



INVESTMENT
GUIDE TO
REAL ESTATE
IN THAILAND

2025

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CHAPTER 1

1. Introduction

Ministry of Finance has predicted that Thailand's economy would grow 3.2% this year compared to a growth of only 2.7% last year.

The World Bank forecasts a 4.4% growth in Thailand's GDP for 2024, a significant increase from the 2.5% recorded in 2023. This uptick in economic growth could result in heightened interest in the real estate sector. Despite the global disruptions caused by the pandemic, Thailand's real estate market displayed impressive resilience, supported by governmental interventions and the country's robust economic underpinnings.

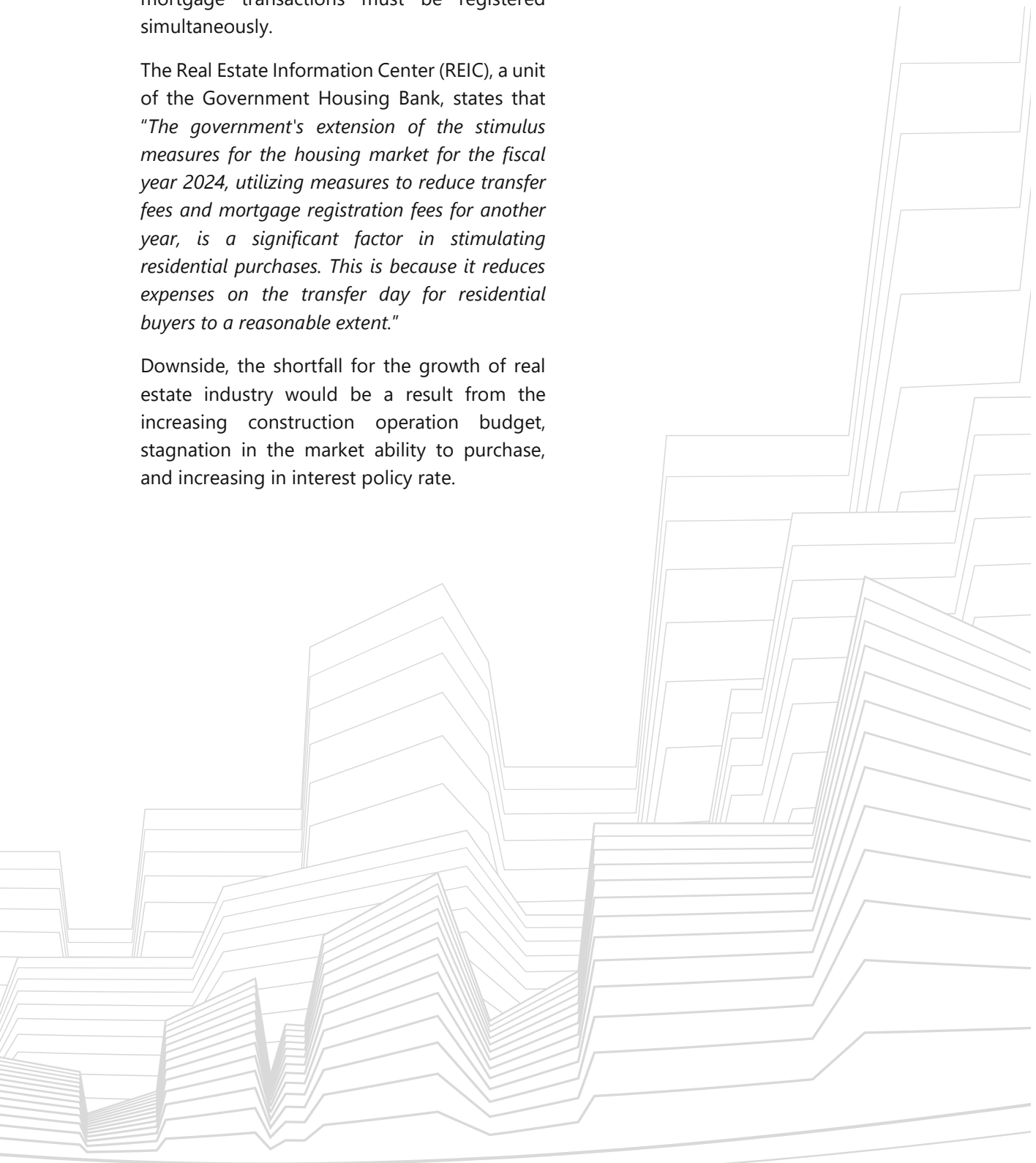
In a recent development, the Ministry of Interior eased regulations concerning the sale and mortgage registration of immovable properties. The ministry decreased the sale transfer fee from 2% to 1%, and mortgage registration fees from 1% to 0.01%, effective until December 31, 2024.

To qualify for the reduced mortgage registration rate of 0.01%, both the sale and mortgage transactions must be registered simultaneously.

The Real Estate Information Center (REIC), a unit of the Government Housing Bank, states that *"The government's extension of the stimulus measures for the housing market for the fiscal year 2024, utilizing measures to reduce transfer fees and mortgage registration fees for another year, is a significant factor in stimulating residential purchases. This is because it reduces expenses on the transfer day for residential buyers to a reasonable extent."*

Downside, the shortfall for the growth of real estate industry would be a result from the increasing construction operation budget, stagnation in the market ability to purchase, and increasing in interest policy rate.

We hope you find the information you need in our Real Estate Investment Guide.





CHAPTER 2

2. Real Property Rights

2.1 Types of Land

There are two main types of land under Thai laws, which are, state land and private land.

2.1.1 State Land

State land can be categorized on a basis of land use as follows:

- (a) State Property: The public domain includes every kind of state property used for public interest or reserved for common benefits. For example, waste land and land surrendered, abandoned, or otherwise being reverted to the State according to the land law; property for the common use of the people (e.g., foreshores, waterways, highways, lakes); and property for special use to the state (e.g., a fortress or other military buildings, public offices, warships, arms and ammunition).

- (b) Treasury Land: Treasury land or so-called "Ratchaphatsadu land" means every kind of immovable property which is owned by the state including land reserved or restricted for special use of the state except for the public domain (e.g., land owned by state enterprise, land owned by public agency, any other land which is not regarded as treasury land).

2.1.2 Private Land

Private land can either be freehold land or land with right of possession. With respect to freehold land, the title to the land is represented by the land title documents. Please refer to the section on Forms of Property Interests for further details.

Forms of Property Interests

The Ministry of Interior (the "**MOI**") regulates local land offices throughout the country for recognition and registration of property interests under the Land Code B.E. 2497 (A.D. 1954) and the Thailand Civil and Commercial Code (the "**CCC**"). Various forms of property interests are recognized under Thai real estate law, including a title deed ("**Chanote**"), confirmed certificate of land utilization ("**Nor Sor Saam Gor**"), certificate of land utilization ("**Nor Sor Saam**") and certificate of possession ("**Sor Kor Neung**"). Generally, the more advanced forms of legally recognized property interest (Chanote and Nor Sor Saam Gor) are suitable for investment and land development purposes, with formal land surveys and reliable land registration procedures.

A Chanote contains all information customarily contained in a title deed, including a cadastral map with marked boundaries, identification of registered owners, transaction history, lessees, mortgages, and other encumbrances. Accordingly, land due diligence procedures can identify all relevant information with respect to the legality of the issuance of a title deed, land ownership, location, and registered encumbrances (if any). A confirmed certificate

of use (Nor Sor Saam Gor) is functionally equivalent to a title deed (Chanote) and can easily be upgraded.

Even though a "Sor Kor Neung" is translated into English as a "certificate of possession", it does not actually grant any rights of possession over a piece of land. The documents "Nor Sor Saam" and "Nor Sor Saam Gor", translated as "certificate of utilization" and "certificate of confirmed utilization" grant more rights on the land although their translation into English could lead investors to think this is not the case.



