

LAND SYSTEMS, RULES, AND REGULATIONS

LAND OWNERSHIP

Land ownership in Thailand may be individual or shared with other Thais. Any Thai national may purchase land in the Kingdom. Land issues are governed primarily by the Land Code B.E. 2497 (A.D. 1954); Land Reform for Agriculture Act B.E. 2518 (A.D. 1975); Land Development Act B.E. 2543 (A.D. 2000); City Planning Act B.E. 2518 (A.D. 1975); Condominium Act B.E. 2522 (A.D. 1979), (No. 2) B.E. 2534 (A.D. 1991), (No. 3) B.E. 2542 (A.D. 1999), and (No. 4) B.E. 2551 (A.D. 2008); and Rules Relating to Land Allocation B.E. 2535 (A.D. 1992). Land regulations are determined by the Ministry of Interior.

Can a Thai with an Alien Spouse Own a Piece of Land?

Previously, a Thai with a lawful alien spouse was not allowed to own a piece of land in Thailand, because under the Land Act, aliens are prohibited from owning land in Thailand. If the Thai spouse were allowed to own land, the land would be *sin somros* (community property), and the foreign spouse would have the right to own half of that land.

According to Article 30 of the Constitution of Thailand B.E. 2550 (A.D. 2007), all persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education, or constitutionally political view shall not be permitted. Also, according to Article 41 paragraph 1, the property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law.

To abide by the provisions of the current Thai Constitution, the Interior Ministry has set up the following guidelines to be followed by the competent land authorities:

- If a Thai with a lawful alien spouse wishes to make land purchases or accept land transfers in a like manner during marriage, and if the official inquiry reveals that the applicant, along with the alien spouse, have jointly affirmed in writing that the money used to buy the land is derived wholly from separate property owned by the applicant and not from community property, the competent authorities shall proceed with the registration of legal rights in land for the applicant. However, if the alien spouse fails to make such affirmation or affirms in writing that all or part of the money so used is out of the community property, after the inquiry has been made the matter shall be submitted for decision to the Minister in charge through the Royal Land Department. This is in accordance with Section 74, paragraph 2 of the Land Act.

- If a Thai with an unlawful alien spouse wishes to make land purchases or accept land transfers in a like manner while living with the spouse as husband and wife, and if the official inquiry reveals that the applicant, along with the alien spouse, have jointly affirmed in writing that the money used to buy the land is derived wholly from personal property owned by the applicant and not from property jointly owned by the parties, the competent authorities shall proceed with the registration of legal rights in land for the applicant. However, if the alien spouse fails to make such affirmation or affirms in writing that all or part of the money so used is out of the money jointly earned by the parties, after the inquiry has been made the matter shall be submitted for decision to the Minister in charge through the Royal Land Department. This is in accordance with Section 74 paragraph 2 of the Land Act.

- If a Thai with an alien spouse, whether unlawful or not, wishes to accept land as a gift during marriage while living with the spouse as husband and wife, and if the official inquiry reveals that the gift has been accepted as separate property or as personal property only and that the alien spouse has no ownership interests in land, the competent authorities shall proceed with the registration of legal rights in land for the applicant. However, if the gift has been accepted as community property, and if the alien spouse has ownership interests in land, after the inquiry has been made the matter shall be submitted for decision to the Minister in charge through the Royal Land Department. This is in accordance with Section 74 paragraph 2 of the Land Act.

- If a Thai who once had an alien spouse but has now divorced or deserted said spouse wishes to make registrations of land acquisitions, and if the official inquiry reveals that there are no circumstances where evasion of the law has been committed, the competent authorities shall proceed with the registration of legal rights in land for the applicant.

- If a Thai minor who is born of an alien wishes to make registration of land acquisitions, and if the official inquiry reveals that there are no circumstances where evasion of the law has been committed, the competent authorities shall proceed with the registration of legal rights in land for the applicant.

The Royal Land Department also requires that the alien spouse give spousal consent in the matter, not only in writing but also in person. If the alien spouse is unable to make a trip to Thailand for any reason to give the required consent, such alien may make an affidavit before a notary public which is later suitably attested by a Thai Consulate located in the country concerned, and then submit the affidavit to the Royal Land Department.

