

FOREIGN OWNERSHIP OF CONDOMINIUMS IN THAILAND

Legal Nature of Condominiums and Foreign Ownership Rules

A. Definition

"Condominium", a relatively recent development in Thailand, is the term used to describe individual ownership of a unit of a multi-unit building. It may include other defined property in which there are undivided ownership interests in the land on which the building and other structures rest and in which the other components of the facility are shared in common with the other owners of the units in the building.

B. The Law

The law governing these matters is the Condominium Act, B.E. 2522 (A.D. 1979) ("Act") as amended, administered by the Ministry of Interior. The Land Department of the Ministry of Interior is responsible for the registration of condominiums, issuance of certificates of unit ownership, or unit title deed, and other types of registration of transactions, including the transfer and mortgage of condominium units.

C. Unit Title Deed

An owner of a unit in a condominium is issued a certificate of ownership, or title deed. The certificate contains the name of the owner, the position and size of the land, the location, area, and, a diagram indicating the unit's width, length, and height. It also includes the proportion of ownership in the common property. An owner of a unit in a condominium building may also be separately allotted title to a common portion of the land upon which the condominium is situated or to other property in the development.

D. Common Property

The following property is regarded by law as the common property of a condominium:

- (i) the land on which the units are situated;
- (ii) the land allotted for common use or benefit;
- (iii) the structure of the building and constructions added for the strength of and the prevention of damage to the units;
- (iv) the building or parts of the building and equipment allotted for common use or benefit including elevators, main lobby, hallways, staircases, etc;
- (v) the tools and equipment made available for common use or benefit;
- (vi) the places made available as common facilities for the housing units: swimming pools, parking areas, recreation areas, tennis courts, etc;
- (vii) other property made available for common use or benefit;

- (viii) office of condominium juristic person;
- (ix) immovable property bought or acquired by the condominium juristic person;
- (x) structures or system built for maintaining security or environment within the condominium building, for example fire prevention system, lighting, air ventilation, air-conditioning, drainage system, waste water treatment, or disposal of garbage and refuse; and
- (xi) property using the money contributed by co-owners in a condominium toward costs and expenses.

The proportion of joint ownership in the common property is based on the ratio between the area of each condominium unit and the total area of all condominium units in the condominium building when the condominium building is registered. The co-owners in a condominium are required to jointly contribute payment toward costs and expenses arising from the common facilities, including the maintenance and operation of the common property, according to the above ratio or according to the portion of benefits each has in their condominium unit, as prescribed in the articles of association. Such fees are usually charged monthly.

E. Condominium Juristic Person

Under the Act, a condominium is required to register as a juristic person established to manage and maintain the common property. Like other juristic persons, there must be articles of association. Such articles must be registered with the Land Department. The articles must be consistent with the Act and set forth a statement of the juristic person's objectives, the procedure for the management of the common property, the procedure for holding general meetings and other meetings, the ratio of the joint expenses of the co-owners, etc. The condominium juristic person must have a manager to conduct its activities in accordance with the objectives or resolutions of the meetings of the condominium juristic person and to act as its representative. The co-owners, who are thus in the position as shareholders, elect a board of directors to control the management of the condominium juristic person.

F. Foreigners Condominium Use and Ownership

A foreigner shall use the condominium unit in such a way that it is not against the customs or the way of life of the people in such community.

A provision in the Act requires that the sections of the Land Code pertaining to acquisition of land by foreigners apply *mutatis mutandis*. Thus, the acquisition of condominium unit ownership by foreigners was prohibited until 1991 when the Condominium Act (No. 2) permitted five categories of foreigners or foreign juristic persons to own condominium units in Thailand. As amended by the Condominium Act (No. 3), adopted in 1999, condominium units may be owned by foreigners, as follows:

- (i) foreigners permitted to reside in Thailand under the Immigration Law (that is foreigners who have been granted Certificates of Permanent Residence);

- (ii) foreigners permitted to enter Thailand under the Investment Promotion Law (that is persons working in Thailand for companies that have Board of Investment promotion);
- (iii) juristic persons (normally Thailand incorporated private limited companies) deemed to have same land rights as foreigners (that is juristic persons that are not at least fifty-one percent (51%) Thai-owned);
- (iv) juristic persons (normally Thailand incorporated limited companies defined as foreign under the Foreign Business Act B.E. 2542 (A.D. 1999)) and have promotion privileges under the Investment Promotion Law; and
- (v) foreigners or foreign juristic persons (legally regarded as foreigners) who (a) bring foreign currency into Thailand, or (b) withdraw money from Baht account of a non-resident, or (c) withdraw money from a foreign currency account to purchase the condominium unit.

