

Doyle's Practice Guide to Thailand Business Law

道乐泰国商业投资法律实用指南

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Chapter 8

第八章

What are the Legal Issues Associated with Foreign Ownership of Land?

外国土地所有权相关的法律问题有哪些？

Contrary to popular belief, land ownership rules in Thailand, as they apply to foreigners, are quite straightforward. Foreign individuals and foreign companies are not allowed to own any direct interest in land unless an exception to this 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. The above stated general rule is, however, quite clear and allows for only limited exceptions, the most common of which are discussed below.

与普遍观点相反，泰国关于外国人土地所有权的规定其实相当明确。外国个人和外国公司不得直接拥有土地权益，除非适用这一普遍规则的例外情况。对于许多希望拥有其商业场所或个人住所土地的外国投资者来说，这一限制令人失望。然而，上述普遍规则非常清晰，仅允许有限的例外情况，其中最常见几种将在下文讨论。

1. Condominium Ownership

公寓所有权

Foreign individuals and foreign companies are allowed to hold title to condominium units in buildings that qualify. There are some conditions however; the most potentially significant are listed below.

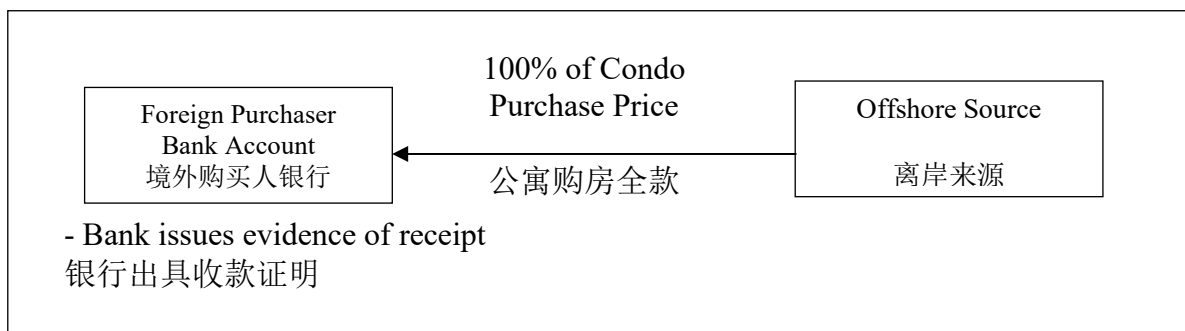
外国个人和外国公司被允许拥有符合条件的公寓单元的产权。然而，这其中存在一些条件，以下列出了可能最重要的几项。

a. Financing

融资

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. This rule is quite significant because it precludes the foreign purchaser from obtaining local financing in Thailand for the purchase.

购买公寓单元的外国个人或外国公司通常需要将全部购房款从海外汇入泰国。此规定相当重要，因为它排除了外国买家在泰国获取本地融资购买房产的可能性。



Normally what happens when a foreigner agrees to buy a condominium is that on the date scheduled for the transfer of title, the foreign purchaser and seller of the condominium unit meet at the Land Office in the district where the condominium is located. The presiding official will require the parties to produce a number of documents, including evidence of receipt of the purchase price from a source offshore issued by the purchaser's bank. If the foreign purchaser does not present this document, the official will not approve the transfer of title.

通常，当外国人同意购买公寓时，在约定的产权转让日期，公寓买卖双方会在公寓所在地区的土地局会面。主持的官员会要求双方提供多项文件，其中包括买方银行出具的从海外汇入购房款的收款证明。如果外国买家未能提供该文件，官员将不会批准产权转让。

There is an important exception to the above rule. Foreign individual condominium purchasers holding a Permanent Resident Certificate are exempt from the above foreign remittance requirement.

上述规定有一个重要例外。持有永久居留证的外国个人公寓买家无需遵守上述外汇汇款要求。

A Permanent Residence Certificate is issued to long-term foreign residents of Thailand who qualify. Note that in recent years, it has become more and more difficult to obtain a Permanent Resident Certificate.

