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**COMMERCIAL  
REAL ESTATE LAW  
IN SOUTHEAST ASIA**

CAMBODIA • INDONESIA • LAOS • MYANMAR • THAILAND • VIETNAM

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# COMMERCIAL REAL ESTATE LAW IN SOUTHEAST ASIA

## CAMBODIA

### Land Ownership by Foreign Individuals and Companies

Only Cambodian citizens and companies of Cambodian nationality can own land in Cambodia, according to the constitution, the Law on Investment, and the Land Law. To be deemed a company of Cambodian nationality, the company must:

- be incorporated in Cambodia; and
- have at least 51% of its shares owned by Cambodian citizens or other companies of Cambodian nationality.

Nominee structures that subvert restrictions on ownership of land by foreign nationals are prohibited—though the exact definition of a nominee structure has not been clearly laid out in Cambodian law or official guidance. In practice, it has been common (especially before the enactment of the Trust Law) for foreign companies to partner with Cambodian citizens and companies of Cambodian nationality in forming companies that are 51% owned by Cambodians and 49% owned by foreign parties.

### Registration and Documentation of Land Ownership

Registration of a land transaction (e.g., transfer, perpetual lease, hypothec, or other encumbrance), must be made in writing and registered with the land office where the land is located.

Formal title certificates evidencing ownership are issued by the Ministry of Land Management, Urban Planning and Construction (the “Ministry of Land”) or one of its provincial or municipal departments and contain officially demarcated boundaries and a registration number.

Formal title certificates are unofficially referred to as “hard titles” in Cambodia, while other documents that evidence a person’s ownership or possession of property are referred to as “soft titles.” These are detailed in the table below.

## HARD TITLES

Three types of hard title are currently used in Cambodia:

- Certificate of Immovable Property Possession
- Certificate of Land Use and Occupancy
- Certificate of Immovable Property Ownership (also referred to as an LMAP title)

These certificates indicate that the land is legally and properly registered with the Ministry of Land.

The first two types of certificate in the list above are issued by the relevant land office through a sporadic registration system, which means that the owner of the land requests the Ministry of Land to survey the land and issue a hard title. The third type of certificate listed above is issued by the Ministry of Land as part of a land management and administrative project (LMAP) introduced by the World Bank. LMAP titles are issued through a systematic registration process in which the government surveys the land and issues the LMAP title. LMAP titles are currently considered the best and safest form of hard title.

## —SOFT TITLES

Soft titles are not issued by national, provincial, or municipal authorities and can be overruled by a conflicting hard title.

Soft titles are typically sales and purchase agreements certified by commune (*sangkat*) or district (*khan*) authorities. Soft titles are still relatively common in Cambodia, as the government has not yet systematically registered land in significant portions of the country. Furthermore, some properties (such as apartments built before the 1990s) do not qualify for a hard title, so soft titles are the only viable option.

Soft title records are typically maintained by the local authorities (though it is not uncommon for records to be lost or misplaced), while hard titles are maintained by the national, provincial, or municipal authorities and are subject to significantly higher standards of document retention and maintenance.

## Foreign Condominium Ownership

Foreign nationals are prohibited from owning land by the constitution. However, they may own units in a “co-owned building,” which is akin to a condominium, except that co-owned buildings can include retail, commercial, and other spaces—so long as part of the building is residential.

A co-owned building, which is defined as a building or construction in which several co-owners are living, consists of parts that are under the exclusive ownership of each co-owner (private units) and parts that are used by all co-owners (common areas) and include the land, courtyard, stairs, parks and gardens, entrance ways, joint walls, and areas for common service. Legally qualified foreign parties are limited to owning no more than 70% of the total surface size of all private units in the co-owned building.

Also, noncitizens are prohibited from owning any private units on the ground floor or underground floors, as foreigners are prohibited from owning land. However, foreign owners may be entitled to proceeds from the sale of the land on which their unit is located, in the event of the total destruction of a co-owned building by a human act or by force majeure and the Cambodian co-owners agree to sell the land.

Foreign parties can also only own immovable property that is located more than 30 kilometers from Cambodian borders, unless it is in a special economic zone or an important urban area. However, the government may freely derogate from these provisions to determine areas in which foreign nationals may or may not own a condominium.

A transfer or sale of any private unit of a co-owned building to a foreign national in violation of Cambodian regulations will be null and void, and the parties will have to proceed to a restitution.

