

CONDOMINIUM ACT OF THAILAND

(Allowing qualified foreigners to own condominium units in Thailand)

The Condominium Act (No. 3) B.E. 2542 (A.D. 1999) has rendered a favourable outcome as to the issue of 100% ownership by qualified foreigners who, from now on, are eligible to own the whole units in each condominium located in some areas. Both potential foreign buyers and those seeking to sell property here will be gratified by the provisions in the long-anticipated legislation.

In the light of this Act, it is necessary that we follow upcoming provisions, rules, methods and conditions which will be issued in the form of Ministerial Regulations.

Condominium Act of 1999

Section 19 (1). Aliens and Juristic persons which the law treats as aliens may own a condominium unit if they qualify as one of the following types of aliens or juristic persons:

- (1) An alien who has been permitted to stay in the kingdom as a resident under the laws of immigration.
- (2) An alien who has been permitted to enter the Kingdom under the laws on promotion of investment.
- (3) A juristic person as prescribed under Sections 97 and 98 of the land code which has been registered as a juristic person under Thai law.
- (4) A Juristic person who is an alien under Announcement of the National Executive Council No. 281, dated 24 November B.E. 2515, and which has received a promotion certificate under the laws on promotion of investment.
- (5) An alien or a juristic person which the law treats as an alien which imports foreign currency into the Kingdom or withdraws money from a deposit account of Thai Baht of a person having residence abroad or withdraws money from a deposit account of foreign currency

Section 19 (2) Each condominium may have aliens and / or juristic persons as stated under section 19 take ownership of its units in total of not more than forty-nine per cent of the whole area of all units in that condominium as shown at the time the condominium was registered.

In any condominium where aliens or juristic persons as stipulated in section 19 take ownership of units in excess of the rate as prescribed by the preceding paragraph, that condominium shall be located in Bangkok, municipal or other local government areas as prescribed by Ministerial Regulations, and the area of the land on which the condominium is situated including the land available for use or for common interests of its co-owners shall not exceed five rai.

The ownership of units pursuant to the second paragraph, which is acquired by aliens or juristic persons as stated in section 19, shall be in accordance with the rules, methods and conditions prescribed by Ministerial Regulations.

Section 19 (3) To transfer ownership of a condominium unit to an alien or a juristic person as stated under Section 19, the transferor of ownership in the condominium unit shall give the names of the aliens or juristic persons as stated under Section 19 and the ratio of the area of the condominium units of which aliens and juristic persons have ownership to the competent official, and the alien or juristic person who applies to accept the transfer of ownership in the condominium unit shall provide the following evidence to the competent official:

- 1) An alien prescribed under Section 19(1) shall produce evidence of a permit to hold residency in the kingdom under the laws on immigration.
- 2) An alien prescribed under Section 19(2) shall produce evidence of a permit to enter the kingdom under the laws on promotion of investment.
- 3) A juristic person prescribed under Section 19(3) shall produce evidence of being registered under Thai law.
- 4) A juristic person prescribed under Section 19(4) shall produce evidence of being a holder of a promotion certificate under the laws on promotion of investment.
- 5) An alien or a juristic person as prescribed under Section 19(5) shall produce evidence of having imported foreign currency into the Kingdom or evidence of withdrawal from a deposit account of Thai Baht of a person having residence abroad or evidence of withdrawal from a deposit account of foreign currency in the amount of not less than the price of the unit to be purchased.

Section 19 (4) When a competent official who has received and checked the documents and evidence under Section 19, and has found that they are correct documents and evidence according to Section 19 and that the ratio of ownership of the area of the condominium units held by aliens or juristic persons under Section 19, also by those who have acquired ownership and by those who have applied to accept ownership, does not exceed the rate prescribed under the first paragraph of Section 19 or meets the requirements under the second and third paragraph thereof, the competent official shall register the right and juristic act concerning the condominium unit according to Chapter IV for the alien or juristic person who applied to accept ownership.

