



Newsletter No. 19 (EN)

**Foreigners as Owners of Land or Houses in
Thailand and Legal Instruments to secure
the Possession of Land**

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I. Can foreigners own land in Thailand?

Generally, it is **not** possible for foreigners to own land in Thailand. However, the following exceptions apply:

1. Special Approval by the Minister of Interior

According to Sec. 86 Land Code, foreigners can apply for a special approval from the Minister of Interior. The size of the land which may be permitted depends on the purpose of use:

- for residence purposes, up to 1 Rai (approximately 1,600 sq.m.) per family may be granted
- for agricultural or industrial purposes, up to 10 Rai (approximately 16,000 sq.m.) may be granted.

2. Investment of THB 40 million

According to Sec. 96 Bis Land Code¹, foreigners may further be permitted to own land if they invest a minimum of THB 40 million and

- the land will be used for residence purposes only, AND
- the land is located within the area of Bangkok, Pattaya City, or within a Municipality, designated as residence zone, AND
- the investment is beneficial to the economy and society of Thailand and will be maintained for a period of at least 5 years.

¹ and Ministerial Regulation Re: Rules, Procedures and Conditions for Acquisition of Land by Aliens B.E. 2545 (2002).

Examples for investments are:

- purchase of Thai Government bonds or bonds of State Enterprises.
- an investment in a property mutual fund or a mutual fund for resolving financial institution problems established under the law on Securities and Stock Exchange.
- an investment in share capital of a juristic person who is granted permission of investment under the law on investment promotion.

The amount of the land which may be permitted to be owned will not exceed 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, the Director-General has the power to dispose such land. An exception of this requirement may be granted to foreign owned companies² on a case-by-case basis according to Sec. 97 Land Code.

3. Land within Industrial Estate

A foreign industrial operator (manufacturer or trader) may acquire land in an Industrial Estate

- for carrying out the business activity in accordance with Sec. 44 of the Industrial Estate Authority of Thailand (IEAT) Act
- in a size as deemed appropriate by the IEAT

If the foreign industrial operator ceases his business or assigns it to another person, the land must be disposed within 3 years.

² juristic persons with over 49% of shares held by foreigners, or with more than half of the shareholders being foreigners.

4. BOI Promotion

According to Sec. 27 of the Investment Promotion Act, a company promoted by the Board of Investment (BOI) may own land everywhere in Thailand in order to carry out the promoted activity (even if the company is 100% foreign owned).

The BOI will review whether the size of the land is suitable for the promoted activity, and the use of the land will be limited to the promoted activity.

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

II. Other Rights

Since it is only possible for foreigners to own land within the above mentioned exceptional cases, there are various possibilities to secure foreigners who want to possess and use a plot of land:

1. Arsai, Sec. 1402 CCC

Arsai is similar to the German right of residence according to §§ 1090, ff. BGB (*„beschränkt persönliche Dienstbarkeit“*).

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

2. Superficies, Sec. 1410 CCC

Superficies is similar to the German inheritable right to build on land belonging to a third person (*„Erbbaurecht“*).

- Purpose of use: To possess the land and own its building, structure or plantation and to live on this plot of land
- Duration: For lifetime of the owner of the land or for lifetime of the superfiary, or for a certain period of time not exceeding 30 years (Sec. 1412 CCC)
- Transferable: **Yes**
- Inheritable: **Yes**

3. Usufruct, Sec. 1417 CCC

Usufruct is similar to the German right to use the land in order to make profit according to §§ 1030 ff. BGB (*„Nießbrauch“*) and §§ 581 ff. BGB (*„Pacht“*).

- Purpose of use: To live, to manage and to use the land in order to make a profit
- Duration: For lifetime of the beneficiary, or for a certain period of time not exceeding 30 years
- Transferable: **No**
- Inheritable: **No**

III. 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). This 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.³

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 the owner of the house. Nevertheless, this document is not a

³ Supreme Court Decision Case No. 1783/2519 (1976).

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.

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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