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series

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Real property



Developing ASEAN

A key role will be played by the ASEAN real estate markets once the ASEAN Economic Community (AEC) takes effect in December 2015.

With an increasing number of investors looking at the ASEAN region for the purposes of portfolio diversification and long term investment, real estate markets could offer cost-effective solutions which will attract less complex industries, drawing them away from more competitive cities and countries. Recent examples include the outflow of industrial production from China into the emerging markets of Myanmar, Vietnam and Cambodia.

Home to nearly 600 million people, demand for real estate in ASEAN is expected to grow and the region's real estate markets stand to benefit from the rising middle class, urbanization and competitive labour costs. Cross-border investment is also expected to improve through the development of and adjustments to regional infrastructure such as air and sea ports, rail networks and roads.

The upcoming Singapore-Kuala Lumpur High Speed Rail project for instance, has led to a strong appetite for property in Malaysia. The property market in Iskandar Malaysia remains attractive for many developers, despite the recent slowdown in sales, as investors are still optimistic on the long term growth prospects of the region.

Demand for grade A office space has driven up construction in Singapore with many global firms seeking to establish their regional headquarters there.

Similarly in the Greater Jakarta area, rising rental yields and the potential for capital appreciation have led to considerable interest from local and foreign investors looking to acquire land within established industrial estates.





In Thailand, a forecast has been issued by the Thailand Real Estate Information Centre (REIC) that the real estate sector will expand by 5 percent this year due to the government's various infrastructure projects; the recovery of the local economy; declining fuel prices and a reduction in the benchmark rate.




2015 also looks to be a strong year for Myanmar and Vietnam's real estate markets. A number of important legal and regulatory changes have been undertaken by the governments of these two countries to improve the market situation and encourage foreign investment by making it likely for foreigners to own property.

The following pages will look at the various aspects and considerations that are relevant to investing in real property across the region, giving investors a snapshot of where each real property market stands at present, and the opportunities that lie in the AEC.



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	 Cambodia	 Indonesia	 Laos	 Malaysia
Governing Legislation	<ul style="list-style-type: none"> • Land Law; • Law on Granting Ownership Rights over Co-owned Buildings to Foreigners; • Law on Investments; • Sub-Decree on Economic Land Concessions; • Sub-Decree on Management of State-Lands; and • Sub-Decree on Management and Use of Co-Owned Buildings. 	<ul style="list-style-type: none"> • Basic Agrarian Law; • Buildings Law; • Condominium Law; • Investment Law; • Land & Building Rights Acquirement Tax Law; • Land & Building Tax Law; • Land Reform Law; and • Security Rights Law. 	<ul style="list-style-type: none"> • Land Law; • Laos Constitution; • Law on Investment Promotion; and • State Property Law. 	<ul style="list-style-type: none"> • Housing Developers (Control & Licensing) Act; • Land Acquisition Act; • National Land Code; • Strata Titles (Amendment) Act & Strata Management Act; • Solicitors Remuneration Order; and • Stamp Act.
Foreign Ownership	<p>Foreigners can only own private units of co-owned buildings from the first floor up and not exceeding 70% of total private units in one co-owned building located in:</p> <ul style="list-style-type: none"> • Special Economic Zones; • Important urban areas; • Areas determined by the Royal Government; and • Other areas further than 30km from the land borders of Cambodia. 	<p>Foreigners are only permitted to hold title with Right to Use (Hak Pakai). Residential units with Hak Pakai may only be acquired by foreigners residing in Indonesia and whose presence benefits national development.</p> <p>Foreigners may not hold the following titles:</p> <ul style="list-style-type: none"> • Rights of Ownership; and • Residential units categorized as modest or very modest. 	<p>Foreigners are not allowed to own land (except as provided under the Investment Promotion Law) but may acquire the right to use land, usually under a lease:</p> <ul style="list-style-type: none"> • Right to sublease; • Security for loan; and • Capital contribution. <p>The right to own & sell land is limited to the conditions under the Investment Promotion Law, but this has not been tested in practice.</p> <p>Foreigners may own fixed assets on land.</p>	<p>Foreign interest may not acquire:</p> <ul style="list-style-type: none"> • Properties valued less than MYR 1,000,000 (approx. USD 280,984) per unit; • Residential units under the category of low and lowmedium cost, as determined by the State Authority; • Properties built on Malay reserve land; and • Properties allocated to Bumiputera interests in any property development project, as determined by the State Authority.
Protection Of Interests	<p>Registration at the relevant land office, including:</p> <ul style="list-style-type: none"> • Ownership registration; • Transfer registration; • Pledge/hypothec registration; and • Perpetual (long-term) lease registration. 	<ul style="list-style-type: none"> • Securing the original certificate of land title; • Registration of owner's name in the Land Book Registry; • Securing a conditional transfer of land title agreement/escrow agreement; and • Ensuring original certificate of land title describes title as legally transferred. 	<p>The Investment Law protects against the following, subject to public interest and payment of compensation:</p> <ul style="list-style-type: none"> • Seizures; • Confiscation; and • Nationalization. 	<ul style="list-style-type: none"> • Registration of a charge (Remedy: Order of Sale); and • Entry of a caveat on the land title to prevent further dealing with the property.
Taxes & Duties	<ul style="list-style-type: none"> • Stamp duty of 4% of total price (Prakas on Collection of Stamp Duty); • Registration fee; • Search fee (if necessary); and • Legal fees (if engaged). 	<ul style="list-style-type: none"> • Land deed official fees; • Land & Building Rights Acquirement Tax (5%); • Non-tax State Revenue (varies); • Value added tax; and • Luxury tax (if applicable, 20%). 	<ul style="list-style-type: none"> • Lease fees; and • Official fees for documentation process (e.g., notarization fees, registration fees). 	<ul style="list-style-type: none"> • Stamp duty; • Stamping fee; • Adjudication fee; • Registration fee; • Search fee; and • Legal fee (if engaged, and subject to the Solicitors Remuneration Order).
Gain Tax	<p>None. However, investors are subject to tax on 1% of turnover and 20% on net profit.</p>	<p>None. Only income from transferring properties is chargeable (5%).</p>	<p>Not applicable, as foreigners are not allowed to own & sell land. There is liability to pay income tax if the land is sub-leased.</p>	<p>Yes, governed by the Real Property Gains Tax Law. Foreigners: Taxed 30% for disposals during the first 5 years of ownership, and 5% for disposals following the 5th year.</p> <p>Citizens : Taxed between 5 – 30% for the first 5 years of ownership, and 0% following the 5th year. Companies will be taxed 5% following the 5th year.</p>
Repatriation	<p>No restrictions. However, investors are subject to 14% tax on the total money to be transferred.</p>	<p>No restriction subject to the applicable taxess being settled accordingly.</p>	<p>No restrictions, subject to full payment of duties, taxes and other fees payable.</p>	<p>No restrictions subject to full payment of duties, taxes and other fees payable.</p>

