



Foreign Ownership Restrictions on Land in Myanmar

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Can foreigners buy land in Myanmar?

The answer is straightforward as the Transfer of Immoveable Property Restriction Act 1987 strictly prohibits foreigners from owning land in Myanmar. Foreigners can, however, own a building, lease land and participate in real estate development in a JV with a local partner. Alternatively, the new Condominium Law will allow foreigners to own a condominium unit when certain conditions are met.

1. Restriction on Foreign Ownership of Land

The Transfer of Immoveable Property Restriction Act 1987 (TIPR) prohibits foreigners from buying or owning land in Myanmar^[1]. Under Section 2 of the TIPR, a foreigner is defined as:

1. According to the Burmese Citizen Act, any person who is not a citizen of the Union of Myanmar; any person who is not a guest citizen or any person who is not allowed to be a citizen;
2. According to the Burmese Citizen Act, any person whose citizenship has ceased or any person who has withdrawn their citizenship, guest citizenship or their allowance to be a citizen;
3. "Foreigner owned company" means a company or partnership organization whose administration and control is not vested in the hands of the citizens of the Union of Myanmar or whose major interest or shares are not held by citizens of the Union of Myanmar.

It should be noted that the definition of a foreign company under the TIPR is less restrictive than the one in the Myanmar Companies Act 1914 (MCA). Under the MCA a company is deemed to be a foreign company when at least one share is held by a foreigner while the ratio of foreign ownership can go up to 49 % under the TIPR.

The question that inevitably springs to mind is to know whether or not a foreigner can use a company to own land on his behalf?

The use of a corporate vehicle to buy land on behalf of foreigners is common in South East Asia as most of the countries restrict foreign land ownership. Basically, the process consists of the creation of a company where a local nominee is the majority shareholder and foreign shareholders keep the control of the company through different means such as preference shares or loan and pledge agreements.

This kind of set up is strongly discouraged in Myanmar. Indeed, the definition of a foreign company under the TIPR includes the control of the company by a foreigner. In case of trouble with the local

shareholder, the foreign shareholder does not have any legal right. Moreover, if caught, the TIPR provides a minimum of three years jail and the confiscation of the land[2].

2. Lease of Land

As a general rule, a lease taken by a foreign national or a foreign entity cannot exceed a term of one year[3]. The lease can be extended with the approval of the government for diplomatic missions or United Nations organizations as well as certain organizations of individuals[4].

One major exception concerns companies investing under the Foreign Investment Law (2012). Such companies may be allowed to lease land for a term up to 50 years plus two renewable of 10 years each with the approval of the Myanmar Investment Commission[5].

3. Condominium

The condominium law which is expected to be passed soon will allow foreigners to own a condominium unit when certain conditions are met. According to Section 15 (c) of the draft, foreigners can own a maximum of 40% of the condominium units above the 6th floor of the condominium.

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[1] Sections 3 and 4 of the Transfer of Immoveable Restriction Act 1987

[2] Section 11 of the Transfer of Immoveable Restriction Act 1987

[3] Section 5 of the Transfer of Immoveable Restriction Act 1987

[4] Section 14 of the Transfer of Immoveable Restriction Act 1987

[5] Section 31 and 32 of the Foreign Investment Law 2012