



**Thailand: Land Ownership Rules  
and Common Questions raised by  
Non-Thai Investors**

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Maya Ito, Jirapong Sriwat, Apinya Sarntikasem

## **Thailand: Land Ownership Rules and Common Questions raised by Non-Thai Investors**

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This Article discusses an overview of the land ownership rules in Thailand and specific questions relating to land title frequently raised by foreign investors intending to invest in real estate in Thailand.

### **PART I: An Overview of the Land Ownership Rules in Thailand**

The ownership, possession, and use of land in Thailand are principally governed by:

- the Land Code 1954, as amended up to the Act Amending the Land Code No.15 (2019) (the “**Land Code**”);
- the Civil and Commercial Code (the “**CCC**”)<sup>1</sup>;
- the City Planning Act 2019;
- the Industrial Estate Authority of Thailand Act 1979, as amended; and
- the Investment Promotion Act 1977, as amended.

Pursuant to paragraph one of Section 86 of the Land Code, there is in place a general restriction on foreign ownership of land in Thailand - “*Foreigners*”<sup>2</sup> may acquire land by virtue of the provisions of a treaty giving the right to own immovable properties<sup>3</sup> and subject to the provisions of this Code.”

As there are currently no treaty provisions in place giving foreigners the right to own land, any right a foreigner may have to acquire land in Thailand needs to derive from the Land Code or other legislation currently in place that affords such rights.<sup>4</sup>

In this regard, the following are the current circumstances in which a foreigner may generally acquire land in Thailand:

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<sup>1</sup> In particular, but not limited to, Book IV of the CCC (Sections 1298 to 1434, inclusive).

<sup>2</sup> Pursuant to Sections 97 and 98 of the Land Code, for the purposes of the Land Code, a “**foreigner**” means as follows:

- (i) a public or private company with more than 49 per cent of its registered capital being foreign owned or more than half of its shareholders being aliens (please be aware that if a private company issues bearer share certificates such shares shall be deemed held by foreigners);
- (ii) a limited partnership or a registered ordinary partnership with more than 49 per cent of its registered capital being foreign owned or more than half of its partners being aliens;
- (iii) an association or co-operatives, more than half of whose members are aliens or which operates especially or substantially in the interest of aliens;
- (iv) a foundation whose objects are particularly or substantially in the interests of aliens;
- (v) a juristic person named in (i) – (iv) becomes the owner of the capital, a shareholder, or partners, as the case may be, in any other juristic person under the provisions as prescribed above, such other juristic person shall be deemed an alien.

<sup>3</sup> Section 139 of the CCC provides that “*Immovable property denotes land and things fixed permanently to land or forming a body therewith. It includes real rights connected with land or things fixed to or forming a body with land.*”

<sup>4</sup> With regard to which, please refer to Paragraphs 3, 4 and 5 of Part 1 of this Article.

**1 Section 96 bis of the Land Code<sup>5</sup>**

Section 96 *bis* permits foreigners to purchase land in Thailand, for residential purposes only, under the following conditions:

- (i) the aggregate area of land to be purchased shall not be more than 1 Rai<sup>6</sup> in area,
- (ii) the purchaser shall bring into Thailand not less than Baht 40,000,000 as an investment and shall maintain this investment for not less than 5 years<sup>7</sup>;
- (iii) permission must be obtained from the Minister of Interior;
- (iv) the money brought into Thailand must be invested in one of the following businesses or activities:
  - (a) to purchase bonds of the Thai Government, bonds of the Bank of Thailand, bonds of State Enterprises, or bonds by which the Ministry of Finance secures capital or interest;
  - (b) an investment in a property mutual fund or a mutual fund for resolving financial institution problems established under the laws on securities and the Stock Exchange of Thailand;
  - (c) an investment in the share capital of a public company limited or a private company limited who has been granted investment privileges under the law on promotion of investment;
  - (d) an investment in an activity as declared by the Board of Investment to be an activity eligible to be granted promotion of investment under the law on promotion of investment;
- (v) the land to be acquired must be located in Bangkok Metropolis, Pattaya City, or Tessaban (Municipality), or in an area specified as a residential zone according to the law on Town and Country Planning and shall not be located in a military safety zone according to the law on Military Safety Zone;
- (vi) any foreigner who is granted permission shall utilise the land only for his/her own or his/her family's residence in a way that does not conflict with local custom or the good living of the local community;
- (vii) if a foreigner, who is granted permission to acquire land, does not comply with the rules and conditions specified, he/she shall dispose of such land in portion to his/her possession within the period of time specified by the Director-General of the Department of Land, which shall be not less than 180 days and not more than 1 year. If, after the time limit has elapsed, the foreigner has not disposed of the land, the Director-General has the power to dispose of such land;

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<sup>5</sup> As inserted by an amendment to the Land Code made in Ministerial Regulations Governing Bases, Procedures and Conditions Respecting Acquisition of Land for Use as Residence of Aliens (2002).

<sup>6</sup> A "Rai" is a local measurement of land and one Rai is equivalent to approximately 1,600 sq. meters.

<sup>7</sup> In this regard, please note that the Baht 40,000,000 used for "investment" purposes shall be separate to any amount used to pay for the land so acquired.

- (viii) if a foreigner granted permission to acquire land does not utilise the land acquired as his/her residence within 2 years as from the day of registering the land acquisition, the Director-General has the power to dispose of such land.