永久居留证签发给符合条件的泰国长期外国居民。需要注意的是，近年来，获得永久居留证变得越来越困难。

b. Ratio of Foreign Ownership

外国人所有权比例

The presiding official at the Land Office will also require the seller of the condominium unit to produce a letter from the condominium juristic person (the body that manages the condominium building) stating the ratio of foreign owners to Thai owners in the building.

土地局的主持官员还会要求公寓卖方提供一封来自公寓管理机构（负责管理公寓大楼的机构）的信函，说明大楼中外国业主与泰国业主的比例。

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 above rule, and the official would reject the transfer.

一般规定是外国人所拥有的公寓单元总面积不得超过大楼总面积的49%。如果拟议的转让导致大楼外国业主的比例超过49%，则违反上述规定，官员将拒绝批准转让。

2. Land Ownership by Foreign Companies 外国公司土地所有权

Foreign businesses classified as “foreign” according to the Foreign Business Act (see Chapter 3) are generally not allowed to own any interest in land. You will recall one of the ways in which a company may be classified as “foreign” is if non-Thai parties hold 50% or more of its shares. Ownership of land is included under the category of “Land Trading” as specified in List 1 of the Foreign Business Act (see Chapter 3, Appendix A). This means foreign companies are prohibited from owning land unless the government grants a special exemption from this restriction (see Section 3 and 4).

根据《外国商业法》（见第3章），被归类为“外国”的外资企业通常不得拥有土地权益。您可能还记得，企业被归类为“外国”的一种方式，如果非泰国方持有50%或以上的股份。土地所有权属于《外国商业法》附表A中的“土地交易”类别（见第3章附录A）。这意味着，除非政府特别豁免，否则外资公司不得拥有土地（见第3节和第4节）。

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. At the Land Office, the presiding official will request the purchasing company’s list of shareholders. In practice, if the company’s foreign shareholders hold more than 39% of the shares of the purchasing company the official will not approve the transfer.

另一方面，如果泰国方持有公司超过50%的股份，并且公司超过一半的股东是泰国国籍，那么根据法律，该公司应当有权持有土地所有权。在这种情况下，公司从技术上讲不属于“外国”公司的定义，因此该限制不适用。然而，在实际操作中，情况并没有那么简单。当泰国方希望出售土地时，交易双方必须前往土地所在地区的土地办公室办理产权转移。在土地办公室，主持官员会要求提供购买公司股东名单。实际上，如果公司的外国股东持有购买公司超过39%的股份，官员将不会批准转让。

EXAMPLE: Suppose a Thai majority-held company with inactive foreign shareholders holding 45% of the total shares, wishes to purchase land. Even though this company technically qualifies as a Thai company (non-foreign) according to applicable law, when the parties attempt to transfer the title at the local Land Office the presiding official may withhold approval. This is because the foreign shareholders hold 45% of the shares of the purchasing company.

例如：假设一家由泰国方控股的公司，其中的外国股东持有45%的股份，该公司希望购买土地。尽管根据适用法律，该公司从技术上讲符合泰国公司（非外国公司）的定义，但当交易双方尝试在当地土地办公室办理产权转移时，主持官员可能会拒绝批准。这是因为外国股东持有购买公司45%的股份。

If the foreign shareholders instead held only 39% of the total shares and the transaction otherwise qualifies, the presiding official would likely have approved the transfer of title.

如果外国股东只持有购买公司39%的股份，并且其他条件符合要求，那么主持官员很可能会批准产权转移。

Because the above method has been used by foreigners to circumvent the restriction of the Thai law, the law has become more rigid on the unlawful acquisition of land by foreigners. Establishing a company with Thai majority ownership, where foreign shareholders are inactive, may be regarded as using “nominees” to hold land ownership on behalf of the foreigners and is considered an illegal method of facilitating foreign land ownership. Both the Thai individuals acting as nominee and the foreigners involved may face fines and imprisonment.

由于上述方法被外国人用来规避泰国法律的限制，法律在外国人非法获取土地方面变得更加严格。成立一家由泰国方控股的公司，其中外国股东处于不活跃状态，可能被视为利用“代理人”代表外国人持有土地所有权，这被认为是非法的外国土地所有权操作方式。无论是充当代理人的泰国个人，还是涉及的外国人，都可能面临罚款和监禁。

3. Industrial Estate Authority of Thailand - IEAT **泰国工业园区管理局—IEAT**

As discussed in Chapter 6, industrial estates are developed and managed by the Industrial Estate Authority of Thailand (IEAT), a state enterprise attached to the Ministry of Industry. IEAT is authorized to grant foreigners rights to own land within these estates. Industrial estates provide the infrastructure necessary for industrial operations (such as ample electricity, water supply, flood protection, wastewater treatment, solid waste disposal, etc).

