

Luther.

# Memo: Real Estate & Foreign Rights in Thailand

October 2023





## 1. Can foreigners own land in Thailand?

As a general rule, Chapters 8 and 9 of the Land Code Promulgating Act, B.E. 2497 (1954) (Land Code) do not permit foreigners (i.e., foreign individuals, foreign registered entities and foreign-owned entities registered under Thai Law) to own land in Thailand.

## 2. Are there any exemptions allowing foreigners to own land in Thailand?

The Land Code provides for several exemptions allowing foreign individuals to own land in Thailand:

- by virtue of an international treaty<sup>1</sup>;
- by special approval of the Ministry of Interior<sup>2</sup>;

*NB: both exemptions are granted within the limit of one rai (≈1600 m<sup>2</sup>) for residential purposes and up to 10 rai for industrial purposes.*

- through an investment of 40 million Baht<sup>3</sup> for at least five years<sup>4</sup> in a business beneficial to the economy and

society of Thailand, granting the foreigner up to one rai for residential purposes in a specified area subject to approval of the Land Department of the Ministry of Interior, as well as from the relevant authority in relation to the business (e.g., Board of Investment Office (BOI), Industrial Estate Authority of Thailand, Ministry of Finance, or Board of Petroleum of Thailand).

*NB: the Cabinet has recently endorsed a new program to allow eligible foreigners to own up to one rai for residential purposes. This new program will target four groups of foreigners (wealthy global citizens, wealthy pensioners, people working from Thailand and highly skilled professional). The new program should reduce the minimum duration of such investment to three years. Furthermore, the new program plans to integrate the value of the real property in the calculation of the amount invested.*

- by inheritance<sup>5</sup> subject to approval of the Land Department of the Ministry of Interior, up to one rai for residential purposes.

<sup>1</sup> Thailand is, to date, not party to any treaty granting such rights to individual foreigners.

<sup>2</sup> Land Code, Section 86 para. 2.

<sup>3</sup> Land Code, Section 96 bis.

<sup>4</sup> Ministerial Regulation Re: Rules, Procedures and Conditions for Acquisition of Land by Aliens B.E. 2545 (2002), Section 2.

<sup>5</sup> Land Code, Section 93.

### 3. Are there any exemptions allowing foreign entities to own land in Thailand?

Further, the Land Code provides for several exemptions allowing foreign-registered entities and foreign-owned entities incorporated in Thailand to own land in Thailand:

- BOI Promotion: a foreign entity being promoted by the BOI is permitted to own land in Thailand in order to carry on promoted activities<sup>6</sup>. To benefit from the BOI promotion and the exemption regime, the foreign-owned entity's business must be eligible to one of the BOI promotion categories and comply with a list of criteria set by the BOI (e.g., minimum investment).
- land within an industrial estate area: a foreign entity is also permitted to own land located in an industrial estate area to conduct its activities pursuant to the Industrial Estate Authority of Thailand Act B.E. 2522 (1979) (IEAT Act)<sup>7</sup>.
- Special Economic Promotion Zone: a foreign entity may also own land for business purposes within a Special Economic Promotion Zone (SEPZ) located in the Eastern Economic Corridor, currently covering Chonburi, Rayong, Chachoengsao Provinces as permitted under the Eastern Corridor Act B.E. 2561 (2018) (EEC Act)<sup>8</sup>.

### 4. What is a foreign-owned entity?

Under the Land Code<sup>9</sup>, the term "foreign-owned entity" means:

- a limited company or public limited company whose shares are held by foreigners by more than 49% of its registered capital, or whose foreign shareholders are more than half of the total number of the shareholders;
- a limited partnership or registered ordinary partnership whose contributions by a foreigner are more than 49% of its total capital, or whose foreign partners are more than half of the total number of the partners;
- an association whose foreign members are more than half of its total number of members or which operates exclusively or substantially for the benefit of foreigners; and
- a foundation whose objectives are exclusively or substantially for the benefit of foreigners<sup>10</sup>.

In case the shareholders of a company are juristic persons, the Land Department officials<sup>11</sup> will also verify the shareholding structure to determine who is the ultimate beneficiary<sup>12</sup>.

*Illustration: a company X registered in Thailand has shareholders A, B and C, all of which are juristic persons. In order to assess whether company X is a Thai or a foreign-owned company, the officers of the Land Department will verify whether the shareholding structure of Company X complies with the rules of the Land Code. They will also look at the shareholding structure of the shareholders, namely A, B and C. Hence, if shareholders A, B and C are deemed "foreign" (i.e., companies with more than 49% of their shares held by foreign individuals or entities), company X will also be deemed "foreign". The officer will also check the shareholding structure of the shareholders of A, B and C and further layers of shareholding to assess the status of company X.*

The threshold to consider whether a company is "foreign" is therefore determined either by the number of shares/equity held by the foreign shareholders or the number of foreign shareholders.