Pursuant to the Act, as amended in 1999, total foreign ownership in a condominium building may not exceed forty-nine percent (49%) of the aggregate space of condominium units within the building; however for a period of five years, that was until 27 April 2004, foreigners could acquire ownership of more than forty-nine (49%) of aggregate unit space of condominiums buildings located in the vicinity of Bangkok Metropolis or a municipality, which in this case was Pattaya City, subject to the following conditions:

- (a) being a condominium with no less than forty condominium units;
- (b) being a condominium that has been duly registered for not less than one year prior to the day the foreigner applies for the transfer of ownership in the condominium unit therein; and
- (c) being a condominium that is not be located in a military safety zone under the law governing military safety zones.

Following the end of the five years period, foreign ownership of condominium units registered within that period will not be affected even if the total foreign ownership percentage in the condominium building exceeds forty-nine percent (49%).

As amended by Condominium Act (No. 4), adopted in 2008, throughout Thailand foreign ownership in a condominium building may not exceed forty-nine percent (49%) of the total area of the condominium units in the condominium building.

G. Required Documents for Foreign Acquisition

Where applicable, a foreigner or foreign juristic person applying for ownership of a condominium unit must submit the following to the competent Land Department official in order to register obtaining ownership of a condominium:

- (i) those specified in F. (i) above must submit evidence regarding their legal residence in the Kingdom pursuant to Immigration Law;

- (ii) those specified in F. (ii) above must submit evidence of legally entering the Kingdom under the Investment Promotion Law;
- (iii) juristic persons specified in F. (iii) above must present evidence of being legally registered as such pursuant to Thai law;
- (iv) juristic persons specified in F. (iv) above must present evidence of obtaining a promotion certificate pursuant to the Investment Promotion Law; and
- (v) foreigners and foreign juristic persons specified in F. (v) above must submit evidence of (a) bringing foreign currency into the Kingdom, or (b) withdrawal of money from Baht account of non-resident, or (c) withdrawal of money from foreign currency account, for not less than the price of purchasing the condominium.

H. Disposal

A foreigner or foreign juristic person must divest of condominium ownership holdings in the following cases:

- (i) where the foreigner or foreign juristic person acquires a unit by inheritance as statutory heir or legatee or otherwise, as the case may be, and when added to the condominium's unit ratio already owned by the foreigners and/or foreign juristic persons exceeds any percentage limitation on foreign ownership;
- (ii) when the foreigner's permission to reside in the Kingdom is revoked, or her/his Certificate of Permanent Residence is no longer valid;
- (iii) the foreigner is deported from the Kingdom and has not received a relaxation;
- (iv) where the foreigner as specified in F. (ii) above does not receive permission from the Board of Investment for an extension of stay in the Kingdom; and
- (v) where the promotion certificate of the foreign juristic person as specified in F. (iv) above is revoked.

Foreigners, other than those stipulated in F. (i) - F. (iv) above, who have acquired condominium unit through legacy, that is by inheritance, in the capacity of statutory heir or inheritor under will or by other means, as the case may be, shall inform the competent officer of the Land Department of such in writing within 60 days from the date of acquisition of ownership of condominium unit and shall dispose of same within one year from the date of acquisition. Otherwise the Director-General of the Land Department shall have the power to dispose of same. Failing to inform the competent officer is subject to a fine not exceeding Baht 10,000 and an additional fine of not more than Baht 500 per day throughout the period of violation. Thus, for example, if the foreigner husband owner of the condominium unit has passed away leaving the unit to his foreigner wife, then his wife, unless meeting the qualification of F. (i) or F. (ii) above, must inform the competent officer within 60 days and dispose of the condominium unit within one year. This is the case whether the owner of the condominium was the foreigner husband or if the foreigner husband and foreigner wife

are joint owners, if the wife inherits the husband's ownership interest in the condominium. Of course, vice versa is applicable. If the foreigner husband and

foreigner wife are joint owners and the foreigner husband inherits the foreigner wife's interest then unless the foreigner husband qualifies under F. (i) or F. (ii) above then he likewise must provide the information within 60 days and sell the condominium unit within one year.