### Transfer-Related Taxes

Under Cambodian law, acquisition or disposal of immovable property must be registered with the relevant land office where the immovable property is located. Transfers of immovable property are subject to the following fees:

Tax	Rate	Default Responsible Party
<b>Land transfer tax</b>	4% of the land sale price	While the land transfer tax is often paid by the seller (negotiable), the tax payment receipt is issued in the name of the buyer, who needs to receive the land transfer payment receipt to confirm that the tax has been paid.
<b>Share transfer tax</b>	Under Cambodia’s new Law on Taxation, if real estate comprises more than 50% of a company’s total assets, then any share transfer is subject to a 4% share transfer tax (as opposed to the 0.1% rate that normally applies to share transfers).	Cambodian law imposes the obligation to pay the share transfer tax on the buyer; in practice, often the seller pays this tax.
<b>Capital gains tax</b>	The capital gains tax is set at 20% for gains from the sale or transfer of immovable property.  The capital gains tax is calculated as 20% of the revenue from the sale and transfer after expenses. In figuring the expenses, taxpayers can either deduct expenses at a fixed rate of 80% of the revenue from the sale or transfer, or deduct actual qualifying expenses.	Seller

## Trust Options

In 2019, Cambodia enacted the Trust Law, which creates a mechanism for foreign nationals to own land indirectly through a trust. The trust becomes valid after it is officially registered with the Trust Regulator, and is limited by statute to a maximum of 100 years. A legal entity or an individual person seeking to be registered as a trustee must obtain a license from the Non-Banking Financial Services Authority.

The trust structure is still rather new in Cambodia, and few trust companies have a solid track record, so there is still uncertainty as to how various trust companies and trustees will manage trusts.

## Lease Options

A company may also lease land. Under Cambodia's Civil Code, a property lease with a term of 15–50 years is deemed a "perpetual lease." If the property is subject to a formal certificate of title issued by the Ministry of Land, the perpetual lease can be recorded on the back of the certificate of title, and the tenant can obtain a Certificate of Perpetual Lease from the Ministry of Land.

Entering into a perpetual lease guarantees the right of the tenant to use the land for the duration of the lease term. The perpetual lease can include a clause stating that the lessor will not sell the land to any third party without the lessee's consent. The lease gives the lessee all the rights necessary to develop the land.

## Hypothec Options

Of the five types of real security rights established by Cambodia's Civil Code (rights of retention, statutory liens, pledges, hypothecs, and security rights by title transfer), hypothecs are most commonly used to secure the debt of a borrower.

According to the Civil Code, a hypothec, which is akin to a mortgage, is created "through an agreement reached between a creditor and a debtor or third party that furnishes immovable property as security." A hypothec can only be held out against a third party if the hypothec is notarized and registered at the relevant land office. In practice, the hypothec is recorded on the back of the hard title (where encumbrances such as a hypothecs or perpetual leases can be recorded).

If the debtor fails to repay the debt, the hypothec (i.e., the lender) can apply to the court for a compulsory sale of the hypothecated property. In other words, if the debtor defaults, the lender does not have the right to seize the property but must seek the assistance of the court to sell the property.

## Construction-Related Permits

Under Cambodian law, no buildings can be constructed, altered, or demolished without obtaining a permit from, or notifying, the relevant government authority. Construction permits for industrial or commercial buildings with more than 3,000 square meters of floor space and for boreys (gated, residential communities) are issued by the Ministry of Land. Applicants can obtain a construction permit application from the relevant national, provincial, or municipal authorities, and they also need certain approvals from local authorities and provincial or municipal authorities.

## Property Tax

A property tax is imposed on all immovable property located in municipalities and provinces that is valued above KHR 100,000,000 (approx. USD 25,000). The property tax rate is set at 0.1% of the tax base of the officially determined value of the immovable property.

The tax base of the immovable property is determined by taking 80% of the value of the immovable property and subtracting KHR 100,000,000 (approx. USD 25,000). Because the Property Evaluation Committee states its market prices in US dollars, it is necessary to convert the value of the immovable property into Cambodian riel in order to deduct KHR 100,000,000.

# LAOS

## Land Ownership by Foreign Individuals and Companies

Though land in Laos is deemed property of the national community, Lao nationals can be granted permanent land use rights—this is as close as Laos gets to the concept of land ownership that exists in most other jurisdictions. These land-related rights can include the right to protect land, as well as usage, usufruct, transfer, and inheritance rights.

While permanent land use rights remain prohibited to foreign nationals, the Law on Land No.70/NA of June 21, 2019, does allow foreign nationals to own and invest in certain immovable properties in Laos. Foreign individuals, legal entities, and organizations may obtain land use rights by leasing land from Lao citizens, leasing state land, or purchasing allocated state land use rights under the Law on Land.

Companies incorporated under Lao law with foreign nationals holding any share equity are prohibited from holding permanent land use rights in Laos. Accordingly, incorporating a legal entity in Laos will not necessarily allow it to hold permanent land use rights, as this is only an option for legal entities owned entirely by Lao nationals.