Section 19 (5) An alien or a juristic person prescribed under Section 19 shall dispose of the condominium unit under the following circumstances:

- 1) When an alien or juristic person prescribed under Section 19 has acquired a condominium unit through inheritance as legitimate heir or legatee of a will or through any other means, as the case may be, which when added to

the units in that condominium already owned by aliens and/or juristic persons prescribed under Section 19, causes the ratio prescribed under the first paragraph of Section 19 to be exceeded, or does not meet the requirements under the second or third paragraph of Section 19

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An alien or a juristic person prescribed under Section 19 shall dispose of the condominium unit under the following circumstances:

- 1) When an alien or juristic person prescribed under Section 19 has acquired a condominium unit through inheritance as legitimate heir or legatee of a will or through any other means, as the case may be, which when added to the units in that condominium already owned by aliens and/or juristic persons prescribed under Section 19, causes the ratio prescribed under the first paragraph of Section 19 to be exceeded, or does not meet the requirements under the second or third paragraph of Section 19.
- 2) When an alien prescribed under Section 19(1) has had his/her residency in the Kingdom revoked or when his/her Certificate of Alien Residency is not valid.
- 3) When an alien prescribed under Section 19(2) or (5) has been exiled out of the Kingdom and has not been granted leniency or has been sent out of the Kingdom to work instead of being exiled.
- 4) When an alien prescribed under Section 19(2) is not permitted by the board of investment to remain in the Kingdom.
- 5) When the promotion certificate of a juristic person prescribed under Section 19(4) has been revoked.

An alien or juristic person which is required to dispose of a condominium unit under the preceding paragraph must give written notice to the competent official within 60 days of the date of the preceding paragraph having occurred.

Under Sub-section (1) the condominium unit which causes the ratio to be exceeded shall be disposed of. Under Sub-sections (2), (3), (4) and (5) all the condominium units owned by the alien shall be disposed of.

Disposal of a condominium unit under paragraph three shall be made within a period of not more than one year from the date of the ownership of the condominium unit, the date

the residence permit has been revoked, the date the certificate of residency has been invalidated, the date of exile, the date the board of investment revoked the permit to stay in the Kingdom, or the date the promotion certificate has been revoked, as the case may be. If it is not disposed of within the stated period of time, the Director-General of the Lands Department shall have the authority to dispose of the condominium unit, and the provisions relating to enforcement of the disposal of land under Chapter 3 of the Land Code and Ministerial Regulations issued under the code shall apply *mutatis mutandis* to the disposal of the condominium unit.

Section 19 (6) When a competent official orders the revocation of a residency permit in the Kingdom, when it is evident to a competent official that a Certificate of Residency of an alien is not valid as required under Section 19(1), when a competent official orders the exile out of the Kingdom of an alien as prescribed under Section 19(1), (2) or (5), when the permit to stay in the Kingdom of an alien as prescribed under Section 19(2) is revoked, or when there is a revocation of a promotion certificate for a juristic person as prescribed under Section 19(4), as the case may be, the competent official shall notify the Director-General of the Lands Department within 60 Days from the date of the order or the date of learning such fact.

Section 19 (7) An alien or a juristic person which the law treats as an alien, except one prescribed under Section 19, which has acquired a condominium unit through inheritance as legitimate heir or legatee of a will or through any other means, as the case may be, shall give written notice to the competent official within 60 days from the date of ownership of the condominium unit and shall dispose of that unit within a period of not more than one year from the date of acquiring possession of the unit. If it is not disposed of within such period of time, the provisions of Section 19(5), paragraph four, shall apply *mutatis mutandis*.

Section 19 (8) Whoever acquires ownership of a condominium unit while holding Thai nationality but later loses Thai nationality by waiving Thai nationality, nationalization or having Thai nationality revoked under the laws on nationality and is not an alien as prescribed under Section 19 shall notify the competent official of the loss of Thai nationality and the fact that ownership of the condominium unit may no longer be held within 60 days of the date of loss of Thai nationality. The condominium unit shall be disposed of within a period of not more than one year from the date of loss of Thai nationality. If it is not disposed of within such period of time, the provisions of section 19(5), paragraph four, shall apply *mutatis mutandis*.