Can a Thai Minor Born of an Alien Own a Piece of Land?

A Thai minor who is born of an alien can own land in Thailand in accordance with Article 30 and Article 41 of the Thai Constitution as stated above.

To abide by the provisions of the current Thai Constitution, the Interior Ministry has set up the following guidelines to be followed by the competent land authorities:

- If a Thai minor born of an alien wishes to make land acquisitions and registrations, and if the official inquiry reveals that there are no circumstances where evasion of the law has been committed, the competent authorities shall proceed with the registration of legal rights in land for the applicant.

- If a person wishes to give a piece of land as a gift to a Thai alien-born minor, the competent authority shall inquire into his/her intention of giving the gift to the minor and into his/her legal relations with the minor. If the property to be given as a gift is acquired by purchase, it must be determined out of whose money the acquisition has been made. That is questioned for fear that the alien parent may give the money to a Thai person to buy and hold the property as nominee owner, and later give it as a gift to the minor. However, in the case of a Thai alien-born major, no official inquiry shall be made to establish said fact.

Previously, a Thai alien-born minor was not allowed to own a piece of land. At present, the statutory rights and freedoms provided by the current Thai Constitution allow for a Thai alien-born minor to own a piece of land in the circumstances described above.

FOREIGN OWNERSHIP

Under present Thai law, foreign individuals and foreign companies are prohibited from owning land in Thailand. Companies incorporated in Thailand that are at least 51% Thai-owned may legally own land. If a company has significant foreign equity, it could be investigated by the Land Department to determine whether or not a foreigner is the true owner of the land before the company is allowed to register a purchase of land.

An exception to the foreign ownership rule applies to Board of Investment (BOI) and Industrial Estate Authority of Thailand (IEAT) projects. Under those projects, special privileges are given to foreign-owned companies to own land for business operation and residential purposes for management and employees. In addition, foreign oil companies that meet the requirements of the Petroleum Act may also own land.

However, foreigners may own buildings on land that is leased, because there are no restrictions on building ownership. Foreigners can thus lease land and construct a building, office tower, apartment, or house on the leased land and own the structure.

In addition, an alien, particularly an alien juristic person, may obtain the rights to the land under the following laws:

- Investment Promotion Act B.E. 2520 (A.D. 1977), Section 27
 - A promoted entity is permitted to own land required for the promoted business in such size as the BOI may prescribe, even though it exceeds the limit prescribed under other laws.
 - In case a promoted entity that is an alien under the Land Code dissolves or transfers the promoted business, the promoted entity shall dispose of the land which it has been permitted to own within one year from the date of the dissolution or transfer thereof. Otherwise, the Director-General of the Land Department shall have the power to dispose of said land under the Land Code.
- Financial Institution Business Act B.E. 2551 (A.D. 2008)
 - Under Section 4 of this Act, financial institution business means commercial bank business, finance business, credit foncier business, and specialized financial institution business. Commercial bank means a public limited company licensed to undertake the business of commercial banking and includes retail banks and branches of foreign banks licensed to carry on such business.
 - Under Section 80 of the Act, no financial institution shall purchase or permanently hold immovable properties except:
 - For use as premises for the business of the commercial bank or as facilities for its officers and employees, with the approval of the Bank of Thailand. Such approval may be granted with any condition.
 - Those acquired as a result of a debt settlement or a guarantee in respect of credit granted or as a result of the purchase of an immovable property mortgaged to the financial institution at an auction conducted pursuant to an order of a court or an official receiver, but such immovable property must be sold within five years from the date such immovable property belonged to the financial institution. In necessary cases, the Bank of Thailand may extend the period for selling such immovable property with any condition.

- Immovable property that a finance business engaging in the business of finance for housing or a credit foncier business purchases or holds for engaging in its business according to the regulation prescribed by the Bank of Thailand.

