

APPLICATION FOR ACQUISITION OF LAND OR CONDOMINIUM UNITS BY ALIENS AND PERSONS CONNECTED WITH ALIENS

1. Application by Aliens for Acquisition of Land

Nowadays, an alien may apply for acquisition of land in Thailand in three cases as follows:

1.1 Receiving inheritance as a statutory heir under section 93 of the Land Code, in this instance, the total area including the land which has already been acquired (or has not yet been acquired) shall not exceed that specified in section 87 of the Land Code, i.e. not more than 1 rai for a residential purpose;

1.2 Bringing the money into the Kingdom for investment to the amount as prescribed in the Ministerial Regulation, which shall be not less than Baht forty million. In this instance, the land to be acquired must be for a residential purpose and must be of not more than 1 rai in area, provided also that permission must be obtained from the Minister. Under section 96 bis of the Land Code, the application for such acquisition of land shall be in accordance with rules, procedures and conditions prescribed in the Ministerial Regulation. Since the Ministerial Regulation concerning this matter has not yet been put into force, an alien is not yet allowed to apply for acquisition of land in this regard;

1.3 Applying for acquisition of land under other laws such as the Promotion of Investment Act, B.E. 2520 (1977), the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979), the Petroleum Act, B.E. 2514 (1971). Detailed Information regarding the Promotion of Investment Act and the Industrial Estate Authority of Thailand Act can be obtained from the Board of Investment (BOI) at tel. + 66-2537-8111 and from the Industrial Estate Authority of Thailand at tel. +66-2253-0561 respectively.

2. Application by Aliens for Ownership in a Condominium Unit

An alien or a juristic person deemed by law as an alien may have ownership in a condominium unit in Thailand when 2 following conditions are satisfied. In the absence of either condition, the alien is not permitted to have ownership in a condominium unit.

2.1 Being an alien or juristic person deemed by law to be an alien under section 19 of the Condominium Act in any of the following prescribed categories viz:

(1) Being an alien permitted to have a residence in the Kingdom under the law on immigration, in this instance, the evidence required to be produced shall be a passport indicating the nationality of the alien, and the certificate of residence (either TM. 11, TM. 15 or TM. 17 Form, as the case may be) issued by the Immigration Division, National Bureau of the Royal Thai Police Force. In the case of an alien who possesses an alien identification card issued by the Police Station in whose jurisdiction the alien is domiciled, such card can be used as evidence for the purpose of applying for acquisition of ownership in a condominium unit in this case without production of a passport;

(2) Being an alien granted permission to enter into the Kingdom under the law on promotion of investment, in this instance, the evidence required to be produced shall be a passport indicating the nationality of the alien, and a letter of the Office of the Board of Investment certifying that the person is an alien granted permission to stay in Thailand under the law on promotion of investment;

(3) Being a juristic person deemed by law to be an alien under section 97 and 98 of the Land Code and has been registered as a juristic person under the laws of Thailand, in this instance, the evidence required to be produced shall be the evidence indicating the registration as a juristic person under the laws of Thailand, i.e. a certificate issued by the corporate Registrar of Department of Commercial Registration, Ministry of Commerce must be produced in the case of a limited company, a public limited company, a limited partnership or a registered ordinary partnership;

(4) Being a juristic person that is an alien under the Alien Business Operation Act B.E. 2542 (1999) and that is granted a certificate of promotion of investment under the law on promotion of investment, in this instance, the evidence required to be produced shall be a letter of the Office of the Board of Investment certifying that the person is granted promotion of investment under the law on promotion of investment;

(5) Being an alien or a juristic person deemed by law to be an alien, who brings a foreign currency into the Kingdom or withdraws the money from a non-resident Baht account or from a foreign currency account, the following evidence must be produced;

(5.1) The evidence for proof of the bringing of a foreign currency into the Kingdom for sale in order to obtain money in Baht currency to pay for a condominium unit is implemented in 2 manners :

