Global Corporate Real Estate Guide - Thailand

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*This chapter was last reviewed in May 2023.*

# Authors

# Real Estate Law

## What is included in the term “real estate”?

The term “real estate” includes the following:

Land

Things fixed permanently to land, such as building, perennial plant and bridge

Things formed with land, such as soil, sand and stone

Real rights connected with land or things fixed to or forming a body with land

## What laws govern real estate transactions?

Mostly, real estate transactions are governed by the Civil and Commercial Code and the Land Code.

## What is the land registration system?

All provinces maintain a public land titles registration system where ownership can be verified and through which interests in land are registered.

## Which authority manages the registration of titles?

Title registration is managed by the Department of Lands, Ministry of the Interior.

## What rights over real property are required to be registered?

Transfers

Mortgages

Easements (servitudes)

Lease with a duration of more than three years or for the lifetime of the landlord or the tenant

Right of habitation

Right of superficies

Right of usufruct

Charge on real property

## What documents can landowners use to prove ownership over real property?

Land ownership may be proven using land title deeds.

## Can a title search be conducted online?

Electronic title searches are not available.

## Can foreigners own real property? Are there nationality restrictions on land ownership?

Generally, foreign individuals and legal entities deemed as being foreign are prohibited from owning land. However, the Land Code provides an exception in cases where the provisions of a treaty give foreigners the right to own real property (currently, Thailand is not a party to such treaty). There are exceptions under other laws. For example, land situated in an industrial estate (set up in accordance with the law on industrial estates) can be owned by a foreign operator. Moreover, a foreign investor of certain types of projects can apply for a promotion certificate under the investment promotion law, and following the receipt of such certificate, apply for ownership of land to be used for the promoted project.

There is no prohibition for foreigners from owning buildings. However, for condominium buildings, several foreigners holding ownership in condominium units altogether must not exceed 49% of the total area of the condominium units in the said condominium building.

## Can the government expropriate real property?

Real property can be expropriated by the government, but appropriate compensation must be paid.

## How can real estate be held?

Generally, an interest is held by any of the following means:

Freehold

Leasehold

## What are the usual structures used in investing in real estate?

A corporation is the usual structure used in investing in real estate. Investment through a real estate investment trust (REIT) is also feasible.

## How are real estate transactions usually funded?

Most real estate financing is arranged through banks. Interest rates can be fixed or variable but usually does not exceed 15% per year. Real estate is usually required to be mortgaged with the bank.

## Who usually produces the documentation in real estate transactions?

Generally, real estate transactions require official forms to be filled out at the land registry office. For preparation of the relevant documentation, it shall depend upon what the parties mutually agree.

## Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

If the property is a point source of pollution, causing or is the source of leaks or contamination that cause death, bodily harm or health injury to any person, or has caused damage in any manner to the property of any private person or of the state, the owner or the occupier of the property is strictly liable to pay compensation or damages, regardless of whether such leakage or contamination is the result of a willful or negligent act of the owner or occupier thereof.

## Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

A seller and occupier can retain liabilities relating to the real estate even after they have disposed of it. Any contamination caused by the seller or occupier shall result in liabilities for such persons.

# Acquisition of Real Property

## What are the usual documents involved in such transactions?

Agreement to sale and purchase, containing all necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), the closing date and any other special terms (conditions for the benefit of the buyer and representations and warranties by the seller are usually contained therein).

Sale and purchase agreement, which is required to be executed in an official form and registered with the competent registry land office

Due diligence report usually conducted by the buyer, through the buyer’s lawyer with respect to the property being acquired

## What are the warranties given by a seller to a buyer?

A seller usually gives warranties that he or she is the owner and is entitled to sell the property. Other warranties shall depend on negotiations.

## When is the sale legally binding?

A sale of real property is legally binding only when it is made in writing and registered by a competent official. An agreement that is not executed in the prescribed form shall be invalid.

## When is title transferred?

The land title will be transferred at the time of registration with the competent official.

## What are the costs usually shouldered by the parties?

The buyer usually pays:

Legal costs

Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys

Half of the transfer registration fees

The seller usually pays for:

Legal costs

Withholding income tax on any profit made in the sale of the real estate

Half of the transfer registration fees

Specific business tax or stamp tax

# Leases

## What are the usual forms of leases?

General lease

The lease of real property must have some written evidence signed by the party liable, otherwise it is not enforceable by action. A lease that is for more than three years or for the lifetime of the landlord or tenant shall be made in writing and registered at the competent land registry office, otherwise it is enforceable only for three years. The duration of the lease cannot exceed 30 years. If it is made for a longer period, it shall be reduced to 30 years. The lease may be renewed, but its duration must not exceed 30 years from the time of renewal.

Lease of real property for commerce and industry

The duration of such lease is for more than 30 years but must not exceed 50 years. The lease shall be made in writing and registered by the competent land registry office. The lease may be renewed upon expiration, but its duration must not exceed 50 years from the agreement date. This form of lease is available only to land categorized by the city planning law as commercial or industrial zone.

Lease of land for agriculture

This form of lease is enforceable by action even without written evidence signed by the party liable. If the written evidence does not specify a lease period, or if the specified period is less than two years, it shall be extended to two years. If there is no written evidence, the lease period shall be six years. The rent of such lease can be paid with an agricultural product. Moreover, the lease does not terminate on the ground of the tenant’s death. The successor or the heir of the tenant may, within 60 days, demand continuity of the lease.