Type of Right	Prerogatives	Corresponding Document	Suitable for Investment Purpose
Occupation and Usage	Can occupy and use land.	Sor Kor Neung	NO
Temporary Occupation and Usage	Can occupy, sell, and use land. Land can also be inherited but is still owned by the Government.	Nor Sor Song	NO
Unconfirmed Possession	Can occupy, sell, use, lease and mortgage land. The land can also be inherited but is still owned by the Government.	Nor Sor Saam	NO
Confirmed Possession – boundaries defined by aerial survey	Can occupy, sell, use, lease and mortgage land. The land can also be inherited but is still owned by the Government.	Nor Sor Saam Gor	YES
Legal Ownership	Can occupy, sell, use, lease and mortgage land. The land can also be inherited and is not owned by the Government, but by an individual.	Nor Sor Si (Chanote)	YES

Sap-Ing-Sith

Sap-Ing-Sith is the right to use immovable property under Sap-Ing-Sith Act, B.E. 2562 (2019). Sap-Ing-Sith Act is aimed to circumvent the restrictions of lease of immovable property under the CCC.

A Sap-Ing-Sith right must be made in writing and registered with the relevant land office. The maximum period for Sap-Ing-Sith rights is 30 years. Sap-Ing-Sith rights can only be registered over land represented by a title deed, land with buildings constructed on land represented by a title deed, and condominium units under the Condominium Act. Only the owner of the above categories of immovable property can register a Sap-Ing-Sith in favor of another person. Sap-Ing-Sith rights are transferable, inheritable, and can be used as security for a mortgage.



TIP! **Registration process and fees in relation to Sap-Ing-Sith right**

In practice, the property owner who wishes to register a Sap-Ing-Sith must file an application with the following supporting documents to the local land office in which the property is located:

1. Land deed or certificate of condominium unit (as the case may be); and
2. Consent letter from mortgagee or security receiver in case the property to be registered the Sap-Ing-Sith right has been mortgaged or used as business security (if applicable).

Upon the registration, the relevant officer will issue Sap-Ing-Sith certificate to the registrant; (i) Tor.Sor.Neung Form (for land represented by a title deed and land with buildings constructed on land represented by a title deed) and (ii) Tor.Sor.Song Form (for condominium units). Note that any transfer, mortgage and transaction in relation to Sap-Ing-Sith must be registered with the local land office.

It is worth noting that if the Sap-Ing-Sith holder wishes to renew the 30-year period of the Sap-Ing-Sith, he may renew by re-registering the Sap-Ing-Sith rights.

2.2 Industrial Land

Land under the Industrial Estate Authority of Thailand

The Industrial Estate Authority of Thailand (the "IEAT") has the authority to approve foreign ownership of land located within designated industrial estates for the purposes of industrial production.

Under the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979) (the "IEAT Act"), industrial estate land is categorized into (i) General Industrial Zones and (ii) IEAT Free Zones.

The IEAT ACT offers both non-tax incentives (e.g., exemptions for foreign ownership restrictions on land, bringing in foreign workers and their dependents, remittance of investment money outside Thailand) and tax incentives (e.g., exemptions on special fees under BOI law, import duty, value added tax, and excise tax; exemptions on export duty, value added tax, and excise tax when exporting certain goods outside Thailand)

Below please find the non-tax incentives and tax incentives for a business operator operating in General Industrial Zones and IEAT Free Zones:

Ref	Privileges	General Industrial Zone	IEAT Free Zone
Non-Tax Privileges			
	<p>Land ownership in the Industrial Estate</p> <p>Industrial operators and commercial operators as permitted by IEAT (the "IEAT Business Operator") may be permitted to own the land in the Industrial Estate to conduct business under the number of areas as deemed suitable by the Board of Directors of IEAT.</p>	✓	✓
	<p>Foreign workers</p> <p>IEAT Business Operators are permitted to bring foreign craftsmen, experts, their spouses, and their dependents, to reside in Thailand under the number and within the specified period as deemed suitable by the Board of Directors of IEAT.</p> <p>Note that foregoing permitted persons are permitted to work in only their position as approved by the Board of Directors of IEAT throughout the specified period above.</p>	✓	✓
	<p>Remittance of investment</p> <p>IEAT Business Operators whose domicile is outside Thailand would be permitted to remit foreign currency outside Thailand when such money is the investment brought in, dividend or benefit arising out of such investment, foreign loan, or the money that the IEAT Business Operator has obligation to within the foreign country.</p>	✓	✓

Tax Privileges			
	<p>Exemption on special fees</p> <p>The industrial operator is exempt from special fees under law on the promotion of investment, import duty, value added tax, and excise tax for.</p> <ul style="list-style-type: none"> (i) machines, equipment, and tools including accessories of such materials as necessary to use in producing goods or for commercial purpose, and items used for construction, assembling, or installation in the factory or building; and (ii) raw materials and supplies used for producing goods, trading, or services. 		✓
	<p>Exemption for raw material including by-products</p> <p>Items brought in for producing goods or for commercial purpose, by-products and other items obtained from production are exempt from export duty, value added tax, and excise tax when exporting outside Thailand.</p>		✓
	<p>Exemption for export and/or IEAT Free Zone</p> <p>Being exempt or returned of duty for items as exempt or returned specified by laws when exporting outside Thailand or import into the IEAT free zone in case of machine, equipment, and raw material.</p>		✓
	<p>Privileges as Duty-Free Zone</p> <p>Items that are brought into the IEAT Free Zone would receive the same benefits as the duty-free zone.</p>		✓
	<p>Exemption from the import and export law</p> <p>Items that are brought into Thailand or raw material that is imported into the IEAT free zone for production, mixing, packaging, or any other action with the aim to export is not subject to laws on the control of import, export, possession or use, controlling standard or quality, affixing seals or any marks to such items, excluding the law on customs.</p> <p>In such cases where such items cause or may cause impact to the stability, health of people or environment as specified by Ministerial Regulation is not subject to the exemption above.</p>		✓
	<p>Exemption from taxes and duties</p> <p>In cases of the sale of products from the IEAT free zone into Thailand for domestic use or consumption, if the components of the raw materials are produced domestically, they shall be exempt from taxes and duties.</p>		✓



TIP! **Ownership of Industrial Land in IEAT**

In practice, the foreign IEAT business operator would purchase land from IEAT and its co-operator of the industrial estates (i.e., the owner). The foreign IEAT business operator must file, as the case may be.

1. An application request for holding land ownership for business undertaking; or
2. An application request for holding land ownership in commercial and residential zones.

Upon the being approved by IEAT, IEAT will issue a Letter of approval to the Land Department and a notification letter to the operator.

In the case of constructed power plants, the operator may purchase the constructed power plant from the owner without having to obtain construction permits (please see details below in Section 5).

To own land in industrial estates, foreign IEAT business operators may submit applications for land ownership to IEAT in both General Industrial Zones and IEAT Free Zones.

In cases where foreign operators dissolve or transfer their business to a third party, the foreign operator is required to dispose of the land approved for foreign ownership and fixtures to the IEAT. The land may also be transferred to a transferee of the business within three years from the date of dissolution of the promoted activity or from the date of transfer of the business. Otherwise, the Director-General of the Land Department will have the power to dispose of such land and fixtures in accordance with the Land Code according to section 44 of the Industrial Estate Authority of Thailand Act B.E. 2522 (A.D. 1979).

Special Economic Promotional Zone

In addition to the IEAT Act, a foreign corporation that is the promoted operator under the Eastern Special Development Zone Act B.E. 2561 (2018) (the “**EECA**”) is entitled to have ownership of land located in the Special Economic Promotional Zone (“**Promotional Zone**”) to engage in the promoted business. Additionally, the EECA also allows certain businesses (e.g., businesses in digital, aviation, and smart electronics industries) to lease or

sublease land or immovable property in the Promotional Zone for 50 years with another 49-year period for renewal from the expiration of the initial lease term. Foreign promoted operators are also entitled to non-tax incentives and tax incentives similar to those in the IEAT Act.

Note that if the promoted operator does not engage in business within three years, or cease the operation, said operator is required to sell the land within 1 year from the date receipt of notice by the Eastern Economic Corridor Office of Thailand (the “**EECO**”).

Board of Investment

A foreign corporation that is promoted under the Investment Promotion Act B.E. 2535 (A.D. 1992) by the Board of Investment of Thailand (the “**BOI**”) is eligible to have ownership of land for industrial purposes (the land must not be in a restricted area stipulated by the government and not under dispute). Please refer to Section 2.7 (Exemption to Foreign Land Ownership and Land Lease Restrictions) for further information.