## **2 Section 93 of the Land Code**

Under Section 93 of the Land Code, foreigners, who are the lawful heir to an estate, may inherit land – provided that such inheritance does not exceed the amount of land which a foreigner is otherwise entitled to own - as prescribed in the Land Code, e.g. for residential purpose: 1 Rai, for commercial purpose: 1 Rai, for industrial purpose: 10 Rai (which may be extended subject to the Cabinet’s approval), and permission from the Minister of Interior is given<sup>8</sup>.

## **3 Industrial Estate Authority of Thailand Act 1979**

By virtue of Notification of the Board of Industrial Estate Authority of Thailand (the “IEAT”) re: Rules, Approaches and Conditions for Granting Permission of Ownership Over Land in the Industrial Estate, issued under the Industrial Estate Authority of Thailand Act 1979, the IEAT may give permission to foreign juristic entities to own land in an industrial estate or in an export industrial zone. Such land ownership is subject to a case-by-case review of each application, but in any event:

- (i) land for executives, experts, skilled craftsmen shall not exceed 200 Sq. Wah<sup>9</sup> per family, which in aggregate shall not exceed 3 Rai (if located in Bangkok, Samutprakarn, Nontaburi, Pathumtani, Samutsakorn, or Nakhonpathom) or 5 Rai (if located outside the preceding provinces); and
- (ii) land for factory employees shall not exceed 1 Rai per 100 families, which in aggregate shall not exceed 5 Rai (if located in Bangkok, Samutprakarn, Nontaburi, Pathumtani, Samutsakorn, or Nakhonpathom) or 10 Rai (if located outside the preceding provinces).

## **4 Board of Investment (the “BoI”)**

By virtue of Section 27 of the Investment Promotion Act 1977, the Board of Investment is permitted to allow a foreign juristic entity to own land as an office or residence to the extent that the Board deems appropriate.

Furthermore, any land so acquired as a result of being a promoted business must be disposed of within 1 year from the date upon which the status of the promoted business ceases to be a promoted business.

## **5 Miscellaneous Thai Laws**

Aside from those laws mentioned above, certain miscellaneous Thai laws provide foreign companies the right to purchase land in very specific circumstances. Notable among these is the Petroleum Act 1971, which permits oil concessionaires the right to own land required for their operations.

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<sup>8</sup> In the event that permission from the Minister is not given under Section 93, or the land inherited is more than the amount as specified in the Land Code, then by virtue of Section 94 of the Land Code the acquirer is required to dispose of such land within the time limit prescribed by the Director-General, which shall not be less than 180 days, nor more than 1 year.

<sup>9</sup> A Sq. Wah is a division of a Rai and 400 Sq. Wah is equal to 1 Rai

Notwithstanding this, prior to any acquisition of land by an eligible foreigner (as permitted by those laws mentioned above), a foreigner also has to consider whether or not such land is located within an area of enforced comprehensive planning under the City Planning Act 2019.

Section 37 of the City Planning Act 2019 provides that, within an area of enforced comprehensive planning, no person is allowed to utilise land contrary to the stipulations of the comprehensive planning, or to perform any act contrary to the stipulations of such.

Moreover, depending on the nature of the right over the land, any acquisition of land generally needs to be made in writing and registered with the relevant Land Office - pursuant to Section 1299 of the CCC. For further details relating to this, please see Part II of this Article below.

## **PART II: Specific Questions – Land and Building Title**

### **1 What are the general differences between land and building?**

Under Section 139 of CCC, immovable property denotes land and things fixed permanently to land or forming a body therewith. It includes real property rights connected with and/or things fixed to or forming a body with land. Therefore, land is always immovable property while building shall be immovable property only if it is fixed permanently to land or forming a body with the land.

Generally, buildings are regarded as immovable property since it is almost always fixed to the land. However, if the owner of the land and building sells only the building and requires that the building must be removed from the land, the building will be regarded as movable property instead.

Classification of immovable and movable property is important for the following reasons:

- (i) certain property rights (e.g. servitude, habitation, superficies, usufruct, charge on immovable property) are only available to immovable property;
- (ii) the period of acquiring possessory title is different (i.e. 5 years for movable property and 10 years for immovable property); and
- (iii) legal transactions concerning immovable property require registration with the official (e.g. sale, exchange, give and mortgage) while transactions of movable property generally do not.

### **2 What are the different categories of land title?**

Essentially, Thai law acknowledges two forms of proprietary rights over land, namely:

- (i) a right of possession (“*possessor’s right*”), whereby the person has the right to possess and use the benefit of land; and
- (ii) a right of ownership, whereby the person has a land title deed and/or other documentation evidencing such right of ownership.

Each of these two principal forms of rights over land in Thailand can be further broken-down as follows:

#### **2.1 Rights of Possession**

- (i) Acknowledgement of Land Possession Form (Sor.Kor. 1)

This form is evidence that the possessor has informed the competent officer of land in his possession (currently, this procedure is no longer in use). Sor.Kor. 1 is not a document of right, since it is not issued by the government, but it is only information given to the authority by

the possessor of that land. According to the law, land with Sor.Kor. 1 is transferred when the possessor abandons the intention to possess the land (e.g. no longer holding the land, selling the land to another person) and transfers the possession of land to another person. A person who holds a Sor.Kor. 1 is entitled to apply for a land title deed or Certificate of Use in two cases:

- first, by use of the Sor.Kor. 1 as evidence when applying for a land title deed pursuant to a nationwide program called “*Survey of land to issue land title deed*”. In this case, the government will be the issuer for each sub-district (Tambon).
- second, by use of the Sor.Kor. 1 as evidence in applying for a land title deed or Certificate of Use (Nor.Sor. 3, Nor.Sor. 3 Gor., or Nor.Sor. 3 Khor.). Any possessor of land who wishes to apply for the issuance of a land title deed or Certificate of Use can file an application with the Department of Land in the relevant part of the country. However, a land title deed can only be issued in the case that there is in existence of a survey map specifically made for the issuance of a land title deed.