- Land Code Amendment Act (No. 8) B.E. 2542 (A.D. 1999), Section 96 *bis*

- The provisions governing the acquisition of land by aliens by virtue of treaty under Section 86 paragraph 1 shall not apply to aliens who have brought in money for investment in an amount fixed in the Ministerial Regulations. However, in no case shall it be less than THB 40 million, whereby the land so acquired for use as residence shall not be more than one *rai*, and permission therefor must be obtained from the Minister.

- The acquisition of land by aliens under paragraph 1 shall be per the bases, procedures, and conditions prescribed in the Ministerial Regulations, whereby such Ministerial Regulations shall at least state the following:

- Category of business invested by the aliens, which must be beneficial to the country's economy and society, or which must be a business prescribed by the BOI as a business that may apply for investment promotion under the law governing investment promotion.

- Period of time for maintenance of the investment, which must not be less than three years.

- The area permitted to be acquired by the aliens must be within Bangkok Metropolis, Pattaya City, or municipalities or areas designated as residential zones under the law governing town planning.

- Industrial Estate Authority of Thailand Act B.E. 2522 (A.D. 1979), Section 44

- Industrial operators and operators of trading for export may be permitted to hold land ownership in an industrial estate or in an export industrial zone, whichever the case may be, for the operation of business in an area deemed reasonable by the Board, even though it may exceed the limit fixed under other laws.

- In the event of an industrial operator or an operator of trading for export who is an alien having dissolved his/her business or having transferred his/her business to other persons, the industrial operator or the operator of trading for export shall sell the land over which he/she was permitted to hold ownership and the land's appurtenances to the IEAT or the transferee, whichever the case may be, within three years from the date of dissolution or transfer of business. Otherwise, the Director-General of the Land Department shall sell the land and appurtenances to the IEAT or any other person under the Land Code.

PRIVATE LAND OWNERSHIP OPTIONS

Laws regarding lease of property or buildings fall under the Hire of Property General Provisions of the Civil and Commercial Code. Land, houses, condominium units, and other buildings may be leased to foreigners for up to 30 years, with possible renewal for another 30 years. However, it should be noted that the renewal option might not be enforceable against someone who purchases the property from the lessor. A lease contract of any immovable property for three years or less is not enforceable unless made in writing and signed. Leases of more than three years need to be registered with the Land Office. Otherwise, they will be valid for only three years.

If a lease is extinguished before the end of the agreed lease period, the innocent party has a number of recourse options. In the case of nonpayment of rent, the contract can be terminated. However, if a lease was signed and the lease is canceled by the lessee, he/she is responsible for damages incurred until an appropriate replacement is found or a reasonable time period has expired. If taken to court, the verdict can vary depending on the specifics of the case and the actual damage the plaintiff is able to prove to the court.

In the event that at the end of the agreed lease period, the tenant retains possession of the leased property and the landlord does not object, it is deemed that the lease is extended for an indefinite period. However, at the end of each rental period, either party may terminate the lease contract by providing the other party notice of at least one rental period or not more than two months' notice in case of yearly rental periods.

A lessee can transfer his/her rights to a third person only with the consent of the lessor.

- Act Governing Leasing of Immovable Property for Commercial and Industrial Purposes B.E. 2542 (A.D. 1999)

Section 3

In this Act, leasing means leasing of immovable property for commercial or industrial purposes for which the lease period is fixed at 30 years but not more than 50 years.

Chapter 2 Article 5, Category of Commerce or Industry

The category of commerce or industry for which lease may be registered shall be any of the following descriptions:

- Commerce with investment of not less than THB 20 million.
- Industry that can apply for investment promotion under the law governing investment promotion.
- Commerce or industry that is beneficial to the country's economy and society, as announced and published by the Minister with the approval of the Council of Ministers.

CONDOMINIUM OWNERSHIP

The Condominium Act B.E. 2522 (A.D. 1979), as amended by Condominium Acts (No. 2) B.E. 2534 (A.D. 1991), (No. 3) B.E. 2542 (A.D. 1999), and (No. 4) B.E. 2551 (A.D. 2008), allows certain groups of foreigners (both individuals and juristic persons) to acquire condominium units in Thailand, provided that the foreign ownership in a condominium project does not exceed, in the aggregate, 49% of the total area of all condominium units in the condominium building. The foreigners must be able to present correct and complete documentation and evidence as required by the Land Department.