2.3 Residential/Condominiums

Under the Condominium Act, B.E. 2522 (1979) (the “**Condominium Act**”), as amended, condominiums can be divided into separate parts of ownership comprising private property (i.e., the condominium unit and its construction,

and land available to each unit) and co-ownership in common property (i.e., parts of a condominium that aren't included in a condominium unit, including land on which the condominium is situated, and other land and property provided for use or common interest of the co-owners). This right to ownership of private property and common property is evidenced by a certificate of condominium unit ownership issued to the condominium unit owner.

The Condominium Act allows foreign ownership of individual condominium units, provided that only up to 49 percent of the total livable area in a particular condominium building is owned by foreigners.

Following the substantial improvement in the Thai condominium market, Thai authorities have tried to strengthen regulation through the amended Condominium Act No. 4 B.E. 2551 (A.D. 2008). Under this amendment, condominium buyers are protected concerning claims made in advertisements such as brochures, handbills, or leaflets made by developers. Developers are responsible for condominium units and common areas advertised in such forms of media (condominium units and common areas), which are required to match the claims depicted in such advertisements. The law ensures developers are accountable for claims made in their advertisements and imposes fines of between THB 50,000 (approximately USD 1,397) to THB 100,000 (approximately USD 2,794) for violations of incorrect or misleading advertisements.

The law also sets the contract standard and clarifies that developers are responsible for the monthly common-area fees for any unsold condominium units. If a unit holder fails to pay the fees, the condominium juristic person can charge a maximum interest rate of 12 percent per year of the overdue payment and up to 20 percent per year in case of failure to remit the payment for more than 6 months.

2.4 Agricultural

Under the Agricultural Land Reform Act B.E. 2518 (1975) (the "**ALRA**"), there is an area of land designated as an agricultural land reform area (the "**Land Reform Area**"). Farmers are entitled to have possessory rights over the Land Reform Area for agricultural purposes, however, the Land Reform Area cannot be owned or sold, leased, or subleased to a third party. The Land Reform Area can be only utilized for agricultural purposes, the use of the Land Reform Area other than agricultural purposes is restricted. Violation of the land use could cause seizure of the relevant Land Reform Area by the Agricultural Land Reform Office.

However, foreigners who operate activities that support or are related to land reform as prescribed by the Ministry of Agriculture (e.g., sugar plant, processed fruits plant, and wood processing plant) may file a request for allocation of land or immovable property to the Agricultural Land Reform Office (the "**ARLO**"). As such, the ARLO will lease, hire-purchase, or provide utilization to such foreigner to the size of area the Board of Agricultural Land Reform deems appropriate, which, in any case, it must not exceed 50 rai.

2.5 Leases

The lease of immovable property (e.g., land and building) must be evidenced by written documents signed by the liable party, otherwise it would be unenforceable. In case the lease term is more than three years, it must be made in writing and registered with the competent official, otherwise, the lease is enforceable for only 3 years.

The CCC also provides that a land lease must not exceed 30 years, and if a longer period is agreed upon, the period will be reduced to 30 years. The lease term may be renewed, but the renewal term must not exceed 30 years. The local land registry offices have been reticent to

register a 30-year lease renewal before the expiration of the original 30-year term.

If the lessor sells or transfers the ownership of the leased property to a third party, the lease is binding on the transferee of the land who assumes all rights and obligations of the lessor and effectively becomes a new lessor in place of the original lessor.

Under certain circumstances, for example, the commercial property investment cost meets a minimum amount of THB 20,000,000, the lease (not including residential leases) has an industrial or commercial purpose, the industrial property is for a project that is eligible for investment promotion from the Board of Investment, however, the Lease of Immovable Property for Commercial or Industrial Purposes Act of B.E. 2542 (A.D. 1999) grants a maximum lease term of 30-50 years. After this initial term, an extension of not more than 50 years is possible. Similar to an ordinary long-term lease, this extension term can only be registered after the initial term has already expired. The 50-year lease can be used as security for a mortgage and can be inherited and transferred or sublet to a third party without consent from the lessor.

Certain risks may apply to long-term leases granted by Thai citizens (as opposed to long-term leases granted by Thai corporations). A decision of the Supreme Court of Thailand has cast uncertainty as to the enforceability of lease renewal terms against the heirs of individual lessors. Accordingly, lessees are well advised to enter into long-term leases with well-established Thai corporations. In addition, long-term lease agreements should restrict the lessors from transferring land without the consent of the lessee to avoid the possible transfer of the land to an individual lessor).

Please note that the EECA (as defined below) allows a 50-year lease or sub-lease of land or immovable property within the special development zone with another 49-year period for renewal from the expiration of the initial lease term (Please see above for further details).

2.6 Foreign Ownership Restrictions

Under the Land Code, foreign corporations and foreign citizens are strictly prohibited from owning land in Thailand unless specific laws and regulations permit otherwise. Violation, whether committed by a foreigner and/or a Thai agent of foreigners, on foreign ownership of land could result in a fine up to THB 20,000 and/or imprisonment up to 2 years.

Apart from this restriction above, the Foreign Business Act B.E. 2542 (A.D. 1999) (the "**FBA**") prohibits any Thai national or Thai juristic person from "aiding or abetting or taking part" in any business restricted under the Act, including "land trading businesses" and "hotel business (but not including hotel management businesses)". Nevertheless, foreign investors have often formed Thai corporations to own land in cooperation with Thai majority shareholders.

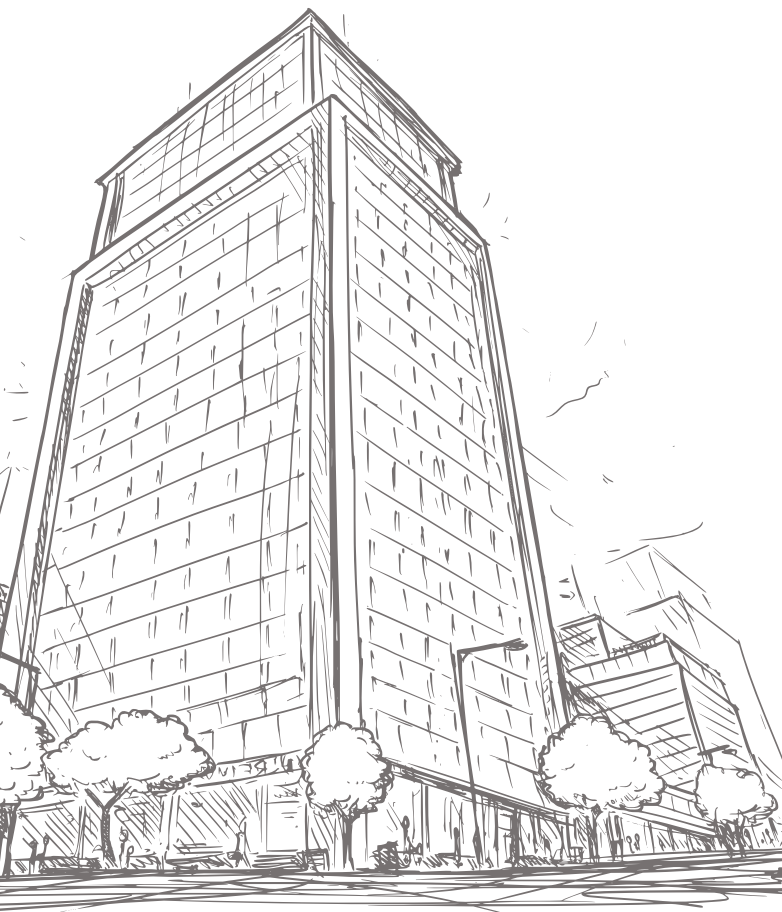
In recent years, the MOI has adopted a strict enforcement policy and issued a series of regulations to limit the use of Thai land-holding companies by foreign investors. Local land registry offices now require Thai shareholders to provide evidence of the funding source for capitalization of any Thai corporation with foreign shareholders (or foreign directors) engaged in land development. The local land registry office has the power to examine the shareholding of such companies to ensure that control over the company is being exercised by the Thai shareholders and requires evidence which proves that the source of funds is from the Thai shareholders if there is foreign shareholding (or if any directors are foreign citizens).

A MOI regulation (Mor Tor 0515/Wor 2227) dated 21 July 2008, provides that any Thai person who owns land for the beneficial interest of foreigners will be subject to both civil sanctions under the Land Code and criminal sanctions under the Criminal Code.

Based upon the strict enforcement policy of the MOI, foreign investors interested in land development are well advised to hold property rights through registered, long-term leasehold interests (as opposed to freehold land ownership).