However, if the Sor.Kor. 1 holder has not applied for a land title deed or Certificate of Use within 6 February 2010, a court decision rendering that he/she is the possessor of the land represented by such Sor.Kor. 1 would be required as a supporting document to the application for a land title deed or Certificate of Use with respect to such Sor.Kor. 1 pursuant to the amendment to the Land Code in 2008.

(ii) Pre-emption certificate (Nor.Sor. 2)

This certificate is an official document that allows the holder to temporarily possess the specified land. A pre-emption certificate is issued to an individual that the government has allocated land to in accordance with the Land Code.

Anyone who holds a pre-emption certificate must start using the land within 6 months from the issue date and must complete their use of the land within 3 years after acquiring the pre-emption certificate. Moreover, except by succession, the certificate is not transferable. After using the land as mentioned, the holder of the certificate is entitled to apply for a Certificate of Use or land title deed. However, the transfer of such Certificate of Use or land title deed must be in accordance with the rules set by law.

(iii) Certificate of Use (Nor.Sor. 3, Nor.Sor. 3 Gor. and Nor.Sor. 3 Khor.)

A Certificate of Use means a certificate from a competent officer to certify that the holder has the right to use the land (i.e. right of possession), as follows:

(a) Nor.Sor. 3

This is the lowest level form of land title, which allows for the legal construction of a building on the property, and is an instrument certifying the use of land issued by the government to the possessor of the land, but is not a possessor’s title, i.e. it is confirmed in law that a person holding a Nor.Sor. 3 has the legal right to possess the land.

This land title can be used as a legal document to use the benefit of the land as the owner. Nor.Sor. 3 are unspecific survey maps with no parcel points. It is issued for a specific plot of land and is not connected to other land plots. This causes problems in

verifying the land area. Any legal acts done to the land with a Nor.Sor. 3 title must be publicised 30 days prior to such act.

(b) Nor.Sor. 3 Gor.

This is a legal land title with the same legal basis as Nor.Sor 3. The difference being that Nor.Sor. 3 Gor. land has parcel points on a survey map, and is set by using an aerial survey to set the points and the land area. It is possible to verify nearby land area. It always uses the same scale of 1:5000. There is no need to publicise any legal acts, and it is possible to partition (divide) the land into smaller plots.

(c) Nor.Sor. 3 Khor.

Nor.Sor. 3 Khor. certifies that the holder has the right to use the land. This certificate is issued in regions where there is no aerial photograph of the area. The issuer of the Nor.Sor. 3 Khor. is the Department of Land officer.

## **2.2 Rights of Ownership**

(i) Land Particulars Certificate (Nor.Sor. 5)

This is a document evidencing that an investigation for the issuance of a land title deed has been done; therefore, the holder is entitled to register for a land title deed. A land particulars certificate is not a certificate showing ownership, but it is transferable.

If the land has both a land particulars certificate and a Certificate of Use issued, when transferring such land, it must be registered in the Certificate of Use first, then in the land particulars certificate.

(ii) Land Title Deed (Chanote/Nor.Sor. 4)

A land title deed is the quintessential evidence of land ownership in Thailand and is evidence of a freehold title registered and issued by the Land Department.

This certificate of ownership of land has the land owner's name on the land title deed and such person has the legal right to the land, and can use it as evidence to confirm their right over the land to government authorities. In this regard, any legal acts may be done immediately, as per the right of ownership. This is the most secure type of land title and, as such, is the one most highly recommended.

## **3 What are the rights of the land and building owner?**

Under the CCC, unless otherwise limited by law, the owner of property, including the owner of land, has the following rights<sup>10</sup>:

- (i) the right to use;
- (ii) the right to dispose of it;
- (iii) the right to acquire its fruits;
- (iv) the right to follow and recover it from any person not entitled to detain it; and

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<sup>10</sup> Section 1336, CCC



- (v) the right to prevent any unlawful interference with it

This right extends to above and below the surface of the land subject to the provisions of the CCC or other laws.<sup>11</sup>

#### **4 What are the restrictions of land usage for each title land?**

Restrictions imposed by the CCC, on the rights of an owner of immovable property, are as follows<sup>12</sup>:

