

Property

Land ownership and foreign investors

To set up an office in Thailand a foreign investor can either acquire land ownership or lease land. A foreigner can acquire land ownership in accordance with four laws – the Land Code, the Investment Promotion Act B.E. 2520 (A.D. 1977), the Industrial Estate Authority of Thailand Act B.E. 2522 (A.D. 1979), and the Petroleum Act B.E. 2514 (A.D. 1971).

The term “foreigner” under the Land Code Sections 97 and 98 means a company or public company in which foreigners hold more than 49 percent of the registered capital, or where more than half of all shareholders are foreign.

This definition also covers a company or public company in which the shares are held by juristic persons. If the shareholding ratio or the number of shareholders of those juristic persons falls within the above-mentioned criteria, all of the shares of those legal persons in the limited company or the public limited company will be

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deemed to be held by foreigners, and such a juristic person will be deemed a foreigner.

On the other hand, if the juristic person does not fall within the definition of those regulations, such juristic person will be considered Thai. Bearer certificate shares of a limited company are considered shares owned by foreigners.

Land Code

The Land Code Amendment Act (No. 8) B.E. 2542 (A.D. 1999) allows a foreigner who brings in a minimum investment of not less than 40 million baht (US\$888,888 at current rates) to acquire land of not more than one rai (1 rai = 0.4 acres) for residential purposes. Such acquisition must be made in accordance with the procedures and conditions as prescribed in Ministerial Regulations.

These regulations require that the business must be of a type that is beneficial to the Thai economy and Thai society, and that the investment must remain in Thailand for at least three years. In addition, the land to be acquired must be located in the Bangkok Metropolis, Pattaya, or such other municipality or other residential area as specified in the Town Planning Act.

Investment Promotion Act

Under Section 27, a promoted person is permitted to own land for carrying on the promoted activity to the extent that the Board of Investment deems appropriate, regardless of whether it is in excess of the permissible limit under other laws. If the promoted person is a foreign national under the

Land Code and dissolves the promoted activity or transfers it to another person, the promoted person must dispose of the land within one year of the date of the dissolution or transfer. Otherwise, the Director-General of the Land Department has the power to dispose of it under the Land Code.

To help foreign-promoted people in doing business in Thailand, they are able to apply for permission to own land not only for the promoted project, but also for office and residence.

Permission to own land is granted to a promoted person on a case-by-case basis. In considering whether or not to grant permission, the reasons, appropriateness and necessity of ownership will be taken into consideration, and it will be granted in terms of Board of Investment Announcement No. 4/2544 (4/2001), effective from June 15, 2001 onwards.

Under this announcement, a foreign promoted juristic entity may be permitted to own land for his office, but not more than five rai; for an executive or expert resident no more than one rai; and for a labor resident no more than 20 rai.

The land for the office and residence can be located in the same area as the promoted project. If a promoted person loses his status, the land must be disposed of within one year of the date of dissolution. This announcement is valid for applications submitted up to December 31, 2002.

Industrial Estate Authority of Thailand Act

Under Section 44 export-oriented manufacturers and traders are allowed to own land in an industrial estate or in an industrial zone for carrying out

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their business activity to the extent that the Board of the Industrial Estate Authority of Thailand may deem appropriate, regardless of whether it is in excess of the permissible limit under other laws.

If an operator who is a foreign national dissolves or transfers his business activity to another person, he must dispose of the land to the Industrial Estate Authority of Thailand or a transferee, as the case may be, within three years of the date of the dissolution or transfer. Otherwise, the Director-General of the Land Department has the power to dispose of the land to the Industrial Estate Authority of Thailand or elsewhere under the Land Code.

Petroleum Act

Section 65 permits a petroleum concessionaire to own land essential to conducting petroleum operations, even if the amount is in excess of permissible limits under other laws. The Act does not prevent him from transferring his land ownership in cases where he has been permitted to do so by the Petroleum Board.

Land lease

Some types of business activities do not require land ownership; a foreigner can lease land or immovable property. There are three relevant laws in these instances – the Industrial Estate Authority of Thailand Act B.E. 2522 (A.D. 1979), the Civil and Commercial Code and an Act on the Lease of Immovable Property for Industrial and Commercial Purposes, B.E. 2542 (A.D. 1999).

Under Section 6 (3) of the Industrial Estate Authority of Thailand Act, it can lease, arrange hire-purchase or sell immovable or movable property within the industrial estate.

Under the Civil and Commercial Code Section 538, a lease for immovable property is not enforceable unless there is written evidence signed by the party liable. If the lease

is for a period of more than three years or for the life of the lessor or lessee, it is enforceable only for three years unless it is made in writing and registered by a competent land official. And under Section 540, the duration of a lease of immovable property cannot exceed 30 years. If it is made for a longer period, such period is to be reduced to 30 years. The aforesaid period may be renewed, but it must not exceed 30 years from the time of renewal.

The Act on the Lease of Immovable Property for Industrial and Commercial Purposes, B.E. 2542 (A.D. 1999) allows a foreigner to lease property for commerce or industry for a period of more than 30 years, but not more than 50 years. Upon completion of the initial term, the parties may agree to renew the lease term for another period of not more than 50 years from the date of renewal.

The lease agreement must be in writing and registered with a competent land official. Otherwise, the lease will be null and void. The lessor must be the owner of the leased property. Any lease for an area of land larger than 100 rai requires approval from the Director-General of the Land Department. The rights and obligations under the lease agreement devolve to the heirs of the lessee, and the lessee may sublease or assign his rights, either in whole or in part, to a third party if it is clearly specified in the lease agreement.

Personal ownership

If a Thai national legally marries a foreigner, the foreigner still cannot own land. A legitimate marriage under the Civil and Commercial Code Section 1457 is effected only on registration, except for those who married before 16 October B.E. 2519 (A.D. 1976), in which cases there were no marriage certificates.

A standing order of the Ministry of Interior came into force on 23 March B.E. 2542 (A.D. 1999), allowing only the *Sin Suan Tua* (personal

property) of Thai spouses to be used to purchase land. *Sin Suan Tua* consists of property belonging to either spouse before marriage; property for personal use, dress or ornaments suitable for one's station in life, or tools necessary for carrying on the profession of either spouse; property acquired by either spouse during marriage through a will or gift; and *Khongman*.

Khongman is the property that a man gives or transfers to a woman as evidence that the marriage will take place. The *Khongman* becomes the property of the woman after betrothal. A land official will register any rights and juristic acts of any applications in cases where they fall within the following:

1. For a Thai national whose legitimate spouse is foreign, the Thai and foreign spouse jointly confirm in writing that all money needed to purchase land is merely the *Sin Suan Tua* of the Thai spouse;
2. Similarly, but where the marriage is not legal, the money that the Thai person uses to purchase land must be solely personal money, income that the spouses jointly earned cannot be used to purchase land;
3. A Thai national whose spouse is foreign in both legal and illegal marriages may apply to obtain land at the time of the marriage or cohabitation as husband and wife, as his or her *Sin Suan Tua*;
4. A Thai national who once had a foreign spouse but who is divorced or the cohabitation terminated, may enter into a juristic act to obtain land;
5. A foreigner's minor whose nationality is Thai may apply to enter into a juristic act to acquire land.

Land still belongs to a Thai national even though he or she marries a foreigner.

