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The Foreign Business Act must be revisited by existing as well as prospective buyers when structuring the shareholding. This Act has its own rules about deeming Thai companies with foreign shareholders as foreigners.

The required Thai shareholders that will have to co-invest in the company owning the condominium unit cannot hold their shares as a nominee of the foreign shareholder. What constitutes a "nominee" under the law has never been entirely clear and it is currently a topic that is receiving considerable attention. The Land Department and Department of Business Development have also this year introduced "evidence of funds" rules for Thais that hold shares in companies with foreign shareholdings or directorships. Basically you must prove where the funds have come from for the Thai investors to show they are not mere puppets or "nominees" and they must as importantly have a genuine commercial reason for investing in the property.

Foreign investors purchasing condominiums under the Thai quota via a Thai company should seek professional advice on the appropriate shareholding structure of the Thai company and the security of their title. HomeHunters International Group has experts available to advise you on your best options when it comes to company structures for land, house or condominium ownership. They are also able to advise you on the structuring of leasehold ownership both for the developer and the buyer.

Leasehold option

Some of the more astute developers have tried to address the problems associated with selling freehold condominiums to a predominately foreign audience. With the ownership rule based on the proportion of total floor space held directly by foreigners, one obvious way is to try and put the larger units, such as penthouses, under the Thai quota, so more units can then be sold under the foreign quota.

Another way to deal with the foreign ownership limit is to offer a long-term leasehold interest instead for the units that can't be sold directly to foreigners - deliberately moving away from the freehold sales pitch!

This will normally be structured so that a Thai company meeting the requirements of the Condominium Act ends up holding all of the units under the Thai quota. Foreign investors will then enter into long term leases for their unit with the Thai company. A shareholding interest in the Thai company may also be offered to the lessees. This is similar to the lease structure used for land deals.

By taking a leasehold interest, the foreigner can "acquire" a unit under the Thai quota without being forced to set up and run his own Thai company in co-operation with Thai shareholders. Where he does use the unit as his personal residence or holiday home, he will not have to worry about paying income tax on rents he would otherwise be forced to pay if the unit was owned in a Thai company.

On exit, the stamp duty and registration fee payable on the transfer

Royal Thai Consulate-General (WA)

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Fax : (662) 66 2 344-6306	Bangkok 10120
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of a long-term leasehold interest are relatively low, and with a little planning, it would be possible to make a gain from the transfer of the lease exempt from Thai tax.

Therefore apart from the money saved by avoiding the Thai company structure, a lease can in fact make for a more attractive exit strategy than a freehold investment.

This is the system adopted by Phoenix Park and Phoenix Park Resort condominium, for further information please contact HomeHunters International Group, 038-416316 or 086-387-6642.

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