

# Condominium Housing in Thailand - Legal Analysis

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## Introduction

Condominium housing projects have been developing in Thailand (mainly Bangkok) during the recent years. The limited land resources as well as the unique legal privilege given to foreigners in this regard have increased the interest and popularity of Condominiums in this part of the world. This article brings a brief summary of the latest legal development in the field of Condominium housing in Thailand in general, and the recent Condominium Act No. 4 in particular

## 1. General

1.1. The basic point of view according to the Thai legal system is the one prohibiting non-Thais from fully acquiring land (i.e., on a freehold ownership basis) in Thailand.

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- This article does not constitute legal advice; nor replaces it.

1.2. Despite the aforementioned, there are nevertheless several exemptions to the above general rule which allow foreigners to freely own land within the Kingdom.

## **2. Condominium Units**

2.1. One of the common methods for purchasing real property in Thailand is the acquisition of Unit(s), what we commonly call “apartments”, in a Condominium building.

2.2. The main legislation governing the purchase and maintenance of Condominium Units is the "Private, Commonly-Owned Housing Act", generally named, the Condominium Act.

2.3. First enacted on April 1979 (widely known as the Condominium Act No. 1)<sup>2</sup>, the Act granted a specific legal status for residential buildings which may be registered as Condominiums according to said Act. Upon such registration, the Condominium building will be granted the status of a juristic person pursuant to the Condominium Act. Said entity is established for the “*purpose of managing and maintaining the common property and shall be empowered to perform any act for the benefits of said purpose which, however, shall be subject to the resolution of the co-owners under this Act*”<sup>3</sup>. The co-owners of Units in the Condominium juristic person may appoint by a general meeting

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<sup>2</sup> Condominium Act (No. 1), B.E. 2522 (1979) (hereinafter “**Condominium Act No. 1**”).

<sup>3</sup> Section 33 (2<sup>nd</sup> paragraph), Condominium Act No. 1.

of all co-owners (to be held within six (6) month from the registration date of the Condominium juristic person, to be further held at least once a year) a committee on their behalf to control and guide the Juristic Person<sup>4</sup>.

2.4. The Condominium juristic person mentioned-above will appoint a Manager (as defined under Condominium Act No. 1) to manage the common property on its behalf.

2.5. The co-owners will contribute funds for the purpose of forming common facilities and their maintenance, in a proportionate manner (in the manner to be further discussed below). Practically, when one wants to purchase a new Condominium Unit, the purchaser will pay a one-time payment regarded as a sinking-fund, which will be used by the Condominium juristic person for the purpose of erecting the common facilities for the benefit of all co-owners. In addition, a monthly payment will be paid for the day-to-day maintenance of such facilities. All said payments will be now paid on the basis of Unit size, as “x” Baht per 1 square meter of the purchased Unit.

2.6. Upon completing the Unit purchase transaction (and once the Condominium juristic person is formed), the purchaser of the Unit will receive the title deed document evidencing and effecting his/her ownership in the Unit and maintained at the competent local land authority.

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<sup>4</sup> Section 37, Ibid.

### 3. Foreign Ownership

3.1. The second amendment to the Condominium Act, enacted in 1991<sup>5</sup>, was innovative in the sense that it allowed non-Thais (whether individuals or juristic persons) to actually fully purchase and own Units in a Condominium building on a free hold basis. Said amendment however, limited the foreign quota of Condominium Units to be purchased by non-Thais (for as long as such are permitted to enter, reside, invest or otherwise stay in Thailand, as prescribed under the applicable laws), to a maximum of “40 percent of the areas of all Units in the Condominium at the time of registering the Condominium as a juristic person<sup>6</sup>”.

3.2. One significant matter to be taken into consideration, which unfortunately is not adequately discussed in practice, is the fact that the foreign ownership of a Condominium Unit cannot be inherited. According to the principle set out in Condominium Act No. 2, any non-Thai which obtained the ownership of a Condominium Unit by a way of will/inheritance, must inform the competent authority of his/her ownership and “dispose of it within one year from the date of obtaining the ownership thereof<sup>7</sup>”.

