

PKF Thailand

May 2021 Newsletter

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Legal Updates: A Way Out for the Real Estate, Industry?

May 11, 2021

The government is looking to amend the current real estate law to pave the way for more foreign investment in Thailand in order to stimulate the economy during the pandemic. This legal amendment promises more freedom for foreign acquisition of condominiums, houses, and lands in Thailand. The public reaction to this news is a mixed bag, as some criticisms perceive that this law might prompt a foreign take-over of a certain area in Thailand, while others think this may be the solution for the struggling real estate sector and even for the general economy which would be greatly energized by this foreign investment boost.

This proposed amendment has not yet been finalized into a Royal Decree; it may therefore be subject to future changes. The details of the amendment in this article will follow the current official statements regarding this legal amendment.

Critical Perspectives of the Amendment

1. Condominium

According to the existing Condominium Act, foreigners can only occupy 49% of the aggregated floor space of the condominium.

With this legal amendment, foreigners will be able to acquire up to 70 to 80% of the aggregated floor space of the condominium. However, only 49% of foreign owners will be entitled to vote in the annual general meeting of the condominium to prevent a dominating foreign situation and the prescription of rules that substantially limit the rights of Thai owners. This situation has happened in Hong Kong, where a certain condominium with a foreign majority prohibited Chinese from entering the premises.

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2. House

As currently governed by the Land Code, foreigners can only own land for residential purposes if the investment in the specified business is worth not less than 40 million baht for an area of land up to 1 Rai, and permission from the Minister of Interior is required. Statistically, the permission for foreign land ownership has hardly ever been approved by the authority. By this legal restriction, foreigners often seek ways to own a piece of land or house through the exemptions granted under the Investment Promotion Act or the Industrial Estate Authority of Thailand Act, which requires a large amount of investment and compliance with somewhat complicated requirements.

With the proposed legal amendment, foreigners will be permitted to own a house if the following conditions are met.

- (i) The purchased house is worth around 10-15 million baht; and,
- (ii) The house is situated in a housing estate area.
- (iii) The foreign ownership does not exceed the maximum of 49% of the total area of such housing estate.

3. Land Lease

The current maximum length of the lease of real estate for foreigners according to the Thai Civil and Commercial Code is 30 years per term, but with this amendment, the maximum length of the lease will be 50 years per term with the renewable right of 40 years per term.

This amendment is estimated to be effective for only 3-5 years. Having currently been assembling the relevant details, this amendment is expected to be proposed in the Economic Management Center of Thailand meeting before being presented in the Cabinet of Ministers meeting in the future. As for the legislation process, this amendment should be implemented and effective by mid-year at the earliest or within this year at the latest.

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Concluding Remarks

This amendment is an ambitious project by the government to energize the stagnant real estate industry. Although it goes against the status quo of foreign ownership of real estate in Thailand, there is a need for a creative plan to solve the ever-worsening economic condition of Thailand, and foreign investment boost is just the right catalyst for the revival of a lucrative industry in Thailand. The concerns against foreign take-over of Thailand are valid, but a deeper look at the proposed amendment would show that the government is aware of this potential problem and has devised an effective safeguard against this problem.

It is uncertain whether this economic-boosting plan will have the desired effect once it is implemented, but one cannot deny that this plan has all the potential to be just the right plan for the current situation. The question remains this amendment the way out for the real estate industry and Thailand's economy? Only time will tell.

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