However, Thai corporate law allows the issuance of preferential shares<sup>13</sup>. A Thai registered company may issue different classes of shares, i.e., ordinary shares and preferential shares, the latter vested with lesser voting and dividend rights. Consequently, a Thai-registered "foreign-controlled" company is not automatically deemed "foreign-owned" and therefore can own land in Thailand.

*Illustration: a company Y registered in Thailand has shareholders A, B and C. Shareholders A and B are Thai entities and own 51% of the shares of company Y. Shareholder C is a foreign entity and owns 49% of the shares. However, the shares owned by shareholder C are preferential shares granting double voting right. As consequence, company Y will still be deemed Thai-owned, notwithstanding that it is foreign-controlled.*

<sup>6</sup> Investment Promotion Act, Section 27.

<sup>7</sup> IEAT Act, Section 44.

<sup>8</sup> EEC Act, Section 49.

<sup>9</sup> Land Code, Section 97.

<sup>10</sup> Land Code, Section 97.

<sup>11</sup> Land Code, Section 98.

<sup>12</sup> Section 4 of the Foreign Business Act B.E. 2542 (1999) provides for different criteria defining a foreign-owned entity. For the sake of land ownership, however, only the definition of the Land Code applies.

<sup>13</sup> Civil and Commercial Code, Section 1142.

## 5. Can foreigners set up a company to own land in Thailand?

Foreigners may be tempted to set up a Thai-registered company to circumvent the restrictions on foreign land ownership. However, this poses several risks:

Firstly, from a regulatory standpoint, setting up a company to circumvent the prohibitions of the Land Code and the Civil and Commercial Code is illegal:

- registration issue: the Land Code<sup>14</sup> specifically prohibits Thai nationals to act as a nominee on behalf of a foreigner to own land. The Land Code<sup>15</sup> also imposes a particular duty of care on the Land Department officials when they are recording land transactions. If they have any reason to believe that a Thai national or a Thai-owned company is owning land on behalf of a foreigner, they have the discretionary power to reject the registration of the transaction and report to the Ministry of Interior.
- criminal liability: the Land Code<sup>16</sup> imposes criminal liability to anyone acting as nominee or proxy for a foreigner for the purchase of a land in contravention with the foreign land ownership restriction. The fine is set to THB 20,000 and/or imprisonment of up to two years. For a company, the fine is not exceeding THB 50,000<sup>17</sup>.
- transaction invalidity: further, the transaction will be deemed void under both the Land Code and the Civil and Commercial Code. However, the property will still be effectively transferred to the foreigner. The latter shall dispose of the land within one year. Failing of which, the Land Department is authorized to proceed selling the land and retain a 5% fee before any tax deduction.

Secondly, from a practical standpoint, the following should be considered:

- the company must be active, run as a legitimate business and comply with the Civil and Commercial Code, the Foreign Business Act, the Emergency Decree on Administration of Alien Working B.E. 2560 (2017) and other laws relevant to the business activity. As consequences:

- the company must appoint at least one director to run the day to day business of the company, and such director, if foreign, must hold a non-immigrant visa and a work permit; and
- the company must be active, meaning it must hold shareholders' and board of directors' meetings and having its accounts audited and filed every year. Failing of which, the director(s) may be held liable, and the company may be removed from the company registrar.

- a limited company shall comprise of at least three shareholders with a majority of Thai interest (see question 4 above).
- possible future amendments of the Foreign Business Act and Land Code regarding foreign ownership of Thai registered company may jeopardize the long-term viability of such structure.

## 6. Can foreigners purchase and own units in a condominium?

Yes, foreigners can purchase and own units in a condominium. In Thailand, a condominium refers to a building or a real estate complex comprised of units owned individually and a community property owned jointly and administrated by the condominium management. Foreigners can own a fractional interest in the condominium and purchase units within the limit of 49% of the total units of the condominium<sup>18</sup>.

## 7. Can foreigners purchase and own a building?

Superficies rights are property rights that are distinct from the ownership of the land, and no restrictions apply to foreigners. The principle can be summarized as "built and own".

The owner of a land can grant a superficies right over anything above the land allowing the superfiary to use the surface of the land for construction or plantation purposes<sup>19</sup>.

Superficies rights may be established for either the life of the owner of the land, the life of the superfiary or for a period not exceeding 30 years<sup>20</sup>. In addition, because it is a proprietary

14 Land Code, Section 96 and 113.

15 Land Code, Section 74.

16 Land Code, Section 113.

17 Land Code, Section 112.

18 Condominium Act, Section 19-2 (bis).

19 Civil and Commercial Code, Section 1410.

20 Civil and Commercial Code, Section 1412.

right, the superficies right is transferable by way of inheritance<sup>21</sup>. The superficies right will be transferred to the entitled beneficiaries of the superfiary or will bind the successor of the landowner. At the expiration of the term of the superficies, the superficies may remove the buildings and restore the land to its former condition or the land owner may buy the buildings at market value<sup>22</sup>.

