

LEGAL ISSUES ASSOCIATED WITH FOREIGN OWNERSHIP OF LAND



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1. Condominium Ownership

Foreign individuals and foreign companies are allowed to hold title to condominium units in buildings that qualify. The foreign individual or foreign company purchasing the condominium unit is generally required to bring into Thailand 100% of the amount of the purchase price from a source offshore. Nevertheless, there is an important exception that foreign individual condominium purchasers holding a Permanent Resident Certificate are exempt from the foreign remittance requirement.

The general rule is that foreigners may own no more than 49% of the total area space in the building at any one time. If the proposed transfer would cause the building to exceed 49% foreign ownership it would violate the ratio of foreign ownership rule, and the official would reject the transfer.

"Foreign individuals and foreign companies are not allowed to own any direct interest in land unless an exception to the general rule applies. This restriction is disappointing to many foreign investors who ideally would like to own the land occupied by their business premises or their individual home."





2. Land Ownership by Foreign Companies

Normally, foreign companies are completely prohibited from owning land unless the government grants a special exemption from the Foreign Business Act's restriction. If, on the other hand, Thai parties hold more than 50% of the company's shares and more than half of the company's shareholders are Thai nationals, the company technically should have the legal right to hold title to land according to the law. In this situation the company would not technically fall under the definition of "foreign"; therefore, the restriction would not apply.

In practice, however, it is not quite that simple. When a Thai party wishes to sell land, the parties must go to the Land Office of the district in which the land is located to transfer the title. The presiding official will request the purchasing company's list of shareholders. In practice, if the company's foreign shareholders hold only 39% of the shares of the purchasing company the official would likely have approved the transfer.

3. Industrial Estate Authority of Thailand – IEAT

In order to purchase land in an industrial estate, the foreign applicant must receive a series of approvals from the IEAT in Bangkok. This is normally not difficult as long as the foreign applicant's primary activity on the property to be purchased will be manufacturing.

The first approval the applicant must receive from IEAT is a Land Utilization License. The applicant must already be established as a company with the Ministry of Commerce. An applicant may not generally purchase such land as a branch, representative office, or regional office. The applicant must then complete necessary forms and submit them together with the application fee (10,000 baht excluding VAT) to the IEAT office.

The next step is for the applicant to apply for the Land Ownership License. The Land Ownership License serves as the notification to the Land Department in the district where the land is located that the applicant has been granted permission by IEAT to own the land. If the applicant intends to construct a factory on the land purchased, he will also be required to obtain a Construction License from the IEAT. The final step is for the purchaser to submit a Notice to Start Industrial Operation with IEAT.

4. Board of Investment – BOI

Unlike the land right granted by IEAT, the BOI is authorized to grant the right to own land outside of Industrial Estates. This can be quite significant because the purchase price of land outside an Industrial Estate is generally much less than inside. There may be other indirect advantages in obtaining the right to own land outside industrial estates as well

5. Eastern Economic Corridor

The Eastern Economic Corridor (EEC) is a new large initiative by the Thai government to attract certain commercial and industrial projects to Thailand which use advanced, modern and environmentally friendly technology, create innovation, and conform to the principle of sustainable development, may be located in three Eastern provinces i.e. Rayong, Chonburi, and Chachoengsao and are divided into 10 zones (Special Economic Promotion Zones or SEPZs). Qualifying foreign owned projects located in SEPZs may qualify to receive the special privileges with respect to land ownership.

6. Title Search

The legal status of the title is accessible to the general public at the local Land Office where the land is located. By conducting a title search one can determine the land's legal boundaries, whether the land has registered liens, mortgages, leases, etc.

7. Long Term Leases

Foreigners are generally allowed to lease land (outside an industrial estate) for up to thirty years. Foreigners may (depending on the terms of the lease) also own improvements erected on the leased property. However, no matter how broad the rights the foreign tenant has to the land during the lease period, the foreigner does not own any interest in the land. This is a very important distinction.

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