(5.1.1) in the case of an alien selling foreign currency in an amount exceeding US\$ 5,000 or its market-rate equivalent, if an alien himself brings the money for sale, the Form F.T.3 (B) provided by an authorised bank to an alien shall be produced for reporting on sale of foreign currency. If an alien sells foreign currency through transferring of that foreign currency to a transferee who has residence in Thailand to do the sale, the Form F.T. (A) provided by an authorised bank to the person residing in Thailand shall be produced for reporting on sale of foreign currency. In both forms, it shall be written "remit from abroad" as regard the remitter;

(5.1.2) in the case of an alien selling foreign currency in an amount not exceeding

US\$ 5,000 or its market-rate equivalent, or the sale of foreign currency to an authorised agent or person, a financial instrument of sale of foreign currency to be produced is a credit advice issued by an authorised bank or agent or person to the alien bringing foreign currency for sale;

(5.2) In the case of evidence for proof of the withdrawal of money from a non-resident Baht account, either from an alien's account or a foreign financial institute's account, a letter provided by a commercial bank certifying that the withdrawal from such account is for the purpose of purchasing a condominium unit shall be produced;

(5.3) In the case of evidence for proof of the withdrawal of money from a foreign currency account:

(5.3.1) in the case of the withdrawal of money from a foreign currency account for sale to a commercial bank in order to obtain money in Baht currency in an amount exceeding US\$ 5,000 or its market-rate equivalent, a copy of Form F.T.(B) provided by a commercial bank to the seller of foreign currency shall be produced along with the application for sale of that foreign currency;

(5.3.2) in the case of the withdrawal of money from a foreign currency account for sale to a commercial bank in order to obtain money in Baht currency in an amount not exceeding US\$ 5,000 or its market-rate equivalent, a financial instrument issued by a commercial bank to its customer or a commercial bank's letter certifying of its purchase of that foreign currency shall be produced;

In addition, the evidence as specified in 5.1, 5.2 or 5.3 or the combination thereof shall represent the amount of money that is not less than the price of the condominium unit intended to purchase.

2.2 The ownership in condominium units by the alien and juristic person in 2.1 shall not be in a higher proportion than forty nine percent of the total space of all units in that condominium at the time of the application for condominium registration under section 6 with the exceptions that:

a. A condominium in which the condominium units are to be owned by the alien and/or the juristic person specified in 2.1 in a higher proportion than forty nine percent must be located in the area of Bangkok Metropolis, municipality or the City of Pattaya and the land on which the condominium is situated shall not, when combined with the land provided for common use or benefit of all co-owners, be more than five rai in area. Also, the condominium units in such condominium shall not be less than forty units and the condominium shall already be registered not less than one year prior to the date of application for the alien to own the condominium units in the proportion higher than forty nine percent, and such condominium shall not be situated in the area of military safety zone under the law on military safety zone.

b. It is provided in section 9 of the Condominium Act (No. 3), B.E.2542 that at the expiration of five years as from the date of the entry into force of the Condominium Act (No. 3), B.E. 2542 (28th April 1999) the provisions as set forth in a. shall be repealed and the alien or juristic person having obtained the condominium units under a. or the alien or juristic person specified in 2.1 to whom the condominium units are transferred from the aforesaid alien or juristic person may continue to have ownership in such condominium units although in the higher proportion than forty nine percent of the total space of all units in that condominium.

3. Application for ownership in land by a Thai national who has an alien spouse or ex- spouse or by a Thai national who is a minor child of an alien

3.1 In the case where a Thai national who has an alien legitimate spouse applies for permission to purchase land or accept a transfer of land in a similar case during marriage or cohabitation as husband and wife with an alien, as the case may be, if after the inquiry the applicant and the alien spouse have given a joint written confirmation that the money which that Thai national will expend on the purchase of the land is wholly the separate property of that Thai national and not the community property or the jointly acquired property, the competent official will proceed with the registration of rights and juristic act.

In the case where a Thai national whose spouse is an alien intends to purchase land or condominium unit but fail to give a joint written confirmation to the competent official as the alien spouse is being abroad, in this instance, an alien spouse shall make the statement declaring in written at the Royal Thai Embassy, Royal Thai Consulate or Notary Public that the money which that Thai national will expend on the purchase of the land or condominium unit is wholly the separate property of that Thai national and not the community property or property which an alien spouse has co-ownership in it. The competent official shall declare that the alien is an actual spouse of the Thai national and then send the statement by mail for the attention of the Director General of the Department of Lands, Bangkok 10200 Thailand, and a copy of that statement to the attention of a person intending to purchase land or condominium unit for submitting to the competent land official who will proceed with the registration of rights and juristic act.