Section 19 (9) Whoever acquires ownership of a condominium unit while holding Thai nationality but later loses Thai nationality by waiving Thai nationality, nationalization or having Thai nationality revoked under the laws on nationality, is an alien prescribed under Section 19, and wishes to continue to hold ownership of the condominium unit, shall notify the competent official of the loss of Thai nationality and shall present evidence of being an alien as prescribed under Section 19 to the competent official within 180 days from the date of the loss of Thai nationality. If the ownership in the condominium unit of that alien causes the ratio prescribed under the first paragraph of

Section 19(2) to be exceeded or does not meet the requirements under the second or third paragraph of Section 19(2), the condominium unit which causes the excess of the ratio or which does not meet the requirements shall be disposed of within a period of not more than one year from the date of loss of Thai nationality. If it is not disposed of within such period of time, the provisions of Section 19(5), paragraph four, shall apply mutatis mutandis.

If the alien as prescribed in paragraph one does not desire to hold ownership of that condominium unit, the competent official shall be notified within 60 days from the date of the loss of Thai nationality, and the condominium unit shall be disposed of within a period of not more than one year from the date of the loss of Thai nationality. If it is not disposed of within such period of time, the provisions of Section 19(5), paragraph four, shall apply mutatis mutandis.

Section 19 (10) When a Thai juristic person which owns a condominium unit has its juristic status changed to that of a juristic person the law treats as an alien and is not a juristic person prescribed under Section 19, the competent official shall be notified of the change in status and the fact that the juristic person is not qualified to own that condominium unit within 60 days from the date of the change of status. The condominium unit must be disposed of within a period of not more than one year from the date of the change of status. If it is not disposed of within such period of time, the provisions of section 19(5), paragraph four, shall apply mutatis mutandis.

Section 19 (11) When a Thai juristic person which owns a condominium unit has its juristic status changed to that of a juristic person the law treats as an alien juristic person and is a juristic person which may own a condominium unit as prescribed under Section 19 wishes to own that unit further, the competent official shall be notified in writing of the change in status. Evidence of being a juristic person as prescribed under Section 19 shall be presented to the competent official within 180 days from the date of the change in status. If the ownership of that juristic person causes the ratio prescribed under Section 19(2) to be exceeded, the unit exceeding the ratio shall be disposed of within a period of not more than one year from the date of the change in status. If it is not disposed of within such period of time, the provisions of Section 19(5), paragraph four, shall apply mutatis mutandis.

If the juristic person under paragraph one does not wish to own the condominium unit any further, the juristic person shall notify the competent official of the change in status within a period of 60 days from the change of status, and shall dispose of the unit within a period of not more than one year from the date of the change in status. If it is not disposed of within such period of time, the provisions of Section 19(5), paragraph four, shall apply mutatis mutandis.

Section 19 (12) When an alien or a juristic person which the law treats as an alien which has the duty to notify the competent official of the disposing of a condominium unit under Section 19(5), the acquiring of a condominium unit under Section 19(7), loss of Thai nationality under Section 19(8) and Section 19(9) or change of status of a juristic

person under Section 19(10) and Section 19(11), as the case may be, fails to notify the competent official within the prescribed time, it shall be an offence and the alien or juristic person shall be fined not more than 500 Baht per day throughout the duration of the violation.

Section 19(13) Anyone owning a condominium unit on behalf of an alien or a juristic person which the law treats as an alien, regardless of whether an alien or juristic person is entitled to own a condominium unit under this Act, shall be considered to have committed an offence and penalized with a term of imprisonment of not more than two years or a fine of not more than 20,000 Baht, or both, and the provisions of Section 19(5), paragraph four, shall apply mutatis mutandis.

If there is reasonable cause to suspect that a person has acquired ownership of a condominium unit in violation of the provisions of this Act, the competent official is empowered to verify and call the relevant persons to make a statement or submit related documents or evidence for consideration as necessary.

Anyone who violates or fails to comply with the provisions of paragraph two shall be considered to have committed an offence and shall be penalized with a term of imprisonment of not more than three months or a fine of not more than 6,000 Baht, or both.

*** The following paragraph is to be added to section 55 as paragraph three of the Condominium Act, B.E. 2522:

An alien or a juristic person prescribed under Section 19 who is named owner on a land title deed as a result of the registration of dissolution of a condominium under paragraph one shall dispose of his/her own portion of the land within a period of not more than one year from the date of the registration of dissolution. If it is not disposed of within such period of time, the provisions of Section 19(5), paragraph four, shall apply mutatis mutandis.