- (i) The owner of a piece of land is bound to take water that flows naturally on to it from higher land. Moreover, water that flows naturally on to lower land, and is necessary to such land, may be retained by the owner of the higher land only to such extent as it is indispensable to his land.
- (ii) The owner of a piece of land is bound to take water coming to it from the higher land in consequence of the artificial drainage of the higher land, if, before the drainage, the water flowed naturally on to his land.
- (iii) The owner of an immovable property must not construct roofs or other structures which would cause rain to fall upon the adjoining property.
- (iv) No well, pond, cesspool or receptacle for manure or refuse may be dug within two metres of the boundary line.
- (v) Land may not be excavated or overload in such manner as to endanger the stay of the soil of an adjoining piece of the land unless adequate measures are provided for preventing injury.
- (vi) Fences, walls, hedges, or ditches, which serve as a boundary, are presumed to belong to the owners of the adjoining properties in common.
- (vii) When a hedge or ditch, which is not used as a drain, belongs to the owners of two joining pieces of land in common, each of the owners is entitled to cut down the hedge or fill up the ditch to the boundary line provided he builds a wall or erects a fence along the boundary line.
- (viii) A tree which stands upon the boundary line is presumed to belong to the owners of the joining pieces of land in common. Its fruit belongs to such owner in equal shares, as well as the timber itself if the tree is cut.
- (ix) The owner of a piece of land may cut off and keep roots of a tree or bush which have penetrated from an adjoining piece of land. He may also cut off and keep overhanging hedge branches after giving the processor of the adjoining piece of land reasonable notice to remove them, such notice not having been complied with.
- (x) Fruits falling naturally upon adjoining land are presumed to be fruit of such land.
- (xi) If a piece of land is so surrounded by the other pieces of land that has no access to public roads, the owner may pass over the surrounding land to reach the public way.
- (xii) Where land has been so partitioned or partially transferred that a plot left without access to a public way, the owner of such plot may claim a right of way only over the land which has been

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<sup>11</sup> Section 1335, CCC

<sup>12</sup> Sections 1339 – 1355, CCC



so partitioned or partially transferred. In such case, no compensation needs be paid. Therefore, the owner of such land may pass over the surrounding land to reach a public way.

- (xiii) The owner of a piece of land is bound, subject to reasonable compensation being paid him, to allow the laying through his land of water-pipes, drainage pipes, electric wires or similar installations for the use of the adjoining land if, without making use of his land, they could not be laid or could be laid only at an excessive cost; but he may require that his interests be taken into consideration.
- (xiv) A person may lead his cattle into or through another person's unenclosed land for grazing and watering.
- (xv) A person may, if permitted by local customs, enter a wood, forest or pasture land owned by another person to collect fuel or gather wild fruits, vegetables, mushrooms, and the like, provided that the owner does not prohibit it.
- (xvi) The owner of a piece of land along or through which a water-way passes is not entitled to draw more water than is necessary for his reasonable needs to the prejudice of any other piece of land on the water-way.

Beside these general restrictions imposed under the CCC, the possessor or owner of land is also required to act in such a way that does not conflict with Thai law; for example, a possessor or owner of land in Thailand would not be permitted to construct a casino on his land as gambling is an illegal activity under Thai law, or has to comply with the City Planning Act 2019 as prescribed in Paragraph 5 of Part I above. Likewise, if the owner of the land wishes to construct a hotel on his land, then certain licences would need to be obtained before this could be done.

## **5 What is the duration of tenure under each title?**

- (i) Right of Possession
  - (a) Sor.Kor. 1: The duration of tenure of land with Sor.Kor. 1 is not limited. The possessor can transfer that land when he abandons the intention to possess the land or no longer holds the property and hands the land to the transferee, or by succession.
  - (b) Pre-emption certificate (Nor.Sor. 2): The duration of tenure of Nor.Sor. 2 is for 3 years. This certificate is transferable by way of inheritance but it is not transferable in any other circumstances. However, the holder of the certificate is entitled to apply for a Certificate of Use or land title deed. After conversion to a Certificate of Use, the possessor cannot transfer a land to another for 10 years (in the case where the Nor.Sor. 2 is issued on or after 14 December 1972) and for 5 years (in the case where the Nor.Sor. 2 is issued before 14 December 1972, provided that the government has supported the allocation of such land).
  - (c) Certificate of Use (Nor.Sor. 3, Nor.Sor. 3 Gor. and Nor.Sor. 3 Khor.): Certificate of Use is freehold and everlasting.
- (ii) Right of Ownership
  - (a) Land Particulars Certificate (Nor.Sor. 5) is freehold and everlasting.
  - (b) Land Title Deed (Chanote/Nor.Sor. 4) is freehold and everlasting.

However, the possessor or owner may be deprived of possession as follows:

(i) Land Possession<sup>13</sup>

Where the possessor has, unlawfully, been deprived of possession, he is entitled to have such possession returned. However, an action for recovery of possession must be entered within one year from the time of dispossession.

(ii) Land Title Deed<sup>14</sup>

Where the person has, for an uninterrupted period of ten years peacefully and openly possessed, a property belonging to another, with the intention to be its owner, he acquires the ownership of it.

**6 What easement and access rights come with each title?**

Each title of land may be subject to the following easements and access rights:

**6.1 Servitudes<sup>15</sup>**

An immovable property may be subjected to a servitude by virtue of which the owner is bound, for the benefit of another immovable property, to suffer certain acts affecting his property or to refrain from exercising certain rights inherent in his ownership. Servitude follows the dominant property when it is disposed of or made subject to other rights.

**6.2 Habitation<sup>16</sup>**

An immovable property may be subjected to a right of habitation in a building or dwelling place. This right is not transferable even by way of inheritance.

**6.3 Superficies<sup>17</sup>**

An immovable property may be subjected to superficies if the owner of that piece of land creates such right. Superficies include the right to own, upon or under the land, structures or plantations. The right of superficies is transferable and transmissible by way of inheritance.