3.3. The third amendment of the Condominium Act<sup>8</sup> increased the foreign-ownership quota to 49% of the total space of all Units in a Condominium

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<sup>5</sup> Condominium Act (No. 2) B.E. 2534 (1991) (hereinafter, “**Condominium Act No. 2**”).

<sup>6</sup> Section 19 bis., Condominium Act No. 2.

<sup>7</sup> Section 19 septem., Ibid.

<sup>8</sup> Condominium Act (No. 3) B.E. 2542 (1999) (hereinafter, “**Condominium Act No. 3**”).

building<sup>9</sup>. In fact, Condominium Act No. 3 allowed total (100%) foreign ownership in Condominiums to be obtained during a limited period of five (5) years from the enactment of said Act, provided that such Condominiums are located in Bangkok Metropolis or other certain areas, per the conditions prescribed by the Ministerial Regulation<sup>10</sup> (i.e., such Condominium shall: (i) have not less than forty (40) Condominium Units; (ii) when combined with the common property designated for the benefit of the co-owners, its area shall not exceed five (5) rai; (iii) has already been registered at least one (1) year prior to the date a non-Thai applicant applies to register the transfer of ownership over a Condominium Unit; (iv) not be located in a military safety zone). It is believed that the main reason for the enactment of Condominium Act No. 3 and the relaxation in foreign ownership limitation, was the need to attract foreign investors and investment into Thailand which suffered a tremendous decline in its economy and GDP pursuant to the economic crisis of 1997.

#### **4. Latest Legal Development - Condominium Act No. 4**

4.1. Recently, the Thai government enacted the forth amendment to the Condominium Act, effective as of 4 July, 2008<sup>11</sup>.

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<sup>9</sup> Section 19 bis., 1<sup>st</sup> paragraph, Condominium Act No. 3.

<sup>10</sup> Ibid (2<sup>nd</sup> paragraph). i.e., for the period 1999 - 2004.

<sup>11</sup> Condominium Act (No.4) B.E. 2551 (2008) (hereinafter, “**Condominium Act No. 4**” or the “**Recent Amendment**”)

4.2. The explanation paragraph to Condominium Act No. 4 states the following reasons for enacting said Recent Amendment: *“The Condominium Act B.E. 2522 (1979) has been in force for a considerably long period and it appeared that many of its procedures and provisions could not actually be implemented and are inadequate to protect the residents in condominiums. Law enforcement of the provisions relating to the Condominium Act shall be more practically effective. Also, the schedule of fees and expenses should be updated. It is therefore expedient to prescribe changes to make the Act more suitable”*.

4.3. Indeed, the Condominium Act No. 4 includes several significant changes which aim to benefit the Condominium’s owners/buyers versus the developers. Said recent changes can be summarized as follows:

4.3.1. In the past, a developer who wished to register the project as a Condominium (as defined under the Act) with the competent authority, was required to submit the following documents:

4.3.1.1. Land title deed;

4.3.1.2. Housing diagram;

4.3.1.3. Information concerning the ratio of ownership of the common property (as shall be further discussed);

4.3.1.4. The particulars concerning the private and common property;

4.3.1.5. Statement concerning mortgage of the building and land, and

4.3.1.6. Other evidence as prescribed under the Regulations.

4.3.2. The Condominium Act No. 4 requires a developer to submit additional information on top of the information listed under item 4.3.1 above, as follows:

4.3.2.1. Copies of selling material, as brochures, pictures and other documents which the developer publicizes for the purpose of marketing and selling the Condominium Units.

4.3.2.1.1. All such selling material must be kept in the juristic person's office for future reference.

4.3.2.2. It is interesting to note that all selling material must be identical to the specifications and evidence being submitted to the competent authority. Furthermore, all such material must indicate and describe the portion of land, Condominium and other facilities allotted as a common property.