2.7 Exemption to Foreign Land Ownership and Land Lease Restrictions

In general, foreign investors may own land by way of certain exemptions under Thai law. The most elementary way for foreign investors to take advantage of such exemptions is to own land according to the Industrial Estate Authority of Thailand Act B.E. 2543 (A.D. 1979), the Investment Promotion Act B.E. 2535 (A.D. 1992), or the Eastern Special Development Zone Act B.E. 2561 (2018).



Under the Investment Promotion Act B.E. 2535 (A.D. 1992), the BOI has the authority to approve a foreign investor as a promoted person under the Investment Promotion Act B.E. 2535 (A.D. 1992), to own any land relating to promoted projects. These include the land underlying the foreign investor's facility, residential homes for foreign employees, and residential housing for local employees. To authorize foreign ownership of land related to BOI-promoted activity, the BOI provides a letter of authorization to be presented to the relevant local land registry office. In case the foreign person (promoted person) under the Land Code dissolves or transfers the promoted activity to a third party, such a person is required to dispose of the land approved for foreign ownership within one year from the date of dissolution of the activity. This may also be done from the date of transfer of the business to a third party. Otherwise, the Director-General of the Land Department will have the power to dispose of such land in accordance with the Land Code.

Under the Land Code, it is possible for a foreigner who has an investment amount of at least THB 40,000,000 for certain businesses and the land acquired is not more than one rai (1,600 square meters), and who obtained permission from the authorities to own land for residential purposes. In addition, the foregoing regulation also allows foreign inheritors to inherit land, should they have obtained permission from the authorities.

Under the Petroleum Act, B.E. 2514 (1971), for the purpose of operating a petroleum business, foreign concessionaires who have been granted petroleum exploration rights, can request permission from the relevant authorities to acquire the land ownership rights necessary for their operations.

Please refer to the exemption for foreign ownership over the land under the IEAT Act and EECA in Section 2.2 (Industrial Land) above.



CHAPTER 3

3. Acquisition of Ownership

In Thailand, any Thai national may purchase. Given that the land title deed (Chanote) is the only land title deed certificate that offers full certified private ownership of land in Thailand, the acquisition of land represented by the Chanote will cause the buyer to have full ownership over the land.

Note that foreign land ownership restriction does not apply to the acquisition of a construction or building. Therefore, foreigners or foreign entities may acquire ownership over a building or construction without being subject to foreign land ownership restriction under Thai applicable laws.

3.1 Perfecting Ownership

The transfer of real estate (i.e., land represented by Chanote and building) must be made in writing and registered with the competent official (i.e. land office). Failure to perform any of these legal formalities will cause the transfer of real estate to be void.

Notarization may be required in the case that a power of attorney is executed outside of Thailand. In such case, the power of attorney must be:

- (i) legalized by the Thai Embassy or the Consular;
- (ii) notarized by a Notary Public; or
- (iii) authorized person to sign the Power of Attorney as a witness under the local law in such country.

Furthermore, any of the documents which are produced in a foreign language must be translated into Thai language and be certified by the qualified translators as prescribed thereunder (e.g., Embassy or Consulate of Thailand located in the relevant foreign countries or Embassy or Consulate of the relevant foreign country in Thailand).

3.2 Asset Acquisitions

When acquiring assets in Thailand, it is highly recommended to conduct due diligence on the assets. Particularly, if the asset is real estate, due diligence shall be conducted to verify the legal ownership of the seller and whether the owner has the right to sell the property. In addition to ownership of the owner, the buyer of the property must ensure that there is no encumbrance or attachment of any nature (e.g., mortgage or lease) with respect to the acquired property. For instance, there is no mortgage registered over the land or building.

Note that the mortgaged land can be transferred, however, practically, the land officer would request the seller (or the mortgagor) to provide consent from the mortgagee for the purpose of registration.

3.3 Share Acquisitions

Share acquisition may lead to indirect ownership of land and buildings. However, when acquiring the shares of a Thai registered land holding company, the buyer will assume all rights/benefits and liabilities/obligations of the

company. Therefore, due diligence on the liabilities/obligations of the land holding company should be conducted. In any case, under Thai law, the liability of the shareholder is limited to the amount unpaid on the shares held by such shareholder.

Furthermore, when acquiring the shares in the land holding company, the buyer must ensure that the share acquisition will not cause the land holding company to become a foreigner as defined under the land code, that is, its foreign shareholding ratio of the company exceeding 49% of the total issued shares.

3.4 Other Acquisition Rights

Inheritance

Foreigners married to a Thai national can acquire land as a statutory heir pursuant to Section 93 of the Land Code upon the permission of the Minister of Interior. However, the foreigner will not be allowed to register ownership over such inherited land. This is because Section 93 applies only in the case where foreign heirs acquire land from another foreigner owning land under a treaty. However, as of today, there is currently no treaty with any country allowing any foreigners to own land, therefore no Minister of Interior will or can permit any foreigner to own land in Thailand.

A foreigner, as a statutory heir, can inherit the land in Thailand and dispose of the land to a Thai national within 1 year. If the foreigner fails to dispose of the land, the Director-General of the Land Department may dispose of the land and retain a fee of 5% of the sale price before any deductions or taxes.

Acquisition for Residency Purposes

This applies to foreigners that bring in no less than THB 40 million of capital for investment over a period of 5 consecutive years. The foreigner can acquire up to one rai of land (i.e., 1,600 square meters) only for residential purposes. Before acquiring land, permission from the Minister of Interior must be granted.

In granting permission, the following must be taken into consideration: (i) the foreigner's investment benefits the economy or society of the country; and (ii) the land must be within Bangkok, Pattaya City, or within the area designated to be a residential area under the law.

Foreclosure in case of Mortgage

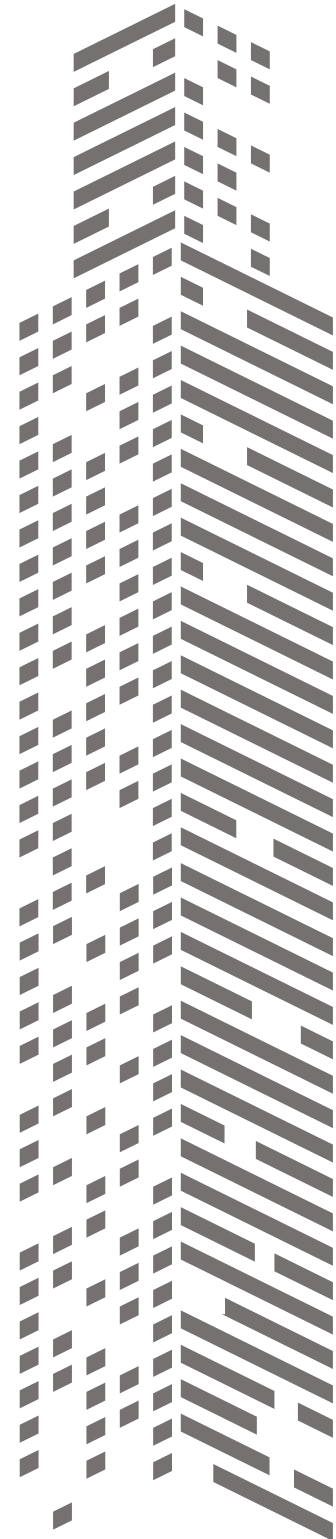
The foreigner or foreign entity (as the mortgagee) may acquire the real estate (excluding land) by foreclosure of a mortgage, provided that the mortgagee has served a written notice to the debtor to perform its obligation within a reasonable period, which is not less than 60 days from the date on which the debtor has received such notice. If the debtor fails to perform its obligations within the specified period, the mortgagee may bring a court action seeking judgment for the mortgaged land to be seized and foreclosed.

In order for the mortgagee to request the court for the foreclosure of the mortgaged property, it is required that the following conditions are met:

- (i) there is no other mortgage or preferential right over the mortgaged land;
- (ii) the debtor has failed to pay interest for five years; and
- (iii) the mortgagee has proved to the court that the value of the mortgaged property is less than the outstanding debt.

Note that the foreigner is not allowed to foreclose the mortgaged land as the foreigner is not qualified to acquire the land as stipulated in the Land Code. However, the foreigner can enforce the mortgage by public auction either by (i) the court's order or (ii) a written notification by the mortgagor.