如第6章所述，工业园区由泰国工业园区管理局（IEAT）开发和管理，该机构隶属于工业部。IEAT有权授予外国人在这些园区内拥有土地的权利。工业园区提供开展工业运营所需的基础设施（如充足的电力、水源、洪水防护、废水处理、固体废物处置等）。

In order to purchase land on 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. Purchasing land for speculation purposes is not allowed.

为了在工业园区购买土地，外国申请人必须获得来自曼谷工业园区管理局（IEAT）的一系列批准。只要外国申请人在拟购买的土地上的主要活动是制造业，这通常并不困难。出于投机目的购买土地是不允许的。

The first approval the applicant must receive from IEAT is a Land Utilization License. In order to receive this 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 the requisite forms and submit them together with the application fee (10,000 baht excluding VAT) to either the IEAT head office located on Vipawadee Rangsit Road in Bangkok or at the located IEAT office where the factory is located or online.

申请人必须首先从工业园区管理局（IEAT）获得土地利用许可证。为了获得该许可证，申请人必须已经在商务部注册成立为公司。一般情况下，申请人不能以分公司、代表处或区域办事处的形式购买土地。然后，申请人需要填写必要的表格，并将其与申请费（10,000泰铢，不包括增值税）一起提交至位于曼谷维帕瓦迪-兰士路的IEAT总部，或工厂所在地的IEAT办事处，或者通过在线方式提交。

This license is usually issued within one to two weeks of the submission of the online application. After the license is issued, it must be renewed every four years.

该许可证通常在提交在线申请后的一到两周内发放。许可证发放后，必须每四年更新一次。

After the Land Utilization License is acquired, 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. Once the applicant obtains this Land Ownership License, the purchaser and the seller may go to the Land Office in the district where the land is located and effect transfer of title.

在获得土地利用许可证后，下一步是申请土地所有权许可证。土地所有权许可证作为通知土地局的文件，告知该地区的土地局申请人已获得工业园区管理局（IEAT）批准拥有该土地。一旦申请人获得土地所有权许可证，买卖双方可以前往土地所在地区的土地办公室办理产权转让。

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 to the IEAT. Note that other licenses and/or approvals may also be required depending upon the company's intended operations.

如果申请人打算在购买的土地上建设工厂，他还需要从工业园区管理局（IEAT）获得建设许可证。最后一步是购买方向IEAT提交开始工业运营的通知。请注意，根据公司的预期运营，还可能需要其他许可证和/或批准。

4. Board of Investment - BOI **泰国投资促进委员会 - BOI**

As discussed in Chapter 6, the BOI is the branch of the Thai government set up to encourage specific types of business projects in Thailand. Foreign companies that engage in these special types of projects, and otherwise qualify, may receive special privileges, including the right to own land. 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, such as less likelihood of staff turnover and logistical advantages.

如第六章所讨论，BOI是泰国政府设立的一个部门，旨在鼓励泰国特定类型的商业项目。符合条件并从事这些特殊类型项目的外国公司，可以获得包括土地所有权在内的特别待遇。与IEAT授予的土地所有权不同，BOI有权授予工业园区外的土地所有权。这一点非常重要，因为工业园区外的土地购买价格通常远低于园区内的价格。获得工业园区外土地所有权还可能带来其他间接优势，例如降低员工流动性和物流方面的优势。

5. Eastern Economic Corridor **东部经济走廊**

The Eastern Economic Corridor (EEC) is a large new 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. EEC projects may be located in three Eastern provinces 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 following special privileges with respect to land ownership.