In the case where a Thai national whose spouse is an alien, after marriage, has already purchased or possessed the land and informed or submitted a false document declaring the married status of a Thai national as single or had not been married to an alien to the official prior to the date the letter of Ministry of Interior, most urgent no. MOI 0710/wor 792 dated 23 March 1999 was issued, or has already purchased or possessed the condominium unit after marriage and informed or submitted a false document declaring the married status of a Thai national as single or had not been married to an alien prior to the date the letter of the Department of Lands no. MOI 0710/wor 34167 dated 6 October 2000 was issued, such alien spouse, whether legitimate or illegitimate, and a Thai national shall together give a joint written confirmation, which later to be filed in the case-list (or dealing package), to the competent official that the money which that Thai national will expend on the purchase of the land or the condominium unit is wholly the separate

property of that Thai national and not the community property or jointly acquired property. If an alien spouse is being abroad and not be able to come to give a joint written confirmation to the competent official, in this instance, the application shall be considered in accordance with the case that a spouse of a Thai national who intends to purchase land or a condominium unit is being abroad, then an applicant shall consign the statement, after completion, to the competent land official for filing in the case-list.

3.2 In the case where a Thai national who has an alien spouse, whether legitimate or illegitimate, applies for permission to accept a gift of land during marriage or cohabitation as husband and wife. If the inquiry reveals that the acceptance of the gift is made with the intention that the land will become the separate property or personal property of the donee without resulting in the alien having co-ownership in the land, the competent official will proceed with the registration of rights and juristic act.

3.3 In the case where a Thai national with an alien ex-spouse who is divorced or has ceased to cohabit or a Thai national who is a minor child of an alien applies for entering into a juristic act for the purpose of acquiring land, if an inquiry reveals no circumvention of law, the competent official will proceed with the registration of rights and juristic act.

4. Application for ownership in a condominium unit by a Thai national whose spouse or ex-spouse is an alien or by a Thai national who is a minor child of an alien

4.1 In the case where a Thai national who has an alien spouse, whether legitimate or illegitimate, applies for permission to purchase or accept a transfer of ownership in a condominium unit with the intention that the property will become the separate property or personal property of the former, (for this purpose, it is deemed that a condominium unit is owned by a Thai national) or in the case where a Thai national with an alien ex-spouse who is divorced or has ceased to cohabit or where a Thai national who is a minor child of an alien applies for the acquisition of ownership in a condominium unit, the application shall be considered in accordance with 3.1 to 3.3 mutatis mutandis.

4.2 In the case where a Thai national who has an alien spouse, whether legitimate or illegitimate, expends money which forms the community property or the jointly acquired property, as the case may be, for the purpose of purchasing a condominium unit, whether the purchase is made in the name of that Thai national alone or jointly in the name of the alien spouse as well, consideration shall principally be made of the alien. In this instance, the alien must be an alien within the meaning of section 19 (1), (2) or (5), as the case may be. The Thai national spouse is therefore entitled to purchase a condominium unit in accordance with the entitlement of the alien spouse and it shall be deemed that such condominium unit is wholly owned by that alien because the ownership in a condominium unit is indivisible and governed by section 19 bis.

4.3 In the case where a Thai national who has an alien spouse, whether legitimate or illegitimate, applies for permission to accept a gift of a condominium unit, such gift being made with the intention that the property will become the community property or such gift resulting in the alien having co-ownership therein, the alien spouse of that Thai national must be an alien within the meaning of section 19 (1) or (2) and it shall be deemed that the condominium unit is wholly owned by the alien and governed by section 19 bis. In contrast, a Thai national who has an alien spouse under section 19 (5) is not allowed to accept a transfer of a gift which is made with the intention that the property will become the community property because the case under section 19 (5) is one involving the application by an alien for permission to acquire ownership in a condominium unit in a manner of sale, in respect of which payment therefore must be made.