**6.4 Usufruct<sup>18</sup>**

Immovable property may be the subject of a usufruct by virtue of which the usufructuary is entitled to the possession, use and enjoyment of the property. A usufructuary has the right of management of the property and has the right to transfer his right to a third person. However, the usufructuary must, in the exercise of his rights, take as much care of the property as a person of ordinary prudence would take of his own property. Having said this, the owner may object to any unlawful or unreasonable use of the property.

**6.5 Charge on Immovable Property<sup>19</sup>**

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<sup>13</sup> Sections 1374 - 1375, CCC

<sup>14</sup> Section 1382, CCC

<sup>15</sup> Sections 1387 - 1401, CCC

<sup>16</sup> Sections 1402 - 1409, CCC

<sup>17</sup> Sections 1410 - 1416, CCC

<sup>18</sup> Sections 1417 - 1428, CCC

<sup>19</sup> Sections 1429 - 1434, CCC

Immovable property may be the subject of a charge entitling the beneficiary to a periodical performance out of such property or to a specified use and enjoyment thereof. A charge on immovable property is not transferable even by way of inheritance, unless provided in the act creating it. If the beneficiary fails to comply with any essential conditions specified in the act creating the charge, his/her right may be terminated.

#### **6.6 Other Easements under Other Laws**

Typically, other easements under other more specific laws can apply. For example, the Telecommunications Business Act 2001 provides that the land owner, whether Thai or foreigner, must allow a licensee to demarcate, erect poles, lay lines, or erect any equipment for telecom services, upon approval of the National Telecommunication Commission and remuneration for the land usage having been paid.

#### **7 Is there any law or mechanism that would allow a Thai Government to compulsorily acquire the land, i.e. what is the security of tenure?**

Yes. Pursuant to Article 7 of the Expropriation of Immovable Property Act 2019, any piece of land required by the State for any purpose necessary for the:

- (a) undertaking of a public utility;
- (b) defence of the State;
- (c) acquisition of natural resources;
- (d) other public interests; or
- (e) use of such land in making compensation in fairness to owner of land expropriated under this Act,

if not otherwise agreed on a transfer, shall be subject to expropriation by the State.

Notwithstanding the foregoing, for the purposes of any expropriation:

- (i) a Royal Decree needs to be enacted to prescribe the area in the land to be expropriated beforehand;
- (ii) during the period in which the Royal Decree is issued, the authorities have the right to enter and take any measure considered necessary for the purposes of a survey;
- (iii) the authorities have the power to carry out negotiation for concluding sales and fixing compensation<sup>20</sup> for immovable property to be expropriated from the legitimate owner.

#### **8 Is it possible to change the category of land title - if yes how?**

Yes, it is possible to change the category of a land title.

In short, essentially there are two ways by which a category of land title can be changed, as follows:

- (i) by applying for a land title deed or Certificate of Use, as the case may be; or

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<sup>20</sup> As determined by the committee under Section 19 of the Expropriation of Immovable Property Act 2019.

- (ii) by applying for a land title deed pursuant to the “*Survey of land to issue land title deed*” programme.

In each of the cases above, an applicant wishing to change the category or land title is required to submit an application to the relevant Land Office in the location where the land in question is located.

**9 How does the Government of Thailand record land title ownership and keep a record of land division?**

- (i) Rights of Possession

The Thai government keeps a record of all documents showing rights of possession, and their possessors at the relevant Land Office in the location where the land in question is located.

- (ii) Rights of Ownership

The Thai government keeps a record of all land title deed documents, and their legal owners, at the relevant Land Office in the location where the land in question is located.

However, please note that, as is the case with most government record systems, the filing system at most land offices is a manual system, i.e. not computerised; thus, any search of such is both time consuming and burdensome.

**10 What are the normal legal and commercial procedures in making a land transaction?**

Pursuant to the CCC, no acquisition by juristic act of immovable property, or of real right appertaining thereto, is complete unless the act is made in writing and the acquisition is registered by the competent official.<sup>21</sup> However, if it is land possession, the transfer of possession is affected by delivery of the property possessed.<sup>22</sup>

Pursuant to Section 72 of the Land Code, any person wishing to apply for registration of rights and juristic acts concerning immovable property shall appear with the parties concerned with papers evidencing the right in the land before the competent official at the Department of Land or Land Office where the land is located. In applying for registration of their rights and juristic acts (in the case of a land title deed), an investigation sheet, or Certificate of Use, the parties to the case may submit an application to the competent official at the Department of Land, or any Land Office, so that the competent official may proceed with the registration - unless the registration requires a publication or a cadastral survey.

In effecting the registration of rights and juristic acts concerning land with a land title deed or Certificate of Use, the Land Office’s official shall enter the agreement or contract concerned, as the case maybe, and record the important provisions in the land title deed or Certificate of Use of the Land Office and of the owner of the land.

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<sup>21</sup> Section 1299, CCC

<sup>22</sup> Section 1378, CCC

**11 What are collateral on land and building?**

For land and building, a mortgage can be created as security for the performance of an obligation without having to deliver the land or building and therefore it gives no right to the mortgagee to use of the mortgaged property.

To be valid and enforceable under the law, a mortgage must be in writing and registered with the relevant authorities.<sup>23</sup> The effect of a mortgage is that the mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors even if the mortgaged property has been transferred to another person.<sup>24</sup>

A mortgage extends to all things which are connected with the mortgaged property except buildings erected or constructions made by the mortgagor after the date of the mortgage, unless there is a clause in the mortgage contract to that effect.<sup>25</sup> If buildings or constructions are erected or made on the property after the mortgage is created and there is no clause in the mortgage agreement giving the mortgagee any rights to the new constructions, the mortgagor must enter into a new or amended mortgage contract in order for the mortgagee to obtain any mortgage rights over the new buildings or constructions. Otherwise, enforcement of the mortgage will not affect the new buildings or constructions.