Note that a public auction by the court's order would normally take several months to a few years from the date the execution writ to the date the land is sold and enforcing the mortgaged land located outside of Bangkok could probably take a longer time.





CHAPTER 4

4. Zoning and Planning Permissions

4.1 Environmental Laws

The Ministry of Natural Resources and Environment has the authority to set restrictions on the use of land throughout Thailand based upon environmental considerations and management of natural resources according to the Enhancement and Conservation of The National Environmental Quality Act B.E. 2535 (1992) (the “**EIA Act**”). The EIA Act establishes the National Environment Board to ensure the protection, conservation and promotion of the nation’s natural environment. If the project requires prior approval on an Environmental Impact Assessment (the “**EIA**”) report or Environmental Health Impact Assessment (the “**EHIA**”) report, the project company must conduct a study and assessment and submit an EIA report or EHIA report to the Office of Natural Resources and Environmental Policy and Planning for approval before starting on the project work.

There are 35 categories of industries that are required to prepare an EIA report as listed in the notification, which notably includes hotels, residential condominiums and other land developed for residential or commercial purposes. For EHIA there are 12 categories of industries that are required to prepare an EHIA report as listed in the notification, which includes mining, dam, biogas power plant, etc.

4.2 Zoning Laws

Under Thai law, the construction of buildings in Thailand is mainly regulated by the Building Control Act B.E. 2522 (1979) and the Town Planning Act B.E. 2562 (2019) (the “**TPA**”) which provide the permissible uses of land in different zones and under different restrictions. In respect of issuing any permit or license by the component government authorities, it requires that land use must comply with the relevant law including BCA and TPA. The TPA empowers government authorities to announce the Ministerial Regulations relating to zone restrictions. Failure to comply with such Ministerial Regulations may lead to the withdrawal of the permit or licenses issued by the component government authorities.¹

The TPA empowers the Interior Minister to announce ministerial regulations regarding the permissible land uses and restrictions on building construction in municipalities and provincial areas. Such ministerial regulations will, in general, be effective for 5 years. These regulations normally apply different zoning designations to the enforceable areas such as:

- (i) low-density residential zones;
- (ii) medium-density residential zones;
- (iii) high-density residential and commercial zones;
- (iv) industrial and warehousing zones;
- (v) rural and agricultural zones;
- (vi) rural and agricultural conservation zone;

¹ Sections 37 and 97 of the TPA

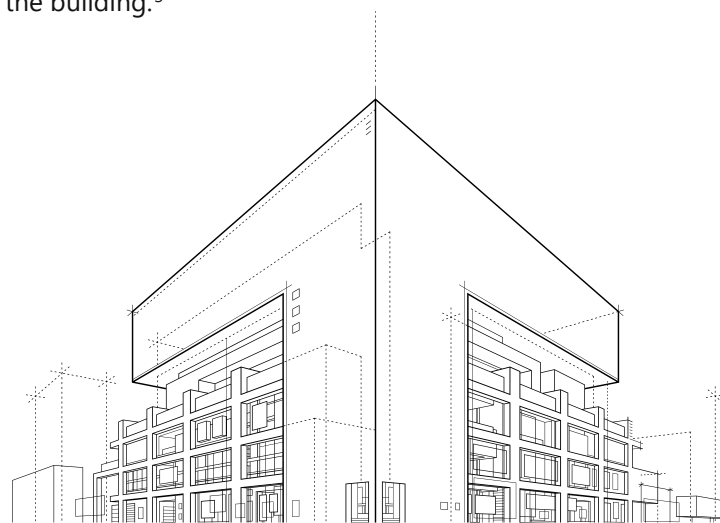
² Clause 25 of the TPA

- (vii) recreation and environmental conservation zones;
- (viii) educational institution zones; and
- (ix) religious institution zones.

For example, a rural and agricultural conservation zone in Samut Prakan Province is designated for agriculture or other purposes which are relevant to agriculture. Concerning utilization of the land, a building of a total area no larger than the specified size (e.g., 200 square meters per building), government institutions, or public utilities will be permitted.²

4.3 Firefighting and Fire Safety

Under Disaster Prevention and Mitigation Act B.E. 2550 (2007), in the case that a disaster occurs the government officer such as Governor, District governor or local administrator (the “**Disaster Director**”) has the authority to instruct the government officer to modify, destroy, move or remove any to prevent or resolve any damages from a disaster. In addition, in case the situation is under the supervision of the Disaster Director, the government officer must be able to enter private buildings for the purpose of disaster prevention or mitigation even if there has been no permission previously granted by the owner of the building.³



³ Sections 25 and 26 of the Disaster Prevention and Mitigation Act B.E. 2550 (2007)



CHAPTER 5

5. Construction

5.1 Legal Framework

The administrative agency responsible for construction and building is the Department of Public Works and Town and Country Planning and the primary law governing construction and building in Thailand is the Building Control Act B.E. 2522 (A.D. 1979) (the “**BCA**”) which sets out the minimum standard and restriction of construction, use, modification, relocation, and demolition of buildings for public safety.

5.2 Construction Licensing Requirements

Construction Permit

Generally, in Thailand, any person who wishes to construct, modify, demolish, or move a building is required to obtain a permit from the Municipal Office which has jurisdiction over the area of the building, or the Local District Office in the case where

the building is located in Bangkok (the “**Local Authority**”) prior to the commencement of such activity.⁴ To obtain a construction permit, the applicant must be the owner of the constructed building⁵ and in case the constructed building is of a kind or category which is required to be undertaken by an engineering professional under the Engineer Act, or an architecture professional under the Architect Act, a professional engineer or a professional architect will be required to certify and sign the submitted application.

A construction permit will be valid for a period of one to three years after the date of issuance depending on the size of the building.⁶ A construction permit is extendable up to four times whereas (i) the same validity period as the initial validity period will be granted for the first extension and (ii) the one-year period will be granted for each subsequent extension (up to three times).⁷ However, any person may construct a building without applying for a construction permit if such person decides to inform the Local Authority pursuant to Section 39 bis of the BCA⁸ about the construction.

Building Certificate

In addition to a construction permit, if the buildings are under usage control under the applicable Ministerial Regulation re: Specification of the buildings under usage control B.E. 2552 (A.D. 2009) or the construction of the building is being informed pursuant to Section 39 bis of the BCA,⁹ when the construction is completed, the owner of the constructed building must send a written notice informing the local authority of the form of category of such building, as determined by the local authority to examine such construction.¹⁰ Upon

completion of the examination of the building, if it is clear to the Local Authority (or the Municipal Office) that the building is constructed according to the construction permit, a building certificate will be issued to permit the use of such buildings.¹¹

5.3 Specific Regulatory Requirements

If the building is in an area under the supervision of the Industrial Estate Authority of Thailand (“**IEAT**”), the construction permit and building certificate must be obtained from the IEAT instead of the Local Authority.¹² Furthermore, if the building is to be used for certain purposes, particularly to be used in electricity generation for sale, the Energy Regulatory Commission (“**ERC**”) will be responsible for the review and issuance of the construction permit and the building certificate.¹³



TIP! Term of Construction Permits

The construction permit is valid for one to three years, depending on the size of the building:

- (i) One year for a project with an area of less than 10,000 square meters;
- (ii) Two years for a project with an area of at least 10,000, but less than 100,000 square meters; and
- (iii) Three years for a project with an area of at least 100,000 square meters.

The construction permit is extendable for up to four times whereby the same validity period as an initial validity period will be granted for the first extension and only one year for each subsequent extension.

⁴ Section 21 of the BCA

⁵ Article 1 of the Ministerial Regulation No.10 (B.E. 2528 (A.D.1985)) issued under the BCA

⁶ Article 2/1 of the Ministerial Regulation No. 10 (A.D. 1985) issued under the BCA

⁷ Article 6/1 of the Ministerial No.10 (B.E. 2528 (A.D.1985)) issued under the BCA

⁸ Section 21 and Section 39 bis of the BCA

⁹ Ministerial Regulation prescribed the buildings are under usage control B.E. 2522 (A.D. 1979)

¹⁰ Section 32 of the BCA

¹¹ Section 32bis of the BCA

¹² Section 42 of the Industrial Estate Area of Thailand Act B.E. 2522 (A.D. 1979) (the “**IEAT Act**”)

¹³ Memorandum of Understanding between the ERC and Ministry of Interior re: Guideline and process to obtain permission for building construction to be used in energy business operations dated 5 September 2555 (A.D. 2012)



CHAPTER 6

6. Tax

6.1 Land related Tax and Fee

The sale of immovable property will be subject to (i) for individuals, Personal Income Tax (“**PIT**”) at progressive rates, up to 35%; or for companies, corporate income tax (“**CIT**”) at 20% on capital gains realized from the sale or transfer of immovable property. In addition, the sale of immovable property is also subject to the Specific Business Tax (“**SBT**”) at the rate of 3.3% on the actual selling price or the appraised value of the immovable property, the stamp duty of 0.5% on the actual selling price or the appraised value of the immovable property at the transfer date, whichever is higher, and transfer fee of 2% on the appraised value of the immovable property at the transfer date. Please refer to the tax implication in detail in Section 6.4.