However, notwithstanding the above mentioned requirement of the Act, it may be possible for an heir who is a foreigner inheriting a condominium unit to obtain title to the unit if the heir is a person other than those stipulated in F. (i) – F. (iv) provided that such heir is the statutory heir, for example, the spouse, child or parent of the deceased unit owner. Application to register title to the unit in the name of such statutory heir may be made at the relevant Land Department office and will be considered by the Director – General on a case by case basis.

Purchase of Condominium Unit by Overseas Resident Foreigner

In practice the above is applied and works in a quite straightforward manner. Let us assume that the condominium buyer is a foreign natural person, that is a human being who is a non-Thai citizen who falls into category F. (v) above. In order to receive title, that is registered ownership, of a condominium unit in Thailand she/he must be concerned especially with the following:

- (i) That after transfer to her/him of the condominium unit purchased the percentage of foreign persons' ownership in the condominium building will not exceed forty-nine percent (49%) of the aggregate space of condominium units within the building, a situation which is easily checked at the Registry Office for the area in which the condominium is located; and
- (ii) All funds for the condominium purchase are either (a) remitted into Thailand in foreign currency, or (b) withdrawn from Baht account of a non-resident, or (c) withdrawn from a foreign currency account. This must be evidenced to the Land Department Registry Official at the time of registration of acquisition of condominium ownership by the foreign person and is easily documented by record of the commercial bank that (a) received the remittance from overseas in foreign currency, or (b) holds the non-resident Baht account from which money is withdrawn, or (c) holds the foreign currency account from which withdrawal is made for all funds to pay the condominium purchase price. (Note, this is a very important requirement that these three means must be used to demonstrate payment of the full condominium purchase price and so if any finance is utilized to purchase the condominium it must be obtained offshore, that is from outside Thailand, in foreign currency, or otherwise acquired and put into a qualified account for withdrawal to first pay the condominium purchase price. Of course, after ownership transfer of the condominium unit is registered in the name of the foreign buyer he/she may mortgage the condominium unit as collateral against borrowings.)

Government Fees and Taxes

Government charges that must be paid upon registration of transfer of ownership of a condominium unit:

I. The government charges a transfer fee of two percent (2%) on the government appraised value of the condominium unit (which may be quite different, often lower, from the actual price paid by buyer).

II. Withholding Tax

(i) Where seller is a natural person, that is a human being, buyer must withhold tax calculated on government appraised value of unit at progressive personal income tax rates with some deductions allowed. The amount of withholding tax to be withheld and paid by buyer is computed by the Registrar at time of registration of condominium unit ownership transfer.

(ii) Where seller is a juristic person, such as a limited company, the unit buyer must withhold and pay as withholding tax one percent (1%) of higher of actual condominium purchase price or government appraised value of the condominium unit.

III. Specific Business Tax

Tax payable at rate of three point thirty percent (3.30%) of the higher of actual condominium unit sales price or government appraised value of condominium unit, except:

(i) If unit seller is a natural person who has resided in the unit for at least one year as evidenced by a Household Registration Certificate, or

(ii) If unit seller has owned the unit for at least five years,

in either event of (i) or (ii) no specific business tax is payable.

IV. Stamp Duty

If no specific business tax is paid, which would be the case if seller was exempt as stated above in III (i) or (ii), then there is stamp duty payable at the rate of half of one percent (0.5%) on the higher of actual condominium sales price or government appraised value of the condominium unit.

V. Mortgage Registration Fee

The government charges mortgage registration fee of one percent (1%) of the mortgage amount.

The government appraised value of the condominium unit changes from time to time and may be ascertained at the Land Department Registry Office of the area in which the condominium unit is located.

The point on above listed government charges is that they must be paid in connection with registration of a change of condominium ownership. However, who pays them, seller or buyer

or both partially, is effectively a matter decided by negotiation between seller and buyer, just as is the condominium unit price.

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