**12 What is the law on foreign ownership either by an individual or corporate?**

Please see Part I of this Article for a summary of the foreign ownership restrictions under Thai laws.

In addition to our comments set out in Part I of this Article, it should also be noted that Thailand has in place a general restriction on foreign business investment activities in Thailand – in order to protect certain indigenous industries. The cornerstone legislation of the foreign business investment restrictions in place in this regard at this time is the Foreign Business Act 1999, as amended (the “**FBA**”).

Under the FBA, a “foreign company” is determined by reference to the level of share capital held by a “foreigner” (see definition of a “foreigner” below) (the “**Foreign Shareholder**”). If at least half of the share capital of a company is held by Foreign Shareholders, that company will be considered a “foreign company”.

The term “foreigner” under Section 4 of the FBA means:

- (1) a natural person who is not a Thai national;
- (2) a juristic person not registered in Thailand;
- (3) a juristic person registered in Thailand of which at least 50 per cent or more of the share capital (or at least 50 per cent of the capital invested in it) is held by the persons set out in (1) or (2) above and if a limited partnership or a registered ordinary partnership, whose managing partner or manager is not a Thai national; or

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<sup>23</sup> Section 714, CCC

<sup>24</sup> Section 702, CCC

<sup>25</sup> Section 719, CCC

- (4) a juristic person registered in Thailand of which at least 50 per cent or more of the share capital (or at least 50 per cent or more of the capital invested in it) is held by any of the persons set out in (1), (2) or (3) above.

Nonetheless, if a Thai investor (meaning a person that does not fall within the ambit of sub-sections (1) – (4) of Section 4 of the FBA) (the “**Thai Shareholder**”) holds shares as a “nominee” of a Foreign Shareholder, the share capital that is held by the Thai Shareholder would be considered as belonging to the Foreign Shareholder.

### **PART III: Specific Questions – Ownership**

#### **1 What requirement and approval do you have to fulfil to acquire and own the land?**

##### **1.1 Applying for a land title deed or Certificate of Use**

The documents required in order to register a land title deed include:

- (i) Identification card, household registration, marriage licence, official name/ surname change certificate, naturalisation certificate (if any) (in the case where the applicant is a natural person);
- (ii) Up-to-date company affidavit, memorandum of association and its objectives, articles of association, minutes of board of directors, list of shareholders, as well as identification card, household registration and sample signature of the authorised director(s) (in the case where the applicant is a company);
- (iii) Acknowledgement of land possession form (Sor.Kor. 1);
- (iv) Acknowledgement of intention to acquire land form (Sor.Kor. 3);
- (v) Pre-emption certificate (Nor.Sor. 2) or Squatter Certificate (Bai Yiap Yum) or Tra Chong;
- (vi) Certificate of Use (Nor.Sor. 3, Nor.Sor. 3 Gor., Nor.Sor. 3 Khor.) or Certificate of Land Registration;
- (vii) Land particulars certificate (Nor.Sor. 5);
- (viii) Documents showing land usage in the case that such land is in self-help land settlement, or an industrial estate (Nor.Kor. 3 or Gor.Sor.Nor. 5, respectively);
- (ix) Evidence showing tax registration and payment and other relating evidence.

#### **2 What building approvals are required in the planning, construction and for the occupation license on completion?**

According to Section 21 of the Building Control Act B.E. 2522 (1979), as amended, a person who wishes to construct, alter, or remove a building is typically required to obtain the building construction, modification or demolition permit )the “**Construction Permit**”( from, or serve a notice to, local competent officer, which is generally the local administration organization having jurisdiction over the area at which the land and the building are located.

Under paragraph two of Section 32 of the Building Control Act and Clause 3 of the Ministerial Regulation No. 10 B.E. 2528 (1985) issued by virtue of the Building Control Act, when a holder of the Construction Permit of a controlled building (e.g. a factory building) has completed the

construction, it shall serve a written notice to the local competent officer. If the officer considers that the construction has been duly completed in accordance with the Construction Permit, a certificate for the construction of buildings (the “**Construction Certificate**”) may be issued to the Construction Permit holder to authorize the use of such building (i.e. such controlled building can be used after the Construction Certificate has duly been issued).

Apart from the requirements for the Construction Permit and Construction Certificate, a number of statutory building regulations are in place that are designed to ensure, at least, the minimum standards of design and stability are being met during the course of a construction project.

- 3 Building construction licences are issued by the Administrative Office of the district in which the land/construction takes place. Information relating to the licences is kept by the accession numbers of licences. A building construction licence has a specific period within which the construction has to be completed; failing which, renewal of the building construction licence - for an extended period of 1 year - has to be filed before the expiry date of the building construction licence. Which government departments handle this licensing?**

It is generally the local administration organization having jurisdiction over the area at which the land and the building are located.