## Registration and Documentation of Land Ownership

Lao nationals holding permanent land use rights must have a land title, which includes details about the land's location, size, and usage purpose (see [Zoning in Laos](#) below), as well as how the land title was acquired (e.g., inheritance, sale). Lease agreements registered where the land is located can be used as evidence of land-use rights. Accordingly, the land registry is able to confirm who holds land-use rights.

Any land transaction (e.g., sale, purchase, transfer, lease, mortgage, security, or other encumbrance) must be made in writing and registered with the Department of Natural Resources and Environment (DONRE) office where the land is located. Encumbrances over land can be confirmed by requesting a certificate of land conformity from the relevant DONRE office.

## Foreign Condominium Ownership

Foreign individuals, legal entities, and organizations may own units in a condominium, which in Laos refers to a multistory building with multiple units that is constructed on land specifically authorized for that purpose. Under Lao law, there is no limit on the number of units that can be



owned by foreign parties within a condominium, and each foreign owner receives an ownership certificate over the apartment unit that acts as proof of ownership.

Foreign companies are also allowed to construct condominiums. To do so, the construction must be conducted by a locally established company, with a construction permit obtained from the Ministry of Public Works and Transport. In addition, the land for the condominium construction must be registered at the DONRE office where the land is located, and the condominium business activities must be authorized by the Ministry of Planning and Investment.

## Transfer Taxes and Fees

Acquisition or disposal of immovable property must be registered with the DONRE office where the immovable property is located, and transactions are subject to the following fees:

Transaction	Fee	Responsible Party
<b>Sale/purchase, transfer</b>	2% of the official appraisal land value for an individual, or 7% for a legal entity	Based on parties' agreement
<b>Lease fee</b>	LAK 200,000 (approx. USD 10) per contract	Based on parties' agreement
<b>Loan, mortgage, security</b>	LAK 300,000 (approx. USD 15) per contract	Based on parties' agreement
<b>Concession</b>	LAK 1,000,000 (approx. USD 50) per concession	Concessionaire

## Lease Options

The maximum duration of a lease of land from a Lao national is 30 years, renewable. Lease agreements for immovable property must be made in writing and signed by the contracting parties, certified by the village administration, notarized by the Notary Office, and registered with the DONRE office where the land is located.

For larger projects (e.g., energy, agricultural, mining) it is also possible to enter into a concession agreement with the Lao government. Generally, the duration of a lease agreement in such a scenario is 50 years, renewable. However, certain types of concession agreements may have different durations. For instance, concession agreements for electricity projects are 25 years at most.

Prospective concession projects require a feasibility study covering environmental and social impact on the surrounding area, and the rights over the land for the project are only secured when a land use rights certificate is issued.

## Zoning in Laos

Under the Land Law, land in the whole country is divided into different categories according to its purpose or characteristics: agricultural, forestry, water area, industrial, communication, cultural, national defense, or construction.

The government is charged with zoning and demarcating boundaries for each land category for final approval by the National Assembly. Local administrations determine the land categories that are under their jurisdiction.

## Building Controls and Permits

Lao law prohibits construction of any building without obtaining prior approval from the Department of Housing and Urban Planning (DHUP) or the One Stop Service of the Ministry of Public Work and Transport (MPWT). The Provincial Administrative Department of the DHUP is responsible for approving and issuing construction permits for the area where the buildings are located.

Construction permits are valid for six months and can only be renewed once for an additional six months; construction must commence while the permit is still valid. After the building is constructed, the Urban Planning Division in the DHUP will issue a building construction certificate to certify its completion.

If a building may have high or moderate social or environmental impact, it requires an initial environmental impact examination report or an environmental impact assessment report for approval by the Ministry of Natural Resources and Environment (MONRE). In such a case, the MPWT would not issue a construction certificate for the project without a certificate from the MONRE.

Controlled-use buildings, such as warehouses, hotels, apartment buildings, and hospitals, also require a certificate of use from the local authority. Construction of controlled-use buildings must comply with specific safety standards and other relevant specifications and requirements.

## Land and Building Tax

Individuals and legal entities that have land use rights must pay an annual land use rights fee to the government to retain the usage rights—which are forfeited if the fee goes unpaid for three years in a row. Parties that derive income from a lease or rental of land or buildings must also pay income tax. Land use rights fees and taxes are calculated by the tax authority based on the type of land and its appraisal value, which will be updated every three years. Tax lease rates are based on the land appraisal value and the total value of the land and property lease.

# MYANMAR

## Land Ownership by Foreign Individuals and Companies

Foreign companies and individuals are restricted from owning land and other immovable properties by the Transfer of Immovable Property Restriction Act (1987). There are exceptions that allow foreign companies (i.e., those with foreign shareholdings of more than 35%) and individuals to have

a long-term lease of land and immovable properties with approval, permit, or endorsement from the relevant authorities.

