

Newsletter No 19 (EN)

Foreigners as Owners of Land/Houses in Thailand - and legal instruments to secure the possession of land -

Newsletter No 19 (EN)

I. Can foreigners own land in Thailand?

No, except:

1. they applied and obtained a **special approval** by the Minister of Interior (Sec. 86 Land Code). The size of the land which may be permitted depends on the purpose of use.

For example:

- for residence, per family not more than 1 Rai, (approximately 1,600 sq.m.)
- for agriculture or industry not more than 10 Rai (approximately 16,000 sq.m.)

or

2. they invest **40 Million THB (Sec. 96 bis Land Code)**. The approval by the Minister of Interior can be obtained only:
 - if the land will be used for residence purposes only,
 - if the land is located within the area of Bangkok, Pattaya City, Municipalities or areas designated as residence zone.
 - if the investment is beneficial to the economy and society of Thailand and must be maintained for a period of 3 years.

The amount of the land which may be permitted to own will not be more than 1 Rai (approximately 1,600 sq.m.). If foreigners do not use the land for residence within the period of 2 years from the date of registration of requirement, the Director-General has the power to dispose such land. This exception is applicable to foreigners and juristic persons whereby over 49 % of its shares are held by foreigners or more than half of its shareholders are foreigners (foreign owned companies), as the case may be (Sec. 97 Land Code).

Newsletter No 19 (EN)

or

3. Investor buys land within an Industrial Estate

an industrial operator (manufacturer or trader) may acquire:

- land located in an Industrial Estate
- in a size as the “Board of the Industrial Estate Authority of Thailand” (IEAT) deems appropriate
- for carrying out their business activity (Sec. 44 of the Industrial Estate Authority of Thailand Act).

However, if an industrial operator who is a foreigner ceases his business or assigns it to another person, the land must be disposed of within 3 years.

or

4. Project of foreign investor with BOI approval

a BOI (Board of Ivestment) promoted company (even if company is 100 % foreign owned) may own land everywhere in Thailand in order to carry out the promoted activity (Sec. 27 Investment Promotion Act). Generally, promoted activities are activities which are important and beneficial to the economic and social development.

The BOI will review the land and the proposed construction plans if:

- the size of the land is suitable for the promoted activity, and
- the use of the land is limited to the promoted activity.

However, if the promoted business is later dissolved, the land must be sold within one year after termination of the promoted business.

Newsletter No 19 (EN)

II. Other rights

Since it is generally not possible for foreigners to own land, there are various possibilities to secure foreigners who want to possess and use a plot of land:

1) **Arsai Sec. 1402 CCC** (*similar to the German right of residence*

= "*Beschränkt persönliche Dienstbarkeit*" §§ 1090 (1033) ff BGB)

- a) Purpose of use: To occupy a building and land for living purposes only (without paying rent)
- b) Duration: For lifetime of the grantee or for certain period of time, but not exceeding 30 years (Sec. 1403 para 3 CCC)
- c) Transferable: **No**
- d) Inheritable: **No**

2) **Superficies Sec. 1410 CCC**¹ (*similar to the German inheritable right to build on land belonging to a third person = vererbliches Recht der Bebauung = "Erbbaurecht", Erbbaurechtverordnung*)

- a) Purpose of use: To possess the land and own its building, structure or plantation and to live on a plot of land on which the building is constructed (*Supreme Court decision Case No. 3702/2535 (1992)*)

¹ If the right of superficies is not made in writing and is not registered by the competent official, the building is not regarded as a component part of the land (Section 146 CCC) and thus is not owned by the land owner (*Supreme Court Decision Case No. 116/2513 (1970)*). It takes effects only against the first owner as a personal right, not against the new owner (*Supreme Court Decision Case No. 3702/2535 (1992)*). Therefore, the new owner may exercise his right of ownership over the land by asking the superficies right holder to get out and remove the house or building out of the land. The superficies right holder may claim against the first owner for compensation for breach of contract. Therefore, it is important that the right of superficies should be registered.

Newsletter No 19 (EN)

- b) Duration: For lifetime of the owner of the land or
for lifetime of the superfiiciary and/or
for certain period of time, but not exceeding 30
years (Sec. 1412 CCC)
- c) Transferable: **Yes**
- d) Inheritable: **Yes**

3) **Usufruct Sec. 1417 CCC** (*similar to the German right to use the land in order to make profit „Nießbrauch” §§ 1030 ff BGB / „Pacht” §§ 581 ff BGB*)

- a) Purpose of use: To live, to manage and to use the land in order to
make profit
- b) Duration: For lifetime of the beneficiary or for a certain
period of time, but not exceeding 30 years (Sec.
1418 CCC)
- c) Transferable: **No**
- d) Inheritable: **No**

III. Mortgage

In addition, foreigners can also register a mortgage on the land (Sec. 702 CCC).
Result: In case the owner of the land sells the land (which is due to the mortgage not too easy for the owner) this mortgage takes effect against the new owner as well. If the owner of the land does not repay the money, which the mortgage was registered for, then the mortgagee is entitled to sell the land via auction.

Newsletter No 19 (EN)

IV. How to register the ownership of the house separately from the land?

Although a foreigner is generally not allowed to own land, he can be the owner of a house (see above superficies). That means that the owner of a house and the owner of the land on which the house is built can be different. For example: If a residential building is built with the consent of the owner of the land, the house is not regarded as a component part of the land (Sec. 146 CCC) and thus does not belong to the land owner (*Supreme Court Decision Case No. 1783/2519 (1976)*).

The registration of the ownership of the house will not be attached to the registration of the ownership of the land. Rather, the Land Department will issue a (separate) document of right showing who is the owner of the house. But this document is not a title deed and cannot be enforced against third parties. In case the owner of the land sells the land, the new owner of the land can ask the owner of the house to remove the house by giving him a removing fee. Therefore, it is advisable to secure the owner of the house who is different to the owner of the land with other additional instruments.

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