6.2 Property/Land Use Taxes and Fees

Thailand’s Land and Buildings Tax Act, B.E. 2652 (2019) (the “**LBTA**”), which repeals and replaces the Household and Land Tax Act and the Local Maintenance Tax Act, became effective on 13 March 2019. However, the tax collection under the LBTA only commenced on 1 January 2020, whereby taxpayers must pay the tax by April of each year.¹⁴ Taxpayers can opt for payment of land and building tax in three equal installments.¹⁵

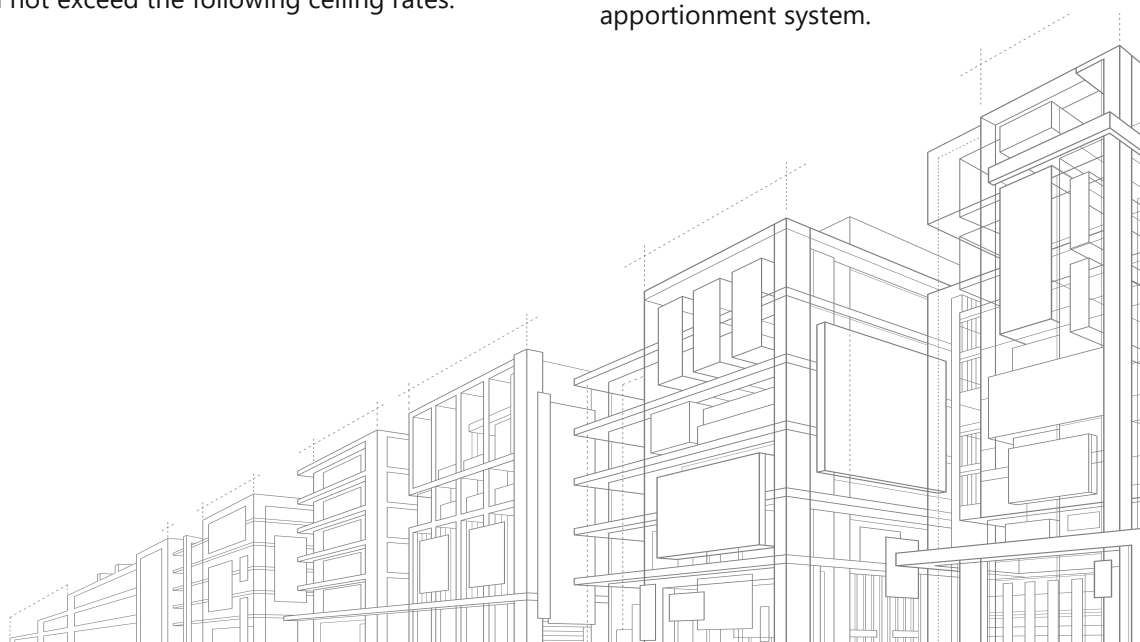
Persons liable to land and building tax are individual and juristic persons who own land or buildings or possess, or exploit land or buildings owned by the State.¹⁶

Assessment of tax under the LBTA is on the property’s appraised value, whereby the applicable tax rate varies depending on the purpose of using the land or building, which shall not exceed the following ceiling rates:

No.	Land and Building Usage	Ceiling Tax Rate
1.	Agricultural	0.15%
2.	Residential	0.3%
3.	Commercial (usage other than 1. and 2.)	1.2%
4.	Left vacant/unreasonably used	1.2% ¹⁷

If an immovable property being transferred has no appraised value, the determination of the taxable value will be according to specific regulation,¹⁸ e.g., the tax base of the certificate of confirmed utilization (i.e. Nor Sor Saam Gor) is estimated by correlation with the appraised value of the nearby plots of land of a similar nature.

If land or buildings fall under several categories/types of use, the local government authorities will assess and collect the tax on an apportionment system.



¹⁴ Deadline for tax payment of fiscal year 2024 has been postponed from April 2024 to June 2024

¹⁵ Section 52 of the LBTA together with Ministerial Regulation on instalment payment of the land and building tax

¹⁶ Section 5 of the LBTA provides the definition of “taxpayers” as “...a natural person or juristic person that is an owner of the land or building or that is a possessor or exploiter of the land or building owned by the State and

that is the person having the duty to pay tax under this Act...”

¹⁷ The tax rate will increase by 0.3% every 3 years if the land is left vacant or unreasonably used

¹⁸ the Ministerial Regulation re: rules, procedures and conditions for calculating the value of land or building with no appraised value
B.E. 2562 (2019)

Tax Rates under the LBTA

For 2024, the LBTA provides tax rates are as follows:

No.	Usage	Value of the property (THB)	Tax Rate
1.	Land or buildings for agricultural use	Up to 75 million	0.01%
		Over 75 – 100 million	0.03%
		Over 100 – 500 million	0.05%
		Over 500 million – 1 billion	0.07%
		Over 1 billion	0.1%
2.	Land or buildings owned by individuals for residential use whose names are listed on the household registration documents	Up to 25 million	0.03%
		Over 25 – 50 million	0.05%
		Over 50 million	0.1%
3.	Buildings owned by individuals for residential use whose names are listed on the household registration documents	Up to 40 million	0.02%
		Over 40 – 65 million	0.03%
		Over 65 – 90 million	0.05%
		Over 90 million	0.1%
4.	Land or buildings for residential purposes other than (2) and (3)	Up to 50 million	0.02%
		Over 50 – 75 million	0.03%
		Over 75 – 100 million	0.05%
		Over 100 million	0.1%
5.	Land or buildings used for purposes other than for agricultural and residential purposes	Up to 50 million	0.3%
		Over 50 – 200 million	0.4%
		Over 200 million – 1 billion	0.5%
		Over 1 – 5 billion	0.6%
		Over 5 billion	0.7%
6.	Commercial and Vacant / unused	Up to 50 million	0.3%
		Over 50 – 200 million	0.4%
		Over 200 million – 1 billion	0.5%
		Over 1 – 5 billion	0.6%
		Over 5 billion	0.7%

6.3 Tax on Rental Income

At the time when a rental income is paid, if the lessee is a juristic person, the lessee is required to withhold tax at a rate of 5%.¹⁹ The withholding tax (“**WHT**”) paid can be used as a tax credit for the lessee in their annual CIT computation.²⁰ On the other hand, individual lessee is not required to withhold tax upon rental payment, regardless of whether the lessor is an individual or juristic person.

If the lessor is a juristic person, the income derived from rental income shall be included in their annual CIT computation, in such case, a CIT tax rate at 20% of the net profit in each tax year will apply. In the case where the lessor is an individual, the rental income paid to them shall be treated as taxable income under Section 48 (5) of the Thai Revenue Code (“**TRC**”) which will be calculated based on the progressive PIT rates per Section 48 (5) of the TRC.

In addition, a stamp duty of 0.1% is applicable on the actual rental payment during the whole leased period – a lessor is subject to pay stamp duty at THB 1 for every THB 1,000 or the fraction thereof. However, the party may agree otherwise to have the other party (i.e., lessee) pay stamp duty. It is noteworthy that the lease of immovable property is VAT exempted.²¹

As for the registration fee, if the lease term of immovable property is more than three years, a registration fee of 1% of the actual rental payment during the whole leased period will apply.