The Myanmar Companies Law (2017), which came into force in August 2018, allows Myanmar companies to have up to 35% foreign shareholding without changing their legal status to be foreign-owned. These companies may own immovable properties such as land.

The Myanmar Investment Law (2016) allows foreign investors applying for an investment permit or endorsement to obtain a long term-lease of land and immovable properties for a term of 50 years, renewable for a total lease of up to 70 years, with the approval of the Myanmar Investment Commission (MIC) and the Union Government of Myanmar.

## Registration and Documentation of Land Ownership

The state is the ultimate owner of land in Myanmar; citizens do not hold absolute property rights. Land ownership and land use in Myanmar are regulated under various laws, depending on whether the land is designated grant land, freehold land, permit land, urban area land, forest land, farmland, or fallow land. Private individuals may hold land in the form of a grant from the government. These grants are for a specific period and are transferrable and leasable, subject to registration with the local land authority. Most land authorities issue grants of lease for 30, 60, or 90 years. Land grant-issuing authorities include the City Development Committees (Nay Pyi Taw, Yangon, and Mandalay), the Department of Urban and Housing Development, the General Administration Department, the Settlement and Land Records Department, and the Township Administrative Body of the Farmland. Registering a land transaction (including ownership, transfer, long-term lease, mortgage, or other encumbrance) requires submission to relevant authorities, depending on location of the land.

For ownership of land, there are various standard formats for grant and ownership documents. As for land transactions, a certified map for the land is mandatory, as is application at the designated authorities of the state or region where the land is located. Under the Registration of Deeds Law 2018, long-term lease agreements must be registered with Office of Registration of Deeds (ORD) under the Ministry of Agriculture, Livestock and Irrigation, which differs from land grant-issuing authorities.

## Foreign Condominium Ownership

Passage of the Condominium Law 2016 made it possible for foreign nationals to legally purchase condominiums in Myanmar. Foreign individuals and companies may legally own up to 40% of the total units in a condominium building.

Under this law, a condominium is defined as “a high-rise building with six stories and above which is constructed as a condominium on the common land registered under the law.” To qualify as a condominium suitable for foreign ownership, the condominium must be constructed according to the following main requirements:

- The building must be constructed by a licensed builder on a “collectively owned” land parcel, which is land owned by persons who have obtained an apartment ownership registration certificate. The land must be registered through local authorities as collectively owned land, even if the developers are the actual owners of the land.

- Before the project is developed, the developer must obtain the approval of the Ministry of Construction to qualify the building as a condominium. After construction is completed and the building is inspected, a “residence permit” must be obtained.
- The condominium must be constructed on a land parcel of at least 20,000 square feet.

Foreign investors may only purchase a condominium through a transfer of funds from abroad, as there is no current allowance for in-country payment.

## Transfer Taxes and Fees

A real estate purchase will not be taxed if the source of income for the purchase has already been taxed; otherwise, property purchases incur tax of 30% of the total value of the property (or of the remaining value if the property is partially purchased using taxed income). Myanmar’s income tax rates for untaxed income currently range from 3% to 30%. The buyer must pay stamp duty at the rate of 2% of the purchase amount when registering the transfer of ownership agreement, plus an additional 2% if the land is in a designated urban area. The registration fee for sales agreements is 0.2% of the total property purchase amount at the ORD.

## Lease Options

There is no limitation on the possible duration for a lease of immovable properties. However, foreign investors are only eligible for long-term leases of up to 70 years (50+10+10) with the approval of the MIC and the Union Government for its foreign investment activities in Myanmar. Land lease periods of less than five years do not require a permit from the MIC, but foreign investors leasing land for less than five years still need to apply for an endorsement. A lease of immovable properties for more than one year must be registered with the Office of Registration of Deeds in urban area or with the local land registration office in other areas. An unregistered long-term lease of immovable properties is not enforceable under Myanmar laws.

Land lease or land use for strategic investment purposes, or land use of more than 1,000 acres for agricultural investment or 100 acres for nonagricultural investment, requires approval from the Union Government.

## Zoning

Myanmar does not zone land specifically for commercial, residential, and industrial uses, although there is zoning for wildlife preservation and historical and cultural sites. Development of new residential and economic or industrial areas requires a feasibility study and approval from the Union Government. In Yangon, the High-Rise and Public Building Project Committee evaluates construction of high-rise buildings in certain downtown areas.

## Building Controls and Permits

Under Myanmar Law, construction of any type of building requires a construction permit from the relevant authorities. Construction permits are issued by the respective city development committee for Yangon, Mandalay, and Nay Pyi Taw, while local municipal authorities issue construction permits for other townships. For construction in Yangon, applicants can apply for a construction permit online via the Yangon Building Permit System.

After construction is completed, every project must receive a Building Completion Certificate from the respective city development committee or municipal authorities before the construction can be used.