## Are lease provisions regulated or freely negotiable?

Lease provisions by an operator who leases five or more property units (i.e., rooms, houses, condominium units, and apartments — with the exception of dormitories and hotels) to individual tenants for residential purpose are regulated by the consumer protection law.  Agreements for such residential lease must include provisions required by the regulations. The regulations also forbid these agreements from having certain types of provisions.

For other types of leases, their provisions are freely negotiable. However, the lease of real estate is not enforceable by action unless there is some written evidence signed by the party liable. If such lease is for more than three years or for the lifetime of the landlord or tenant, it is enforceable only for three years unless it is made in writing and registered at the competent land registry office.

## Is there a maximum term for leases? Can these be extended?

The duration of a lease of real property cannot exceed 30 years. If it is made for a longer period, the period shall be reduced to 30 years. The lease may be renewed, but its duration must not exceed 30 years from the time of renewal. Nevertheless, a lease agreement can be made for the duration of the lifetime of the landlord or the tenant.

However, the law permits a lease agreement of real property for commercial and industrial purposes to be made for a period over 30 years, but not exceeding 50 years. The lease may be renewed for a duration not exceeding 50 years from the time of renewal. Such duration is applicable only to land located in the areas zoned by city planning law as commercial or industrial zone.

## What are the usual lease terms?

This depends on the purpose of the lease.

## Are there instances where tenants may demand an extension of the lease?

No.

## On what grounds may a lease be terminated?

A landlord can generally terminate the lease under the following circumstances:

The tenant breaches the terms of the lease, including non-payment of rent.

The tenant sublets or transfers his/her rights of the property, in whole or in part, to a third person without the consent of the landlord.

The tenant uses the property for purposes other than those that are ordinary and usual, or that have been provided in the agreement, provided that warning must be given before termination.

The tenant fails to generally take care of or fails to normally maintain or conduct petty repairs to the property, provided that warning is given before termination.

## Must rents be paid in local currency?

The parties may agree to pay rent in other currencies.

## Is rent paid on a monthly basis? Is it required to be paid in advance?

This will depend on the agreement of the parties.

## How is rent reviewed? Are there limits to the increase in rent?

No.

## What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Deliver the property to the tenant in a good condition

Repair and maintain the structure of the property

Pay half of the agreement registration fees

Reimburse to the tenant any necessary and reasonable expense incurred by the tenant for the maintenance of the property, except those for ordinary maintenance and petty repairs

The following is usually required of tenants:

Pay rent and half of the agreement registration fees

Generally take care of and ensure ordinary maintenance and petty repairs of the property

Inform the landlord if the structure needs to be repaired, if a preventive measure is required to avoid danger or if an unauthorized person trespasses on the property

Allow the landlord to access the property (often by appointment) for inspections and landlord’s work

Return the property in good condition upon termination or end of the agreement.

## What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

A tenant shall not sublet the leased premises or transfer his/her rights to a third person, in whole or in part, unless consent of the landlord is granted. If the tenant sublets the premises or transfers the lease without the landlord’s consent, the landlord shall have a right to terminate the agreement.

## What happens in the event of destruction of the leased premises?

If the leased premises is wholly destroyed, the lease agreement shall be concluded, regardless of whether the destruction is due to the fault of any contracting party or an act of God.

## Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises. Moreover, for certain types of buildings, the landlord, occupier or operator of the building is required to arrange for liability insurance against the life, body and property of third persons.

## Will the lease survive if the owner sells the leased premises?

Lease agreements survive and are binding upon the new owner.

## Will the lease survive if the leased premises are foreclosed?

Lease agreements survive and are binding upon the new owner.

# Planning and Environmental Issues

## Who has authority over land development and environmental regulation?

The Office of Environmental Policy and Planning has the nationwide authority over environmental regulation, while the authority on the development of land is under the jurisdiction of local authorities.

## What environmental laws affect the use and occupation of real estate?

The Enhancement and Conservation of Natural Environmental Quality Act is a primary law regulating the environmental aspects in the use and occupation of real estate. Additional rules and regulations have been enacted to control the use and occupation for each specific area.

## What main permits or licenses are required for building or occupying real estate?

Construction permit

Building use permit, required for a building categorized as a controlled-use building, such as a building used in commercial business and as an assembly hall or office

The approval of the relevant environmental reports, as follows:

Health Impact Assessment Report, required for certain industries that may cause serious impact to the community, such as mining, petrochemical and power plants

Environmental Impact Assessment Report

Initial Environmental Examination Report, required for land in certain sensitive areas such as Phuket, Pattaya and Hua Hin

## Can an environmental cleanup be required?

If the property is a point source of pollution that shall be controlled in regard to the discharge of waste water, waste and/or the emission of polluted air into the environment, the owner or occupier of the property shall be required to construct, install or bring into operation an onsite facility for waste water treatment, waste disposal and/or air pollution control as determined by a competent official.

## Are there minimum energy performance requirements for buildings?

For factories and buildings categorized as controlled, the owner shall prepare an energy conservation policy that must be posted at a noticeable place in the controlled factory or building, or by another suitable method so that the personnel of the said factory or building may learn of and comply with the policy.

Additionally, the owner of the controlled factory or controlled building shall arrange for an inspection and a certification of energy management from an inspector and certifier. Reports of inspection and certification must be submitted to the authority every year.

## Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

Certain types of buildings must arrange for engineering and architectural inspections. Inspections must be conducted annually. A major inspection must be conducted every five years to examine the stability of infrastructure, equipment and security management, among other things.

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