6.4 Tax on Capital Gains from Real Estate

At the time of the sale or transfer of immovable property, the buyer is required to withhold tax at a rate of 1%. The WHT paid can be used as a tax credit for the seller in their annual CIT computation.²²

For individual sellers, the WHT on payments made to individuals is calculated based on the progressive PIT rates per Section 48 (4) of the TRC. The WHT paid in this instance can be treated as final tax.²³

Under Section 48(4), a taxpayer may elect to withhold the tax on income received from the sale of an immovable property as follows:

- (a) For income from the sale of immovable property acquired by way of bequest or gift, the tax payable is calculated by deducting expenses at 50 percent of the income, divided by the number of years of holding the property,²⁴ multiplies by the income tax rate, and multiplied by the number of years.
- (b) For income from the sale of immovable property acquired in a manner other than specified in item (a), the tax payable is calculated by deducting expenses and adjusted based on the number of years the immovable property is held.

Furthermore, the sale or transfer of immovable property would also be subject to Specific Business Tax (“**SBT**”) at the rate of 3.3% on the actual selling price or the appraised value of the immovable property at the transfer date, whichever is higher (provided it is made in a commercial manner or for profitable purposes).

¹⁹ Clause 6 of Tor. Por. 4/2528

²⁰ Ruling of the Revenue Department no. GorKor 0706/9462

²¹ Section 81(1) (Tor) of the TRC

²² Section 69 Ter of the TRC

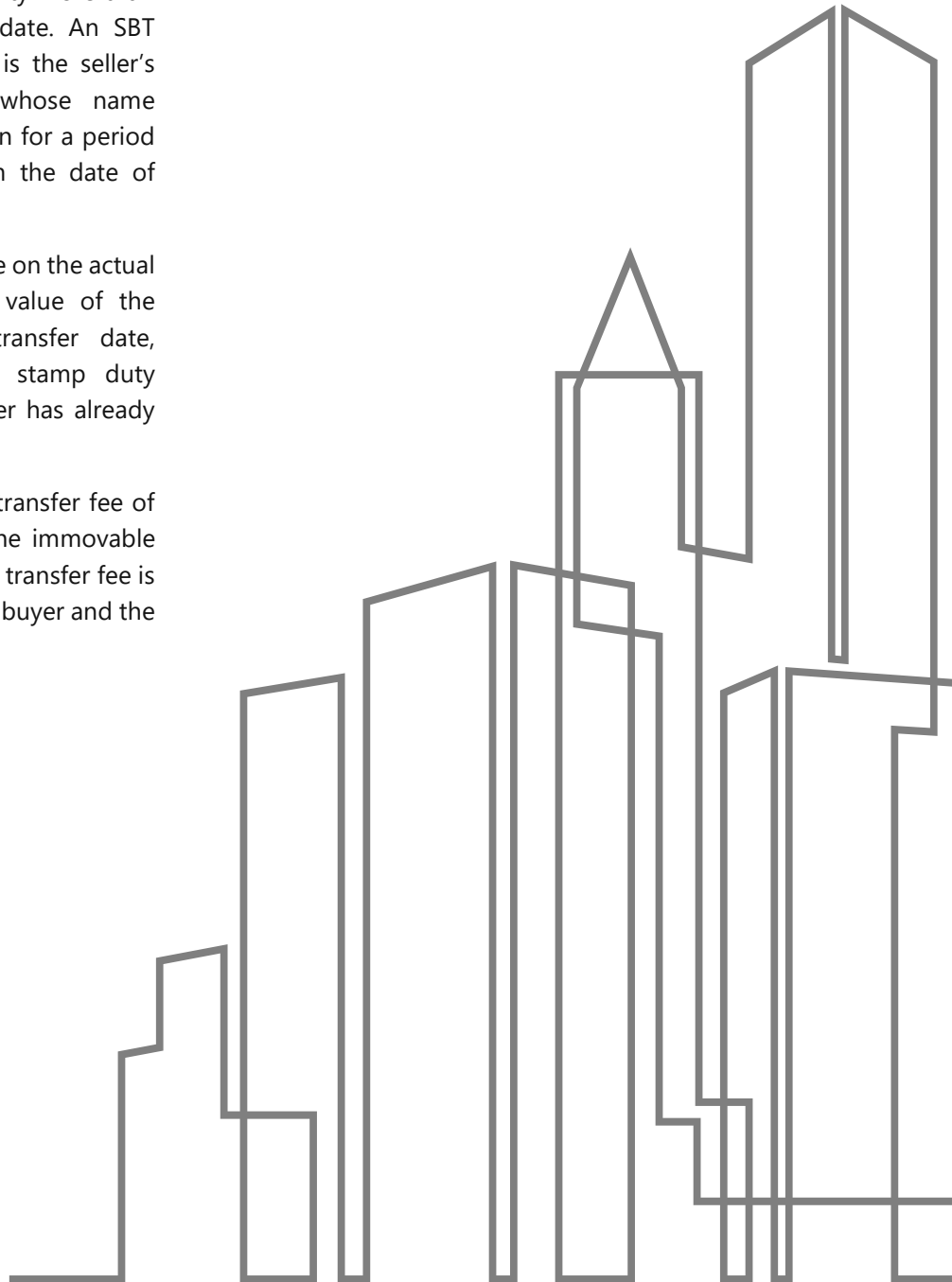
²³ If the WHT is treated as final tax, the amount of total tax payable shall not exceed 20 percent of the sale price.

²⁴ The term “number of years of holding the property” means the number of years from the year of the acquisition of ownership or possessory right in an immovable property to the year in which such ownership or possessory right is transferred. A period exceeding 10 years shall be treated as 10 years, and a fraction of a year shall be treated as one year.

SBT is collected by a competent officer when registering rights and juristic acts over the immovable property at the time of registration.²⁵ An SBT exemption may apply if the seller sells or transfers property more than five years from its acquisition date. An SBT exemption may also apply if it is the seller's principal place of residence whose name appears on the house registration for a period of not less than one year from the date of acquisition.²⁶

A stamp duty of 0.5% is applicable on the actual selling price or the appraised value of the immovable property at the transfer date, whichever is higher. However, stamp duty would be waived where the seller has already paid SBT.

In any case, there will also be a transfer fee of 2% on the appraised value of the immovable property at the transfer date. The transfer fee is generally split 50:50 between the buyer and the seller unless otherwise agreed.²⁷



²⁵ Section 91/10

²⁶ Section 91/2(6) of the TRC together with Royal Decree No. 342

²⁷ Section 457 of the CCC



CHAPTER 7

7. Real Estate Investment Fund (REIF)

REIF is not a juristic person, but a pool of properties owned by a licensed trustee, as a legal owner of the property, on behalf of REIT unit holders, as a beneficial owner. An REIT is managed by an REIT manager, which could be an asset management company licensed to manage mutual funds or an entity with a paid-up capital of at least THB 10 million and an REIT manager license duly obtained from the SEC.

Apart from investing in real property with a total value of not less than THB 500 million, an REIT may invest in and acquire the majority of shares at least 99 percent in property holding. To this effect, procedures that will enable the trustee and REIT manager to control such a company in accordance with the trust deed and REIT regulations must be presented and put in place.

A normal REIT's borrowing capacity is 35% of the total assets and for an REIT with an investment grade credit rating, borrowing capacity can extend to 60% of its total assets. REITs may generate income only by way of leasing out real property.

As to the holding restrictions, people in the same group are prohibited from holding more than 50% of the total units sold by the trust. Foreign individuals or entities can invest in REITs by purchasing REIT units listed on the SET, provided that the foreign restrictions applicable to REITs investing in Thai freehold real property are adhered to.





CHAPTER 8

8. Real Estate Finance

8.1 Permitted Finance

The most common security for real property is a mortgage. The real property that is allowed to be used as collateral under the BSA must be the immovable property of a security provider who operates a business related to such immovable property. For instance, a property developer can use the land and building situated in its developed residential project as collateral under the BSA.

The assignment under the CCC, in the case of real property, would refer to the lease right to the land or building. In such a case, the holder of the land/building lease right can conditionally assign its lease rights to the lender to secure its obligations under the loan document.

8.2 Mortgage

A mortgage is an agreement whereby the mortgagor assigns property to the mortgagee as security for the performance of an obligation, without delivering or granting the right of possession of the property to the mortgagee. The mortgage can be created over immovable property, such as land, building or registered machinery.

A mortgage agreement must be made in writing and registered with a competent government official. The mortgage agreement must specify the property mortgaged and the mortgage amount in Thai baht.