## Land and Building Tax

Real estate owners do not yet have to pay property taxes, although real estate lessors must pay 10% income tax on their lease income after deducting any reliefs under the Income Tax Law. Lease income cannot be combined with other income for tax purposes, and the tax on lease income must be paid separately. The lessee must pay commercial tax of 5% on the lease fee. Owners cannot share or pass any of their tax burden to someone else.

The government is drafting property tax regulations and plans to tax property ownership in the future, though the details of the planned arrangements and liabilities are not yet known.

# THAILAND

## Land Ownership by Foreign Individuals and Companies

Under the Land Code, foreign individuals and companies are prohibited from owning land in Thailand. (This includes foreign-majority owned companies incorporated under Thai law in which foreign nationals hold more than 49% of the total issued shares, or the majority of shareholders are foreign nationals.)

There are, however, a number of exceptions to the prohibition on foreign ownership of land under the following laws:

### Land Code Amendment Act (No. 8) B.E. 2542 (1999)

- Foreign nationals who have brought in money for investment over the threshold fixed by ministerial regulation (currently THB 40 million) can acquire less than one *rai* of land in certain areas for residential purposes after obtaining the Interior minister's approval.

### Investment Promotion Act B.E. 2520 (1977)

- Promoted entities may own land required for the promoted business in an amount prescribed and approved by the Board of Investment (BOI).

### Industrial Estate Authority of Thailand Act B.E. 2522 (1979)

- Industrial operators and operators of trading for export are eligible to own land in an industrial estate area governed by Industrial Estate Authority of Thailand (IEAT) with the IEAT's approval.

### Financial Institution Business Act B.E. 2551 (2008)

- Financial institutions as defined under the act may purchase or permanently hold immovable properties for use as bank premises or facilities for officers and employees, with the Bank of Thailand's approval.

### Petroleum Act B.E. 2514 (1971)

- The Petroleum Committee may permit concessionaires to own land for petroleum operations.

## Registration and Documentation of Land Ownership

Land transactions (e.g., transfers, long-term leases, mortgages, or other encumbrances) must be registered with the relevant land office where the land is located.

The hierarchy of land documents ranges from a notice of possession of land up to a title deed representing full and complete ownership rights.

<b>Land Title Deed (<i>Chanot</i>)</b>	A true title deed is issued by the local provincial office of the Department of Lands. Such a title deed is based on accurate surveys, pegged and plotted in relation to a national survey grid and including deployment of unique numbered marker posts set into the ground.
<b>Nor. Sor. 3 Gor.</b>	A Nor. Sor. 3 Gor. is a type of document for which rights of possession of land may be registered, or for which the owner may lease the land. It is similar to the Nor. Sor. 3 (see below) but is a more recently issued document. Land covered by this type of document is also more accurately surveyed than that covered by a Nor. Sor. 3, as each plot is cross-referenced to a master survey of the area and a corresponding aerial photograph. In dealing with purchases of land covered by such a document, it is wise to confirm boundaries with neighbors before purchase.
<b>Nor. Sor. 3</b>	Nor. Sor. 3 strictly translates to “land exploration testimonial deed” or “utilization certificate.” Such documents are issued and maintained by the relevant district office of the Department of Lands. So long as there are clear records of rights of possession, land under such a document may be sold, leased, or mortgaged, though the prescribed public notice period must be observed before any change in the status of the land can be registered. In general, land covered by this type of document is less accurately surveyed than that covered by a title deed, and the boundaries are only recorded in relation to neighboring plots. This type of document is increasingly rare.
<b>Sor. Kor. 1</b>	This is a certificate to document land rights, issued in response to provision of notice to the government of possession of certain land. The document serves to maintain existing rights. Surveys on which these documents are based may be inaccurate. Land covered by this type of document may only be transferred to an heir. However, a Nor. Sor. 3 or Nor. Sor. 3 Gor. may be issued in exchange for this document, making the land more easily transferable.

Por. Bor. Tor. 5,  
Por. Bor. Tor. 6  
(Tax Receipt)

This is a tax payment form filed with the District Office (as opposed to the district office of the Department of Lands) establishing a squatter's or settler's claim. It is not an official land registration and does not establish ownership rights. Purchasing land covered by this type of document is extremely risky. Banks will not accept the land as collateral, permanent structures may not be constructed on the land, and the land may not be leased.

Sor. Por. Kor.

This document is issued by the Agricultural Land Reform Office. It grants rights to agricultural workers to use land for agricultural purposes only. Land covered by this document may not be divided, and the rights to the land may only be transferred to an heir.