The registration of the building will be separated from the registration of the land in a title deed of ownership. However, if the construction is not properly registered with the Land Department, such right may not be enforceable against third parties. Hence, if the owner of the land disposes of the land, the ownership of the building may not be claimed against the new owner.

## 8. Can foreigners be granted usufruct rights?

The usufruct right grants a right of use of a property (land or building) to the usufructuary, and no restrictions apply to foreigners. The principle can be summarized as “use and maintain”.

Similarly to the superficies right, it can be granted either for the life of the owner of the land, for the life of the usufructuary or for a period not exceeding 30 years. However, the usufruct cannot be inherited or transferred upon the demise of the beneficiary.

The usufruct right is enforceable against third parties meaning that the usufruct right may be claimed against the new owner the event of a transfer of the property.

## 9. Can foreigners enter into long-term lease agreements?

Foreigners are entitled to lease land in Thailand. Under the Civil and Commercial Code<sup>23</sup>, the maximum duration of a lease of immovable property is 30 years, renewable twice for 30 year-term period each time<sup>24</sup>. A renewal option can be inserted in the lease agreement. However, it should be stressed that the renewal is not guaranteed. The renewal option is merely a contractual promise to discuss the term of the renewal upon termination of the initial lease term. Pre-



agreed renewals or locked renewals are not enforceable in court, and any pre-agreed consecutive lease terms shall be deemed as part of one lease agreement and reduced to the maximum term of 30 years.

Besides this limitation, you will find in Thailand real estate developers and promoters offering 90 year leases, built on the promise that the two 30 year-renewals are guaranteed (30+30+30 lease). The most common legal arrangement to secure the renewal are the lease-mortgage and the collective/protected lease:

- lease-mortgage is a way to secure a 30+30+30 lease. The payment of the rent for the two additional 30 year-terms will be considered as a loan and secured through a mortgage on the property. The renewal decision upon expiry of the term will remain in the hands of the lessor. However, if the latter decides not to renew the lease, the lessee may claim for reimbursement of the loan. In the event that the lessor cannot reimburse the loan, the lessee may execute the mortgage and have the property seized and sold.
- collective-lease or protected lease is a contractual arrangement whereby the tenant enters into a lease agreement while also acquiring a minority shareholding interest in the Thai development company which owns the leased land. As consequence, the foreigners leasing the villas in the estate collectively own the development company which owns the lands. With preferential voting rights, the minority foreign shareholders can control the development company and, as such, can ensure that the leases will be renewed upon expiration of the initial term.

However, it should be stressed that this structures have been successfully challenged in court, resulting of the lease agreement to be declared void<sup>25</sup>.

21 Civil and Commercial Code, Section 1411.

22 Civil and Commercial Code, Section 1416.

23 Civil and Commercial Code, Section 540.

24 Civil and Commercial Code, Section 540.

25 Based on Civil and Commercial Code, Section 155.

# Luther in Asia

## Expertise

Our office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the creation of international holding structures and ensuring tax-efficient repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR professionals and tax consultants offering all the services one would necessarily associate with a “one-stop shop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax structures. Our accountants and professionals carry out the time-consuming administrative tasks of accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

## Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters for many international companies operating within the Asia-Pacific region.

With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than 26 lawyers from Singapore, Germany, France and other jurisdictions cover the full range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia.

Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

## Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market.

Luther Shanghai is fully authorised to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

## Region

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Ho Chi Minh City (Vietnam), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners in Australia, Hong Kong, Japan, New Zealand, the Philippines and South Korea.

# Hits the Mark. Luther.

Luther Rechtsanwaltsgesellschaft mbH is one of the leading corporate law firms in Germany. With some 420 lawyers and tax advisors, we can advise you in all fields of German and international corporate law. In addition to having offices in every economic centre throughout Germany, we are also present in 11 locations abroad: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Ho Chi Minh City, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advisory services are tailored to our clients' corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients. The name "Luther" stands for expertise and commitment. With a passion for our profession, we dedicate all our efforts to solving your issues, always providing the best possible solution for our clients. Not too much and not too little – we always hit the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always have an eye on the economic impact of our advice. This is true in the case of strategic consulting as well as in legal disputes. We have complex projects on our agenda every day. At Luther, experienced and highly specialised advisors cooperate closely in order to offer our clients the best possible service. Thanks to our fast and efficient communication, permanent availability and flexibility, we are there for you whenever you need us.

Luther has been named "Law Firm of the Year: Germany 2021" and also "European Law Firm of the Year 2021" by The Lawyer, one of the most well-known legal magazines worldwide.