- 4 If a foreign owned Thai company acquires land, develops it and then wishes to subdivide the land into separate plots for sale to foreigners, how can he do this?**

A person engages in the business of “land trading” may be required to obtain approval for the business of “land allocation” from the Bangkok Metropolitan land allocation commission or provincial land allocation commissions pursuant to Section 21 of the Land Allocation Act 2000, if the business involves the sale of land which is subdivided into 10 or more separate plots (regardless of whether the subdivision is made on a single plot of land or many plots of land adjacent to each other) in consideration for assets or benefits. This also includes the subdivision of land into less than 10 separate plots but such land is later subdivided into, in aggregate, 10 or more separate plots within 3 years.<sup>26</sup>

Any person who violates Section 21 of the Land Allocation Act 2000 will be liable to an imprisonment for a term of not exceeding 2 years and a fine of Baht 40,000 to Baht 100,000.<sup>27</sup> In addition, in the case where a company violates Section 21 of the Land Allocation Act 2000, directors, managers, or any persons authorised to act on behalf of the company, will also be liable to the same term of imprisonment and same amount of fine.<sup>28</sup>

However, as discussed in Part I of this Article, foreigners cannot generally own land in Thailand – regardless of whether they are individuals or companies – except in those circumstances set out in Paragraphs 2, 3, 4 and 5 of Part I of this Article.

One possible exception to this rule would be if the property development company was developing the property for the purposes of constructing a condominium project, which would then be sold, in part, to foreign buyers.

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<sup>26</sup> Sections 4 of the Land Allocation Act 2000

<sup>27</sup> Section 59 of the Land Allocation Act 2000

<sup>28</sup> Section 66 of the Land Allocation Act 2000



Notwithstanding this, if the foreign development company was to be afforded Board of Investment privileges to develop the land, then the foreign development company could undertake such development in accordance with the investment privilege provided by the Board of Investment, but it is highly unlikely that such property so developed could then be on-sold to foreigners.

Aside from the above, the process of splitting a land title deed in Thailand is not onerous and merely involves an application being submitted to the relevant Land Office where the land is located. An official of the Land Office will then come and inspect the land in question, with new markers, and shall then proceed with the subdivision of the land title deed. This process should not take more than 3 - 10 months depending on the official's work load.

It may also be possible for a foreign development company to develop and sell property in Thailand provided that there is no ownership of land issue, i.e. the land is leased. However, the short term of lease<sup>29</sup> in Thailand and the fact that any sub-lease of land in Thailand requires the owner's permission<sup>30</sup>, has usually resulted in this being considered an uneconomical option.

In addition, a foreign development company may be able to own land in Thailand through a corporate structure commonly known as the "Thai Majority Owned but Foreign Controlled Company". Using this structure, principally a private company's shares are held by Thais in an amount of not less than 51 per cent of its registered capital, but the company is controlled by foreigner(s) who has/have the majority of the shareholder voting rights and also a majority of the representatives on the board of directors of such company.

Having said this, on 4 August 2008, the Land Department issued the Land Department announcement re: supporting evidence for investigation in case where a juristic person in which foreigners have interests applies for the acquisition of land (the "**Land Department Announcement**") pursuant to the internal practice guides<sup>31</sup> of the Ministry of Interior (the "**MoI Practice Guides**") which require an investigation on the income of Thai shareholders of a limited company, limited partnership or registered partnerships (except public companies or juristic persons permitted to acquire land under other laws) applying for an acquisition of land for the purposes of operating a real estate business, where such entity has foreign shareholders or directors, or where there is a ground to believe that such Thai shareholders are holding shares on behalf of foreigners, in order to prevent the circumvention of laws or the acquisition of land for the benefits of the foreigners.

Under the Land Department Announcement, an investigation on the income or source of funds of the Thai shareholders of a limited company, limited partnership or registered partnership is required to be conducted in the case where (i) the acquisition of land is for the purposes of operating a real estate

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<sup>29</sup> 30 years generally or 50 years if the lease falls within the lease under the Act on Lease of Real Property for Commercial and Industrial Purposes 1999 (the "**1999 Act**"). The lease under the 1999 Act has the maximum term of 50 years, extendable for another period of 50 years, provided that certain conditions need to be satisfied (e.g. (i) the leased property is in the commercial or industrial areas as prescribed by the City Planning Act or in industrial parks in accordance with the regulations of the Industrial Estate Authority of Thailand; (ii) the lessor must be the owner of the land to be leased; and (iii) in case of lease for commercial purpose, such business shall have an investment of not less than THB 20 million, or, in case of lease for industrial purpose, such industrial activity shall fall within the scope of promoted businesses under the Investment Promotion Act 1977, or such commercial or industrial activity shall be beneficial to Thai social and economy as announced by the Minister of Interior). In the case where the "alien" as defined in Section 97 of the Land Code is the lessee, its commercial or industrial activities shall not be the restricted businesses under the FBA.

<sup>30</sup> Section 544, CCC

<sup>31</sup> Letters of the MoI No. MorTor 0515/Wor 1562 dated 15 May 2006, No. MorTor 0515/Wor 2430 dated 21 July 2006, and No. MorTor 0515/Wor 2227 dated 21 July 2008

business, such as sale/purchase and lease of land, hotel business operation or construction of vacation homes; and (ii) the acquisition of land is not for the purposes of operating a real estate business but there is a ground to believe that such Thai shareholders are holding shares on behalf of foreigners, such as in the case that foreigners are authorised directors, promoters or hold preference shares with extraordinary voting rights or Thai majority shareholders are not the real investors (e.g. being a lawyer or broker).