## Foreign Condominium Ownership

The Condominium Act B.E. 2522 allows foreign nationals who meet the law's criteria to own a condominium unit. This applies to:

- Foreign individuals who hold permanent resident status;
- Foreign individuals residing in Thailand under the laws governing investment promotion;
- Foreign juristic persons granted investment promotion under the relevant law;
- Juristic persons with more than forty nine percent of the registered capital held by foreign nationals, or a company incorporated under Thai law with foreign nationals making up more than half the shareholders; and
- Foreign individuals who bring foreign currency into Thailand or withdraw money from a nonresident or foreign currency bank account.

The Condominium Act defines "condominium" as a building where persons are able to hold ownership of units separately, with each unit consisting of personal ownership in the property and joint ownership in common property (i.e., parts of the condominium besides the unit, land where the condominium is located, and land or other properties for the use or joint benefit of the owners). All condominium unit owners have rights and duties to jointly manage and use the common property in their condominium building.

A condominium unit title deed shows ownership of a condominium unit.

Foreign ownership in a condominium project must not exceed, in aggregate, 49% of the total area of all condominium units in the condominium project. The necessary information from the condominium's juristic person and a letter confirming the foreign quota must be submitted to the land office to register a transfer of condominium unit ownership to a foreign party.

## Transfer Taxes and Fees

Acquisition or disposal of immovable property must be registered with the relevant land office where the immovable property is located, and transfers of immovable property are subject to the following fees:

Transaction	Fee	Responsible Party
<b>Transfer fee</b>	2% of official appraisal value (assessed by the Treasury Department)	Equally shared between seller and buyer
<b>Specific business tax (SBT)</b>	3.3% of official appraisal value or actual transaction value (whichever is higher)	Seller
<b>Stamp duty (if not subject to SBT)</b>	0.5% of official appraisal value or actual transaction value (whichever is higher)	Seller
<b>Withholding tax</b>	<ul style="list-style-type: none"> <li>For corporate entity as seller: 1% of official appraisal value or actual transaction value (whichever is higher)</li> <li>For individual seller: personal income tax rate (5%–35% currently) applied to official appraisal value and further calculation</li> </ul>	Seller

## Lease Options

Under Thailand's Civil and Commercial Code, the maximum duration of a lease of immovable property is 30 years, renewable for another 30 years. A lease contract for any immovable property for three years or less is not enforceable unless made in writing and signed by the party liable (i.e., the lessee). Leases of more than three years need to be registered with the land office. Otherwise, they will be enforceable for only three years.

Further lease options are available under the Act Governing Leasing of Immovable Property for Commercial and Industrial Purposes B.E. 2542 (1999), which fixes lease periods at 30–50 years, renewable for up to another 50 years. A lease (or renewal) of this type must be made in writing and registered.

A lease for commercial or industrial purposes may be registered under the act only for commerce with investment of at least THB 20 million in an industry permitted to apply for investment promotion, or for commerce or industry deemed beneficial to Thailand's economy and society. The immovable property must be in an area designated as commercial or industrial land under the law governing city planning, or an industrial estate area under the law governing the IEAT. Furthermore, the commercial or industrial land must be listed as an area that allows foreign business operation under the Foreign Business Act B.E. 2542 (1999).



Leasing land in excess of 100 *rai* requires approval from the director-general of the Department of Lands, and the land must be used for operation of a business that:

- Increases the value of exports or supports employment in the country;
- Does not yet exist in Thailand, or exists in insufficient quantity;
- Uses modern manufacturing processes or involves development of technology; or
- Is deemed highly beneficial to the economy and society of the country.

## Zoning

In parts of Thailand where land use may endanger the environment or natural resources, area-specific ministerial announcements and regulations set rules for land use and structure height. Under Thai law, land use is regulated under the City Planning Act as residential, industrial, agricultural land; land for environmental or cultural protection; or land for other purposes. Zoning is done by colors.

Normally, there is a ministerial regulation issued for each province (or district or municipality) describing purposes for the land utilization as well as prohibitions or restrictions on construction or project development.

## Building Controls and Permits

Under Thai law, no buildings can be constructed, altered, or removed without obtaining a permit from, or notifying, the relevant government authority. This is generally the local *tambon* (subdistrict) administrative office or municipality office responsible for the area where the land and building are located.

Controlled-use buildings (e.g., warehouses, hotels, condominium buildings, medical facilities, etc.) require a certificate of use from the relevant local authority. Construction of a building must also comply with specifications and requirements (e.g., safety standards, setback requirements) of the Building Control Act B.E. 2522 and its accompanying regulations.

Construction of certain buildings requires preparation of an initial environmental impact examination report or environmental impact assessment report (depending on the building type and location) for approval from the Office of Natural Resources and Environmental Policy and Planning (ONEP) in accordance with the Enhancement and Conservation of the National Environmental Quality Act. B.E. 2535 and its relevant notification. The construction may not begin before obtaining ONEP approval.