Enforcement of the mortgage can be done through (i) public auction or (ii) foreclosure of the mortgaged property. In the case of a public auction, it can be done by (i) the court's order or (ii) a written notification by a mortgagor. The latter can be conducted without resorting to the court. With respect to the foreclosure, if there are no other mortgages or preferential rights registered on the mortgaged property, the mortgagee may claim foreclosure of the mortgaged property instead of the public auction under conditions that (i) the debtor has failed to pay interest for 5 years; and (ii) the mortgagee has satisfied the court that the price of the property is less than the amount due.

In practice, a mortgage is enforced by filing a case in court and getting a court judgment for the sale of the mortgaged property by public auction. Enforcement through judicial procedure is treated as any civil litigation and could take one to three years in the first court as foreclosure procedures are not common due to the difficulties of fulfilling requirements as provided above.

8.3 Other Security Interests

Security under Business Security Act

Business security is an agreement whereby a security provider grants security over certain types of assets to the security receiver to secure an obligation, without having to deliver or grant possession right over the asset to the security receiver. The Business Security is regulated under the Business Security Act B.E. 2558 (2015) (the "**BSA**"). Under the BSA, there are several types of assets that can be registered as business security, including immovable property of a security provider operating a business related to immovable property; business, right of claim, movable property used by a security provider in operating its business e.g., machineries, inventories or raw materials and Intellectual property rights.

In addition to the mortgage, a security provider who operates a business related to immovable property can use such immovable property as collateral under the BSA.

Although the mortgage of immovable property under the CCC and business security under the BSA are considered as security the mortgagee and business security receiver are treated as secured creditors under Thai laws. The enforcement processes of mortgage and business security are different. The enforcement of a mortgage must be made through (i) public auction or (ii) foreclosure of the mortgaged property, while the business security can be enforced by a qualified security enforcer, where the enforcement process in practice tends to be faster and less court proceedings being required. Note that if the immovable property is mortgaged under CCC and is placed as business security under the BSA, such immovable property can be enforced through process under the BSA, and the preferential rights of the mortgagee and business receiver will be prioritized based on the first-to-register basis.

The BSA permits the security provider to provide business security to the security receiver to secure the obligations of another

person.²⁸ As to the formalities, the business security must be made in writing and registered with the Ministry of Commerce²⁹ via online registration. In registration of the business security with the Ministry of Commerce, consent from the security provider is required. While the BSA does not provide limitations to the nature of security providers (i.e., the security provider can be either Thai or foreign juristic or natural person), the security receiver must be a financial institution or other person as designated in the Ministerial Regulation. In this regard, a foreign entity is allowed to be a security receiver only if it is characterized as a foreign bank and is granting a loan jointly with the Thai financial institution.

In addition, the security provider is allowed to retain the rights to possess, use, mortgage and sell the collateral, including receiving interests derived therefrom, unless it is agreed otherwise. The security provider can also place property or rights that they currently have in possession or to be acquired in the future as a business security under the BSA.

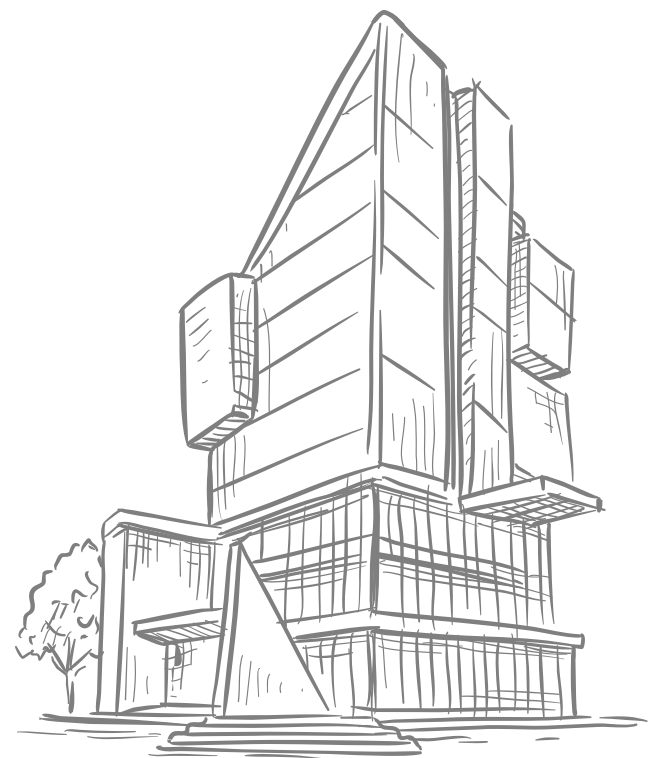
In terms of enforceability, the enforcement procedure differs depending on types of business security as follows:

- (a) In case the business security is an asset (such as machinery and raw materials), the security receiver is entitled to enforce the security over the assets either by way of sale by auction or foreclosure.³⁰

- (b) In case the business security is a whole business, the security enforcer may enforce the security by any way of disposition.³¹

Note that the security enforcer must be appointed by the security provider and the security receiver³² and the security enforcer appointed must be licensed and registered with the Business Security Registration Office of the Ministry of Commerce.³³

As to the use case for business security, according to the information published on the Stock Exchange of Thailand's website.



²⁸ Section 5 Paragraph 2 of the BSA

²⁹ Section 13 of the BSA

³⁰ Section 36 of the BSA

³¹ Section 73 paragraph 1 of the BSA which states that "the security enforcer shall have the powers and duties to maintain, manage, and operate the business which is the security until the business which is the security is sold, to examine and assess the price of the business which is the security, to prescribe suitable method for the disposition of the business which is the security, to proceed with the disposition of the business which is the security, and to allocate the proceeds from the disposition of business which is the security under Section 74. For the purpose of this

proceeding, the security enforcer may sell, transfer, lease, lease out, pay debts, create debts, or act on anything that generates burdens in the business which is the security to an extent necessary for the continued operation of the business."

³² Section 12 of the BSA that states that "where a business is placed as security, the contracting parties shall select one or several licensees to be the security enforcer under the business security agreement. A licensee who agrees to be the security enforcer must notify the contracting parties in writing of his consent and shall also specify the rate or the amount of consideration in return therefor."

³³ Section 54 of the BSA



TIP! **Registration of Business Security in Practice**

Practically, the business security can be registered at once via an online system on the Thai Department of Business Development (“**DBD**”)’s website. The applicant is required to have a username and password with the DBD to proceed with the business security e-registration. The e-registration system is not complicated, and the e-registration process can be completed within a day if all the required documents are complete and in good order. It is worth noting that in registering the business security, consent from the security provider is required.

Assignments under the CCC

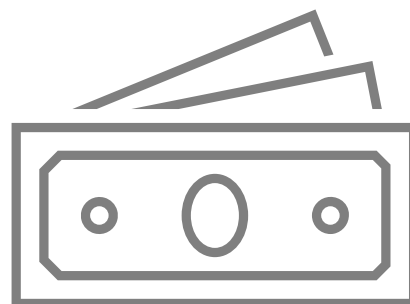
In practice, it is common for a borrower to conditionally assign its contractual rights or accounts receivables to secure its obligations under the loan agreement in favor of a lender. However, Thai law does not recognize an assignment as a security interest. Therefore, the assignee will not be treated as a secured creditor under the Bankruptcy Code, and it shall not have preference over the secured assets in the same manner as a secured creditor. The effect of an assignment is similar to a transfer or disposition of assets in that it shall remove relevant property from the bankruptcy estate of the debtor. However, a transfer or disposition of assets by an insolvent person may be challenged as a fraudulent conveyance, thus allowing the official receiver to claw back such assets into the bankruptcy estate by requesting the court to cancel such transfer or disposition pursuant to the relevant provisions in the Bankruptcy Code.

Furthermore, the assignment of rights is valid if a notice has been sent to a debtor. If the debtor, upon receiving such notice of assignment, gives written consent without qualification, the debtor cannot raise against the assignee all defenses which it might have made against the assignor.

In case of multiple assignments, the assignment in relation to which a notice is given first or the obligor has agreed first shall be preferred to such other assignments. The conditional assignment may be subject to multiple assignments and the notice as aforementioned means a notice that effects an absolute assignment.

8.4 Foreign Lender Restrictions

A foreign lender is generally allowed to take a security over property located in Thailand and it is not required to obtain approval from a government authority to enforce the security. However, given that foreigners are generally prohibited from owning land situated in Thailand, the foreign lender can only enforce real estate security by way of public auction, not the foreclosing on the mortgage of the property in Thailand.



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