东部经济走廊（EEC）是泰国政府推出的一项大型新计划，旨在吸引使用先进、现代且环保技术的特定商业和工业项目，促进创新，并符合可持续发展的原则。EEC项目可以设立在三个东部省份——

罗勇、春武里和察觉绍，并分为10个区域（特别经济促进区，SEPZ）。符合条件的外资项目若位于SEPZ内，可以获得与土地所有权相关的以下特别待遇。

1. A foreign company operating in the SEPZ has the right to own land in the SEPZ to engage in the permitted businesses without being required to obtain a license under the land code. 在SEPZ运营的外资公司有权在SEPZ内拥有土地，从事允许的业务，无需根据土地法获得许可证。

2. The above-mentioned business operator also has the right to hold title to a condominium for business operation or residential purposes with an exemption from the restrictions normally applicable to foreign ownership of property under the condominium law. 上述提到的商业运营者还可以拥有公寓的产权，用于商业运营或住宅用途，并免除通常适用于外资拥有物业的公寓法规定的限制。

3. A lease of land and other immovable properties in the SEPZ, intended for the development and promotion of any of the particular areas designated as Special Targeted Industries (See Appendix A), may be leased for up to the maximum period of 50 years plus a one-time renewal for not more than 49 years. 在SEPZ内租赁土地和其他不动产，用于开发和促进任何指定为特殊目标产业的特定区域（见附录A），租期最长可为50年，并可一次性续租不超过49年。

4. However, if the foreign business operating in the SEPZ has been granted the right to hold 100% of the title to land and condominium as stated above, but has not engaged in the approved business within three years or ceases the business operation, the operator must sell such land within one year from the date of receipt of notice by the EEC Office. 然而，如果在SEPZ运营的外资公司已获得上述土地和公寓100%产权的权利，但在三年内未从事批准的业务或停止运营，该运营者必须在收到EEC办公室通知之日起一年内出售该土地。

6. Title Search 产权搜索

A very simple step that many foreign purchasers of property in Thailand overlook, is performing a title search. This seems like common sense, but many foreigners make mistakes by not doing it. You will almost always learn something new about the property by performing a title search. 许多在泰国购买物业的外国买家忽视了一个非常简单的步骤，那就是进行产权调查。这看起来是常识，但许多外国人因为没有进行产权调查而犯错误。通过进行产权调查，你几乎总能发现一些关于该物业的新信息。

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.

该土地的产权法律状态可以通过当地土地办公室公开查询。通过进行产权调查，可以确定土地的法律边界，以及土地是否有登记的留置权、抵押、租赁等。

7. Long Term Leases 长期租赁

Many foreigners avoid the restrictions associated with owning land by instead leasing the designated land over the long term. This option is generally completely acceptable, and the foreigner may be afforded very broad rights to the land during the term of the lease. There are, however, some legal and practical limitations associated with this option.

许多外国人通过长期租赁指定土地来避免与拥有土地相关的限制。这种选择通常是完全可以接受的，外国人在租赁期间可以享有对土地的广泛权利。然而，选择这种方式也存在一些法律和实际的限制。

Foreigners are generally allowed to lease land (outside an industrial estate) for up to 30 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.

外国人通常被允许租赁土地（位于工业园区之外），租期最长可达30年。外国人可以（根据租赁条款）拥有在租赁物业上建设的改善设施。然而，无论外国租户在租赁期间对土地拥有多么广泛的权利，外国人都不拥有土地的任何权益。这是一个非常重要的区别。

If the foreign tenant wishes to divest his rights to the land, he will be limited to assigning those rights to the land to a third party assignee (if the terms of the lease permit such assignment) or waiting until the conclusion of the lease term. Because of this, the foreign tenant's interest in the land is generally regarded as much less marketable than if he owned the land outright.

如果外国租户希望放弃其对土地的权利，他只能在租赁条款允许的情况下将这些权利转让给第三方受让人，或者等待租赁期结束。因此，与直接拥有土地相比，外国租户对土地的权益通常被认为在市场上价值较低。

Also, in order to be enforceable after an initial three-year lease period, all leases of land for a period of longer than three years must be registered with the local Land Office where the land is located. After registration, the lease appears on the land title. If the lease is not registered, the terms of the lease are enforceable for the initial three-year period only.