## Land and Building Tax

Under the Land and Building Tax Act B.E. 2562, individuals and juristic persons who have ownership, possessory, or usage rights over land or buildings (including condominium units) on January 1 of each year must pay land and building tax. Payment is normally due each April.

For calculation of land and building tax, the tax base is the official appraisal value of the property (as assessed by the Treasury Department), and the tax rate depends on the property's use and appraisal price.

# VIETNAM

## Land Use Rights Granted to Foreign Individuals and Organizations

In Vietnam, land ownership is not allowed for individuals or organizations (e.g., companies), regardless of whether they are Vietnamese or foreign. Instead, the land is collectively owned by the people and managed by the state, which grants the right to use land to land users. Under the applicable laws, these land use rights can be granted in certain forms, typically including:

- land allocation with or without a land use fee;
- land lease with a lump-sum rent payment; and
- land lease with an annual rent payment.

Each form grants the land users different land use rights and ownership of assets attached to the land (e.g., buildings and other constructions on the land). The right to transfer or mortgage the land use rights and ownership of attached assets may vary depending on the specific land use form. For example, for land allocated with land use fees or land lease with a lump-sum rent payment, the land users are entitled to transfer or mortgage the land use rights and ownership of the assets attached to the land. For land lease with annual rent payment, however, the land users are only entitled to transfer or mortgage ownership of the assets attached to the land, not the land use rights.

The state, acting as the custodian and manager of all land resources, can allocate or lease the land based on the land use purpose.

## Obtaining Land Use Rights from the State

Except for certain special cases (such as foreign organizations with diplomatic functions), foreign individuals or organizations cannot lease or be allocated a land site directly from the state. Instead, they must establish a foreign-invested enterprise (FIE) in Vietnam, and through this FIE they can lease or be allocated the land from the state, depending on the land use purpose. In particular:

- **Land allocation:** The state allocates the land (and collects a land use fee) to FIEs for investment projects involving construction of residential houses for sale or for a combination of sale and lease.
- **Land lease:** The state leases the land, with annual or lump-sum rent payment, to FIEs for certain purposes, such as:
  - implementation of investment projects in agriculture, forestry, aquaculture, or salt production;
  - nonagricultural business and manufacturing;
  - construction of public facilities for commercial purposes; and
  - implementation of investment projects offering residential houses for lease.

## Obtaining land use rights from a third party

In addition to obtaining land use rights from the state, foreign individuals and organizations, acting through their FIEs, can acquire land use rights through:

- subleasing a land site and its infrastructure from the developer in special areas such as industrial zones or economic zones;
- transfer of land use rights from a third party in certain circumstances, such as foreclosure of a land site as a secured asset for debt settlement, or receipt of land use rights as capital contribution from owners or shareholders; or
- purchasing land use rights indirectly through acquisition of shares or equity interest in a company holding a land site.

## Land use term

FIEs (both wholly owned subsidiaries and joint ventures between foreign entities and local investors) can lease or be allocated land sites from the state for up to 50 years—or up to 70 years for large investment projects with slow recovery of capital and projects in areas with certain difficult socioeconomic conditions that require a longer term. However, the granted land use term will typically follow the term of the investment project.

## Auction of land use rights

Generally, FIEs can only obtain land use rights from the state through an auction of land use rights, regardless of whether the land is allocated or leased, unless otherwise approved by the prime minister.

Land sites must satisfy certain conditions for organizing an auction of land use rights when the state allocates or leases the land. These conditions include, among others, the governmental authority having approved an annual land use plan and completed the land clearance and compensation process. FIEs can provide financial support to the state authorities to expedite the land clearance and compensation process; however, there is no guarantee that the FIE will win the auction of land use rights. In addition, organizations seeking to participate in the land use rights auction process must ensure that no more than one company with cross-ownership participates in the auction. They must also submit a deposit of 20% of the total value of the land site, which is the starting price for the auction.

After the announcement of the auction results, the down payment and any interest earned will be converted into a security deposit to ensure the land user's financial obligations are met. If the auction winner fails to pay the full amount for the land use rights, the security deposit will be forfeited.

## Land Registration and Title Documentation

Upon fulfillment of the financial obligations with the state, FIEs as land users are granted a Certificate of Land Use Rights and Ownership of Residential Houses and Other Assets Attached to the Land (LURC)—a legal certificate in which the state certifies the holder's lawful land use rights and any ownership of attached assets (after construction). The LURC records mandatory particulars such as information on the land users and the term, form, and purpose of the land use and the attached assets.

After issuance of a LURC, FIEs are entitled to control their land site and exercise their rights over the land site and any attached assets.