## About unyer

unyer, founded by Luther and Fidal in 2021, is a global organisation of leading international professional services firms. Besides law firms, unyer is also open to other related professional services, especially from the legal tech sector. unyer is based in Zurich as a Swiss Verein. unyer is globally connected but has strong local roots in their respective markets.

unyer has an exclusive approach and only accepts one member firm from each market. unyer members offer its clients full services across all jurisdictions with a compelling industry focus. The organisation has an annual turnover of more than EUR 650 million and includes over 2,550 lawyers and advisors in more than 14 countries in Europe and Asia. In September 2021, Pirola Pennuto Zei & Associati joined the international organisation. In the spring of 2023, the Austrian law firm KWR joined the group. [www.unyer.com](http://www.unyer.com)



# Our locations

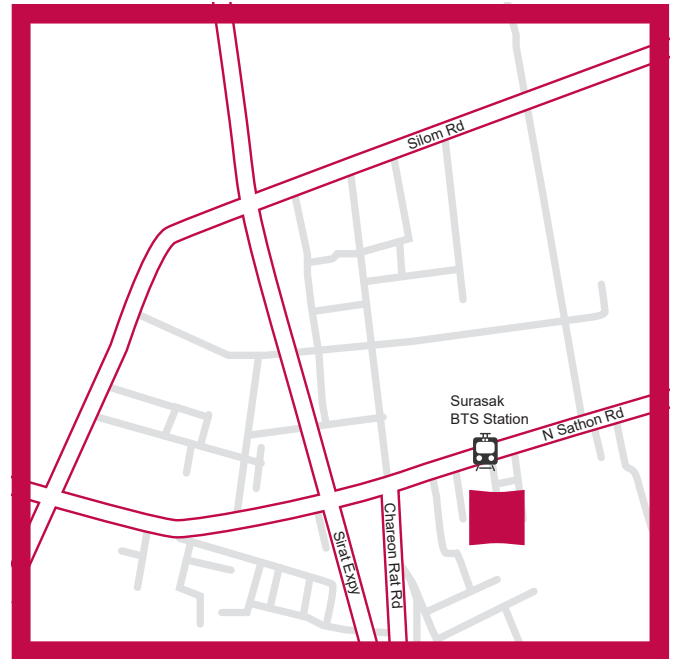
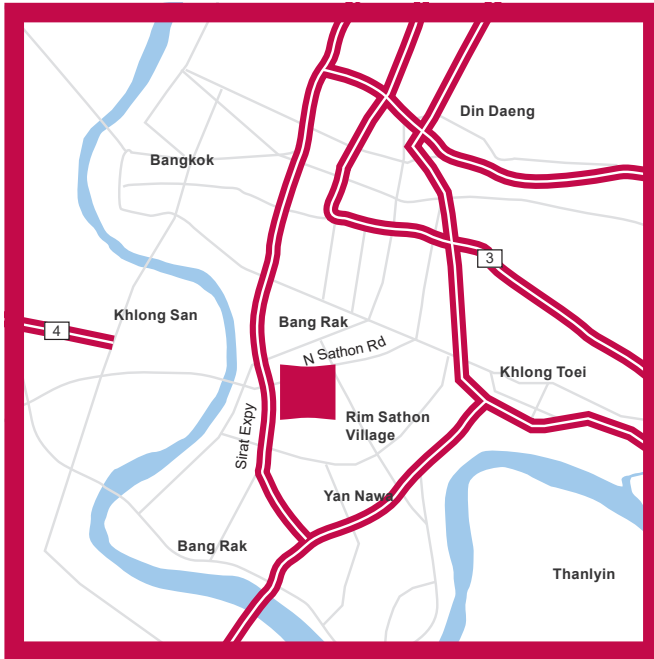
Our and our local partners' offices in important European and Asian markets



The shown locations are either Luther legal or corporate services offices and/or offices of our local cooperation partners.



# Our office in Bangkok



Description in detail

## Our office in Bangkok

**Luther Law Firm (Thailand) Co., Ltd.**  
43 Thai CC Tower, 18th Floor, Unit #183  
South Sathorn Road, Yannawa, Sathorn  
Bangkok 10120, Thailand  
Phone: +66 2 2100 036  
Email: Thailand@luther-services.com

## Your contact



**Fabian Lorenz, M.A.**  
Attorney-at-law (Germany)  
Partner, Location Head  
Mobile: +66 6 1420 4049  
Email: fabian.lorenz@  
luther-lawfirm.com

# Luther.

Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,  
Frankfurt a.M., Hamburg, Hanover, Ho Chi Minh City, Jakarta, Kuala Lumpur,  
Leipzig, London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

You can find further information at:

[www.luther-lawfirm.com](http://www.luther-lawfirm.com)

[www.luther-services.com](http://www.luther-services.com)