Supporting documents which are required to be submitted for such investigation are, for example, a letter of employment of each Thai shareholder representing his/her position, length of employment, monthly income and any other reliable evidence and evidence of the source of fund used to purchase shares of the company (e.g. deposits, proceeds from sale of land, inheritance or loan, in which case a bank statement, land sale agreement, evidence of inheritance or loan agreement must be presented).

In the case where the Thai shareholder is a juristic person, although such juristic person has no foreign shareholders or directors, an investigation on the source of fund used by such juristic person is required to be conducted. In this regard, an authorised person of such juristic person is required to present the source of fund used to purchase shares of the company, such as balance sheets of the juristic person, a loan agreement in the case where the fund has been borrowed from a third party and minutes of meetings on the relevant matters.

In the case where the entity applying for the acquisition of land acquires the land at a price higher than its registered capital (e.g. the land price is Baht 10,000,000 and its registered capital is Baht 500,000) without mortgaging such land, an investigation on the source of fund used by such entity to acquire the land is required to be conducted. If the fund has been borrowed, a loan agreement and minutes of meetings on the relevant matters are required to be submitted for such investigation, together with the following supporting documents: (i) in the case of a loan from foreign persons (individuals or companies), evidence of inward remittance of fund or withdrawal of fund from a bank account and minutes of meetings of the lenders, and (ii) in the case of a loan from Thai persons (individuals or companies, regardless that there is no foreign shareholders or directors in such companies), balance sheets of the company, evidence of withdrawal of fund from a bank account and minutes of meetings of the lenders.

In the case where a foreign juristic person leases or holds any long-term rights of land, objectives of the lease or such holding, whether or not the holding of land is on behalf of foreigners or whether or not such acts conflict with the FBA shall be investigated.

Under the MoI Practice Guides, after the investigation, if there is a ground to believe that the acquisition of land is conducted to circumvent the laws or for the benefits of the foreigners, the land official shall report the result of such investigation to the Land Department in order to obtain further instruction from the Minister of Interior.

In addition, given that certain juristic persons circumvent Sections 97 and 98 of the Land Code (which prohibit a juristic person of which more than 49 per cent of the shares are held by foreigners or in which more than half of its shareholders are foreigners from owning land in Thailand) by acquiring land while they are considered as Thai juristic persons under the Land Code and later increasing the share capital owned by foreigners to more than 49 per cent of the total share capital or the number of foreigners to more than half of the total number of shareholders, in order to monitor any violation of Sections 97 and 98 of the Land Code, the Land Department requires that the Bangkok Metropolitan land office and the provincial land offices send a list of land owners which are juristic persons having foreign shareholders or directors to the MoC within the month of June of every year in order to review

whether or not such juristic persons fall under Sections 97 and 98 of the Land Code.<sup>32</sup> The consequence of becoming foreign juristic persons under the Land Code after the time of the acquisition of land is that such juristic persons will be required to dispose of the land within the period prescribed by the Director-General of the Land Department, which shall not be less than 180 days but not more than one year. If such land is not disposed of within the prescribed period, the Director-General is empowered to dispose of such land.<sup>33</sup> In addition, in violating the Land Code, such juristic persons will be liable to a fine of not more than Baht 50,000 pursuant to Section 112 of the Land Code.

## **5 How easy to get building permission?**

The process for the competent authorities to approve a building construction can be different - depending on the size of the building to be constructed.

The following are the two alternative methods of obtaining permission for a building construction:

- (i) applying for the Construction Permit with the local authority where the land is located, the time frame of which is approximately not more than 45 days; and
- (ii) notifying the relevant Public Works Division of the building construction prior to the actual construction whereby the correctness of the items in the notification must be verified by a qualified engineer, architect, and construction supervisor. This alternative takes a shorter time than the first alternative. In principal, once all supporting documents are fully submitted to the competent official, the competent official will, on the same day or within a few days after such submission, issue a notification and the construction can be started.

## **Part IV: Recent Development**

On 4 June 2021, the meeting of the Center for Economic Situation Management due to the Effect of COVID-19 Pandemic No. 2/2564 agreed to the proposal to provide economic incentives for 4 focused groups of high potential foreign investors as follows: (1) wealthy global citizen with a minimum investment of USD 500,000 in Thai government bond, foreign direct investment or real estate and having minimum personal income of USD 80,000 in the past two years; (2) wealthy pensioner with a minimum investment of USD 250,000 in Thai government bond, foreign direct investment or real estate and having minimum personal income of USD 40,000 in the past 2 years; (3) work-from-Thailand professionals who wish to work in Thailand for foreign employers who, among others, are listed on the stock exchange or have a minimum turnover of USD 50 million in the past 3 years; and (4) highly skilled professionals who will be working in a target industry in Thailand.

Among the incentives that would be provided, the qualified foreign investor may be given the right to own or long term leasing of immovable property, including land. However, details of these incentives and qualified foreign investors are still in deliberation and need further confirmation from the government.

*This Article is intended merely to provide a regulatory overview and not to be comprehensive, nor to provide a legal advice. Should you have any questions on this or on other areas of law, please contact any of the authors.*

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<sup>32</sup> Letter of the Land Department No. MorTor 0515/Wor 12013 dated 26 April 2006

<sup>33</sup> Sections 94, 95 and 100 of the Land Code

# **NISHIMURA&ASAHI**

SCL Nishimura & Asahi Limited

34th Floor, Athenee Tower, 63 Wireless Road,  
Lumpini, Pathumwan, Bangkok 10330, Thailand

Tel:+66-2-126-9100

<https://www.nishimura.com/en/>