## Land for Manufacturing Projects

In manufacturing projects, foreign investors, through FIEs, frequently enter into sublease agreements with developers of industrial or economic zones to acquire land. The subleasing process with these lessees is typically straightforward, allowing the parties to negotiate and agree upon essential terms such as sublease term, rent, payment terms, and the sublease type (e.g., bare land or land with infrastructure). Subleasing land within an industrial or economic zone offers the added advantage of well-developed infrastructure, including roads, electricity, and sewage systems.

In addition, FIEs may lease land directly from the provincial People's Committee, with the rental rates determined by the authority. However, this type of land lease is becoming less common in Vietnam due to the limited availability of land for manufacturing purposes and the auction requirement.

## Land for Real Estate Business Projects

There is no limitation on the percentage of foreign investment in a company engaging in real estate business in Vietnam. However, the scope of real estate business that can be conducted by FIEs is limited to:

- leasing houses and buildings for the purpose of subleasing;
- leasing land from the state to develop residential houses for the purpose of leasing, and to develop houses and buildings other than residential houses for the purpose of sale, lease, or grant of hire-purchase;
- receiving a transfer of part or all of a real estate project from an investor to develop houses and buildings for the purpose of sale, lease, or grant of hire-purchase;
- receiving an allocation of land from the state to develop residential houses for the purpose of sale, lease, or grant of hire-purchase; and
- leasing land in industrial or economic zones to develop houses and buildings for trading in accordance with the land use purpose.

Depending on the type and size of the real estate project, an investor may obtain a land site by getting investment approval (e.g., investment policy approval and investor approval from the National Assembly, the prime minister, or the provincial People's Committee), engaging in an auction of land use rights, bidding for land use projects, or receiving a land allocation or lease in accordance with land laws.

Due to the complexity and lengthiness of these procedures, foreign investors usually consider M&A structures to engage in real estate projects that have already completed the above processes. Under such an arrangement, a foreign investor directly acquires equity or shares in a real estate company from existing shareholders. This neither changes the current organizational structure nor affects real estate project licenses and permits, which remain under the name of the real estate company.

## Foreign Individuals' Ownership of Houses or Apartments

Foreign nationals cannot own detached houses outside of commercial housing projects. They are only permitted to purchase apartments and detached houses within commercial housing projects and obtain a LURC recording their ownership of the house or apartment. If a foreign individual marries a Vietnamese citizen, the couple can own a house or apartment for the long term and enjoy the same rights as Vietnamese owners.

Issuance of a LURC to a foreign national in Vietnam provides that individual with the same ownership rights—including leasing and selling the property—as Vietnamese citizens. However, there are certain limitations:

- The ownership period for houses and apartments owned by foreign nationals cannot exceed 50 years from the date of issuance of the LURC (extendable); Vietnamese individuals do not face this restriction.
- There are quotas for the maximum number of foreign-owned apartments and houses in housing projects. For residential apartments, foreign nationals in aggregate are limited to owning no more than 30% of the total number of apartments in each apartment building or no more than 30% of the total apartments of all apartment buildings in an area with a population equivalent to a ward. For detached houses, foreign nationals are allowed to own no more than 10% of the total number of houses and no more than 250 houses in one housing project.

To be eligible to purchase apartments and detached houses, foreign nationals must have permission to enter Vietnam (e.g., visa, residency permit), lack diplomatic immunity and privileges, possess a valid passport with an entry seal from Vietnam’s immigration authority, and have full legal capacity to engage in housing transactions according to Vietnamese law. However, they are not required to register temporary or permanent residence at the location of the property being purchased.

## Real Estate for Tourist Accommodation

Like with other types of real estate, investors in real estate for tourist accommodation, such as hotels and resorts, can be granted a LURC recording their ownership of entire buildings constructed on commercial and service land. However, there is some uncertainty regarding the land use purpose of real estate for tourist accommodation in which investors sell units, such as units in a condotel or villas in a resort, to different buyers. Vietnamese regulators have been hesitant to determine whether a LURC issued to such buyers would record the land use purpose as residential (like apartment buildings) or commercial and service (like regular hotels and resorts). This has caused a hold on granting ownership to buyers of units in real estate for tourist accommodation.

The government has recently determined to grant ownership of buildings constructed on commercial and service land that are used for tourist accommodation purposes (including condotels or other types of resort real estate) in accordance with regulations applicable to other types of buildings constructed on commercial and service land. This can be a basis for issuance of a LURC to buyers of units in condotels, villas in resorts, and other real estate for tourist accommodation.

## Recent Updates

The Land Law was promulgated in 2013, while the Law on Real Estate Business was enacted in 2014. After nearly 10 years of implementation, new developments in the industry made clear the need for amendments to both laws. Accordingly, a draft amended Land Law was released on January 3, 2023, and a draft amended Law on Real Estate Business was released on April 5, 2023, to collect public opinions. The final versions of the amended laws are expected to be promulgated by the National Assembly in its Sixth Meeting in October 2023.

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