Individual foreigners eligible to own condominium units are:

- Foreigners who are permitted to have residence in Thailand under the Immigration Act. The documents required are a passport, residence permit and house registration, or alien book.
- Foreigners who are permitted to enter Thailand under the Investment Promotion Act. The documents required are a passport plus a letter from the Board of Investment of Thailand certifying permission to live in Thailand under the Investment Promotion Act.

- Foreigners who bring foreign currency into Thailand to pay for the purchase of condominium units, or withdraw money from a bank account of a nonresident, or withdraw money from a foreign currency account.

Any one of the following documents is required in the last-mentioned case above:

- Evidence of bringing foreign currency into the Kingdom, or evidence of withdrawal of money from a baht account of a nonresident or withdrawal of money from foreign currency account in an amount not less than the price of the unit to be bought.
- Foreign Currency Declaration Form issued by the Customs Department.
- Receipt for foreign currency issued by a company or individual person authorized to be a foreign exchange dealer, together with the license issued by the Bank of Thailand.

Foreign juristic persons eligible to own condominium units are:

- Foreign juristic persons specified under Sections 97 and 98 of the Land Code that are registered as juristic persons under Thai law. One of the most important documents required is the Certificate of Registration issued by the Ministry of Commerce.
- Foreign juristic persons specified under the Foreign Business Act B.E. 2542 (A.D. 1999) that are promoted by the Board of Investment of Thailand. One of the most important documents required is the Promotion Certificate from the Board of Investment of Thailand.
- Foreign juristic persons that bring foreign currency into Thailand or withdraw money from a baht account of a nonresident, or withdraw money from a foreign currency account to pay for the purchase of condominium units. The documents required are detailed above.

DOCUMENTATION FOR OWNERSHIP

The Land Office in the province where the land is located is the proper registration location for land transactions. For land located in the Bangkok area, the proper registration locations are the District Land Offices. All land transactions should be recorded in a written document, have a title deed, and be registered.

It is critical to research the true ownership of land prior to any agreement. The process to determine ownership can become quite complicated, especially in rural areas. However, exceptions to land ownership rules exist.

LAND DOCUMENTS PROVIDING EVIDENCE OF LAND OWNERSHIP OR POSSESSION RIGHTS

Land Title Deed (*Chanote*)

A Land Title Deed is the purest form of land ownership. It ensures easy transfer and is issued mainly in urban areas. One original set is kept at the District Land Office where the registration of land transfer takes place, and the other original set is given to the owner of the land.

Confirmed Certificate of Use (*Ngor Sor Saam Gor*)

This document certifies the right to use land and is often issued pending Land Title Deed. Transfer of the certificate is mainly completed at the District Land Office or Branch District level, as the case may be.

Certificate of Use (*Ngor Sor Saam*)

This is similar to the Confirmed Certificate of Use, but lacks completion of formalities such as provision of an aerial photo of the land. Transfer of this certificate requires posting of intent at each of the following places:

- Provincial Land Office or Branch Land Office.
- District Land Office or Branch District Office.
- House of the village headman.
- Location of the land.
- Municipal Office, if the land is in a municipality.

There is a 30-day waiting period before the transfer is registered by the Chief District Officer or Assistant District Officer, as the case may be.

Certificate of Possession (*Sor Kor Neung*)

This certificate only recognizes possession and does not imply ownership rights with such possession. The certificate is nontransferable. However, a person in possession may transfer physical possession. This certificate is required for issuance of a Certificate of Use, and is most common in the rural areas.

Tax Receipt

A tax receipt is evidence of possession, but does not confer ownership rights with possession. It is useful when applying for a Certificate of Possession.

Condominium Unit Title Deed (*Nangsue Kammasit Hong-Chut*)

This form of title deed is evidence of ownership of a condominium unit. This document has similar importance to the Land Title Deed (*Chanote*). Administrative procedures relating to the registration and issuance of a Land Title Deed also apply to the registration and issuance of a Condominium Unit Title Deed.