

Investing in Thailand – Real Estate Law Basics

Foreign Ownership

Thai Law basically restricts foreigners from buying or owning land under freehold title, however there are exceptions that make it possible for foreigners to own land in the following circumstances:

- The Board of Investment (BOI) and the Industrial Estates Authority has power to permit promoted companies to own land for the purpose of the promoted business.
- Permission can be granted under the Petroleum Act for use in approved projects.
- Banks and financial institutes that have become foreign owned.
- A foreigner who invests at least 40 million Baht in authorized securities in Thailand may buy up to 1 rai (1600 sq. m.) for residential purposes only of the owner and their family.

This obviously does not cater for the majority of foreign investors. The following are legitimate ways for a foreigner to purchase a property interest in Thailand.

Leasehold Property

Foreigners can lease land and/or structures on short or long term contracts. Leases may be registered at the appropriate land office for up to 30 years and often have a renewal clause for additional periods of 30 years, however it should be noted that Thai law provides for only one such renewal. Leases for industrial or commercial

purposes have a term of up to 50 years. This again is renewable for periods of 50 years. The majority of authorities agree that any such renewal clause is enforceable as against the original lessor; not, however, as against a transferee lessor. Any lease of 3 years or more must be registered on the title to the land at the appropriate land office in order for the lease to be enforceable for any term beyond 3 years.

Company Ownership of Freehold Property

A Thai Limited Company can purchase land as a juristic person. The company must be allowed to own land and invest in land in accordance with its objectives and Articles of Association. Foreigners can hold a maximum of 49% of the shares in such a Thai Limited Company, the balance must be owned by Thai actual investors.

It is also vitally important that annual accounts are completed and taxes paid on time.

Land Title Documents

The preferred land title in Thailand is the *Chanote* (which literally translates to “Title Deed”) issued in accordance with the Land Act of 1954. *Chanotes* issued under the provisions of this Act are registered with the Land Department and state the ownership, boundaries, area measurements and encumbrances (such as mortgages or servitudes) with particularity. The purchaser of a *Chanote* is registered as the owner of the land with the Land Department at the time of transfer.

Chanotes are issued by the Land Department by application from the holder of a possessory right document for the land. There are three basic types of possessory right documents all of which are still in existence and many of which have yet to be upgraded to a *Chanote*. They are the *Nor Sor 3 Gor*, the *Nor Sor 3*, and the *Sor Kor 1*, however, occasionally other forms of possessory documents may be encountered as part of the historical record of a plot of land.

Of the three, the *Nor Sor 3 Gor* is the preferred. This document contains an accurate measurement of the land and boundaries (but not as accurate as a *Chanote*), along with verification of the utilization of the land in the past. A *Nor Sor 3* is similar to the *Nor Sor 3 Gor* except that the measurements and boundaries of the *Nor Sor 3 Gor* are more accurate. Further, a *Nor Sor 3* requires a 30-day public notice period

before the transfer whereas these changes can be registered with a *Nor Sor 3 Gor* immediately.

The least preferable is the *Sor Kor 1*. This document is an unregistered form stating a claim by an occupant of land that the land belongs to him or her. The measurements are vague or missing and can be easily disputed. Yet, even a simple *Sor Kor 1* can be purchased from its holder and upgraded to a *Chanote*. Also, a *Sor Kor 1* requires a 30-day public notice period before the transfer.

The application process to upgrade a *Nor Sor 3*, or *Nor Sor 3 Gor* or *Sor Kor 1*, to a *Chanote* title can take anywhere from three months up to one and half years depending on the District Land Department.

Additionally, although far less common, there are several other types of legally recognized *Chanotes* in existence. These other types of *Chanotes* may not contain boundaries and measurements as accurate as a Land Act *Chanote* but they are treated the same by the Land Department as far as transfer and registration of ownership is concerned.

In brief, the many varying land title documents encountered in Thailand stem from the complex, and sometimes conflicting, history of land development and ownership documentation. Even a properly issued *Chanote* can be subject to legal attack. With this in mind, it is advisable to conduct a thorough search of the history of the land in question and the title documents associated with it. The purchaser of land acquires any defects in the title and potential claims against it along with the land itself.

Legal Due Diligence by qualified and experienced attorneys familiar with the history of land documents and procedures of the Land Department should always be conducted prior to purchasing any land. This process will generally include a complete review of the title history of the land, encumbrance search, land site inspection, and verification of land use and zoning regulations.

Ownership of Condominiums

The rules concerning the ownership of condominiums are similar to those concerning land. Condominium units have a form of freehold title deed and ownership is transferred at the Land Department. Foreigners, both natural persons and foreign

owned companies can own up to 49% of the area of a condominium project. For those who do not have resident permits there must be proof that foreign money was brought into Thailand to purchase the unit. Condominium units may also be leased by foreigners in the same way that they may lease land or structures.

Ownership of Structures

Structures may also be owned outright by foreigners in their own name. They should have a “superficies” (i.e. the right to own structures on land they do not own) over the land registered in their name on the title deed to the land the structure is on. If they are the first owner of the structure they should also have evidence that they built the structure such as payment records to the builder, a building contract and their name on the building permit. If they are a transferee owner of the structure, the transfer is registered in their own name at the relevant land office and requires a 30-day public notice period before the transfer.

Transfer of Ownership

Ownership of land and/or structure is transferred by a written registration at the authorized Land Department. The transaction is recorded on the title deed and/or other documents. All supporting documents are kept in official records.

In general, the current fee and taxes applicable to and payable upon the registration of ownership of immovable property are as follows:

1) Transfer fee:

2% of the land office appraised value.

2) Income Tax (payable as withholding tax):

1% of the land office appraised or the actual transaction value of the property (whichever is higher) if the Seller is a juristic person. This is a withholding tax and it is credited to (i.e. deducted from) the company’s income tax payable for that year.

An incrementally applied personal income tax sliding scale from 0% – 35% based on the land office appraised value of the property and a rather complicated calculation or based on the actual profit margin, if the seller is an individual.

3) Stamp Duty or Specific Business Tax/Local Development Tax:

Stamp Duty: 0.5% of the land office appraised or the actual transaction value of the property (whichever is higher).

or **

Specific Business Tax/Local Development Tax: 3.3% of the land office appraised or the actual transaction value of the property (whichever is higher).

**in general, the Stamp Duty will apply if the land has not been transferred within the last five years, otherwise the Specific Business Tax/Local Development Tax will apply.

Leases

For leases that are registered, there is a registration fee and stamp duty of 1.1% of the total rental amount of the term actually being registered (i.e. not including any renewal terms).

Mortgages

A mortgage over land and/or structure can be granted to secure the performance of any obligation, including foreign individuals.

The fee and stamp duty for registering a mortgage is 1.05 % of the amount declared in the mortgage agreement (with maximum total fee and duty of Baht 200,000.00) if the property is:

Property Taxation

House and Land Tax is imposed on the owners of a house, building, structure and/or land except for the first residential place. The tax rate is 12.5% of actual or assessed annual rental value of the property. The annual value is the amount a property may reasonably gain in rent for one year, if the property is offered for lease.

A **Local Development Tax** is imposed upon any person who either owns or is in possession of land. The tax rates vary according to the appraised value of the property

being determined by the local authorities. There is an allowance granted for land utilized for personal dwellings. This allowance differs according to the location of the land.

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