此外，为了在初始三年租期后具有法律效力，所有超过三年的土地租赁必须在土地所在的当地土地办公室登记。登记后，租赁信息将显示在土地产权证上。如果租赁未登记，其条款仅在初始三年内具有法律效力。

EXAMPLE: Suppose a foreigner enters into a thirty-year lease of a plot of land, but does not register the lease with the local Land Office. The lease would be enforceable by the foreign tenant for the initial three-year period of the lease only.

例子：假设一名外国人签订了一份为期三十年的土地租赁合同，但未在当地土地办公室登记。该租赁合同仅在初始三年内对外国租户具有法律效力。

Registering the lease with the Land Department effectively places prospective third party purchasers of the land on notice of the tenant's rights to the land during the period of the lease.

在土地局登记租赁合同可有效通知潜在的第三方买家，在租赁期内租户对土地享有的权利。

EXAMPLE: Suppose a foreign individual leases land for a period of 30 years and registers the lease with the local Land Office. The owner of the land then sells the land to a third party without mentioning the lease to the purchaser. That purchaser would acquire the land subject to the foreign tenant's rights for the remainder of the term of the lease. That is because by registering the lease the foreign tenant placed all future purchasers of the land on notice that any purchase of the land during the lease period would be subject to the current tenant's rights.

例子：假设一名外国人租赁了一块土地，租期为30年，并在当地土地办公室登记了租赁合同。随后，土地所有者在未告知买方租赁情况的情况下将土地出售给第三方。该买方在租赁期内取得的土地将受外国租户剩余租期内权利的限制。这是因为通过登记租赁合同，外国租户已通知所有未来的土地买家，在租赁期内购买土地将受现有租户权利的约束。

8. Usufruct 用益权

An alternative option sometimes used by foreigners is usufruct. A usufruct is a well established land use concept whereby a landowner agrees to grant broad rights to a grantee (Thai or foreign). 另一种外国人有时使用的选择是用益权。用益权是一种成熟的土地使用概念，土地所有者同意将广泛的权利授予受益人（泰籍或外籍）

A usufruct right must be formalized in a written agreement between the landowner and the grantee and registered for either a specific period or for the life of the grantee, at the local Land Office where the land is situated. In exchange for a usufruct right, the grantee will normally pay a lump sum to the landowner.

用益权必须通过土地所有者与受益人之间的书面协议加以正式确立，并在土地所在的当地土地办公室登记，可登记为特定期限或受益人的终生期限。作为用益权的交换，受益人通常会向土地所有者支付一笔一次性款项。

EXAMPLE: A Danish national age 25 wishes to acquire broad rights to one rai of land with a house in Rayong for the duration of his life and the land owner agrees. The parties may accomplish this by entering into a usufruct agreement and registering the usufruct interest at the local Land Office. The Danish national would then hold possessory rights to the land and house until his death.

例子：一名25岁的丹麦国民希望在其一生期间获得对位于罗勇的一块一莱土地及其上的房屋的广泛权利，土地所有者同意。双方可以通过签订用益权协议并在当地土地办公室登记用益权来实现此目的。此后，该丹麦国民将拥有该土地及房屋的占有权直至其去世。

EXAMPLE: Using the same basic fact as above, but this time the parties agree that the rights period is to be 55 years. This would also be permissible. However, if the Danish national died before the expiration of the 55 years the remaining years would go into his estate.

例子：基于上述相同的基本情况，但这次双方同意权利期限为55年。这也是允许的。然而，如果丹麦国民在55年期限届满前去世，剩余的年限将成为其遗产的一部分。

Take special note that the registration of the usufruct may be rejected by the presiding land official if it is determined that the arrangement was intended to circumvent land ownership restrictions and to unlawfully enable a foreigner to own land.

特别需要注意的是，如果土地管理官员认定该安排旨在规避土地所有权限制并非法使外国人拥有土地，用益权的登记可能会被拒绝。

EXAMPLE: Same fact as above but here the Danish national wishes to register the usufruct right for 50 rai. In this situation the land official may reject the registration application if he believes the usufruct would be used as a way to circumvent land ownership restrictions.

例子：与上述相同，但这次丹麦国民希望将用益权登记为50莱。在这种情况下，如果土地管理官员认为该用益权将被用作规避土地所有权限制的手段，他可能会拒绝登记申请。

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