4.3.3. The Recent Amendment does not merely settle for a very detailed recording system of all material concerning the sale of the Condominium, but also prescribes that "*all advertisement materials, text, photos, sale letters, are part of the Condominium Sale Agreement as the case may be. If the advertisement material differs from the Sales Agreement, it shall be interpreted for the benefit of the buyer*"<sup>12</sup>. The legislator has gone a significant way for the purpose of protecting the

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<sup>12</sup> Section 4, Condominium Act No. 4.

consumers versus the developers, who possess better financial resources and knowledge concerning the project to be sold. The same concept was initiated since the Unfair Contract Terms Act<sup>13</sup>.

4.3.4. Due to recent increasing protest and criticism concerning the use of unfair Condominium Unit purchase contracts that were usually drafted in a one sided manner by the developer, imposing unreasonable terms and conditions against the buyer, the Recent Amendment prescribes another significant change in this regard; any Condominium sale agreement to be made between the developer and a buyer must be according to the standard contract to be set by the Minister of Interior (the “**Standard Contract**”)<sup>14</sup>. Any provision of a Condominium sale contract which will contradict the Standard Contract in the sense that it will carry any disadvantage to the buyer, will be considered null and void.

4.3.4.1. Note that the above provision merely relates to the contractual relationship between the initial owner of the Condominium project, i.e., the developer wishing to sale such property, and the buyer of a Condominium Unit in such project. It is therefore not applicable with respect to a subsequent sale transaction between buyer no. 1 and buyer no. 2, and so on.

4.3.5. The Condominium Act No. 4 requires that the ownership ratio of the Condominium Units’ owners in the common property will be based on

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<sup>13</sup> Unfair Contract Terms Act B.E. 2540 (1997).

<sup>14</sup> Note that said Standard Contract has not yet been published.

the space of each Unit in proportion to the total space of all Units at the time of Condominium registration<sup>15</sup>. Condominium Act No. 1, for instance, prescribed an ownership ratio which was based on the price of the Unit, rather than its space<sup>16</sup>. The previous requirement had led to situations where developers assigned high prices to relatively small areas owned by it; thus, giving the developer a greater voting power in the Condominium co-owners' meeting. In other cases, developers assigned a low value to greater space owned by them, thus reducing their financial liabilities to pay maintenance fees.

4.3.6. Another significant addition requires the developers to share the burden with other co-owners with respect to monetary contribution for maintenance expenses and the costs of tax and duty<sup>17</sup>. The developers will be considered as co-owners of the Condominium Units that have not yet been sold to others for the purpose of said payments to be calculated on the basis of space as described under item 4.3.5 above. Fines shall be imposed on late payments as prescribed under the Recent Amendment.

4.3.7. The Condominium Act No. 4 clarifies the maximum foreign holdings in a Condominium Unit and fixes such to a maximum of “49% of the total space of all Units in that Condominium at the time the Condominium was registered...”<sup>18</sup>

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<sup>15</sup> Section 7, Condominium Act No. 4.

<sup>16</sup> Section 14.

<sup>17</sup> Section 10.

<sup>18</sup> Section 12.

4.3.8. The Recent Amendment better clarifies and specifies the qualifications that are required from a Manager (in particular, a natural person who must be appointed to act on behalf of the Manager if the later is a juristic entity) who may be appointed by the Condominium juristic person for the purpose of managing and maintaining the common property in the Condominium building<sup>19</sup>.

4.3.9. In addition, a management committee (the “**Management Committee**”) comprising of the co-owners may be appointed for the purpose of controlling the management of the Condominium building, consisting of minimum three (3) co-owners up to a maximum of nine (9) members<sup>20</sup>. As the Management Committee is in fact the sole entity that ultimately represents the co-owners, the Recent Amendment further prescribes in details additional requirements and duties regarding the Management Committee’s operation and meetings. For the sake of better accountability and transparency, the Condominium juristic person is obliged to present to the general meeting of co-owners yearly audited balance sheet and profit and loss statements.

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<sup>19</sup> Section 19.

<sup>20</sup> Section 20. Condominium Act No. 1 merely required a maximum number of nine (9) members - section 37.