 Myanmar	 Singapore	 Thailand	 Vietnam
<ul style="list-style-type: none"> • Farmland Law; • Registration Act; • Stamp Act 1899; • Transfer of Immovable Property Restriction Law; • Transfer of Property Act; • Vacant, Fallow and Virgin Lands Management Law; • Upper Myanmar Land and Revenue Regulation; • Lower Myanmar Town and Village Lands Act; • Land and Revenue Act; • Land Acquisition Act; • Development Law; • Yangon City Development Law; • Mandalay City Development Law; and • Nay Pyi Taw City Development Law. 	<ul style="list-style-type: none"> • Building Control Act; • Building Maintenance and Strata Management Act; • Conveyancing and Law of Property Act; • Housing Developers Act; • Land Acquisition Act; • Land Titles Act; • Land Titles (Strata) Act; • Sale of Commercial Properties Act; and • State Lands Act. 	<ul style="list-style-type: none"> • Condominium Act • Foreign Business Act • Industrial Estate Authority of Thailand Act • Investment Promotion Act • Land Code • Land Development Act 	<ul style="list-style-type: none"> • Law on Land No. 45/2013/QH13 • Law on Residential No. 65/2014/QH13 • Law on Real Estate Business No. 66/2014/QH13
<p>Foreigners may only acquire a lease or tenancy for a term not exceeding 1 year at once.</p> <p>The Investment Commission may grant leases of up to 50 years with extensions subject to conditions and approvals.</p> <p>Subject to conformity with the laws of inheritance and approval of the Ministry of Foreign Affairs, foreigners may inherit immovable property.</p>	<p>Residential – Restricted by the Residential Property Act, Planning Act, and Executive Condo Housing Scheme Act to permit holding of condos and non-landed properties only.</p> <p>Commercial and industrial – Requires approval from the Controller of Residential Property Land Dealings.</p> <p>Vacant land, landed properties and units in buildings > 6 floors – requires approval from the Singapore Land Authority.</p>	<p>Subject to condition and approvals, foreigners may apply for acquisition of:</p> <ul style="list-style-type: none"> • Residential units where foreigner invests ≥ 40 million baht for ≥ 5 years • Rights under specific laws and regulations (e.g. Investment Promotion Act) • Inheritance as a statutory heir (subject to the Land Code) <p>Foreigners may also own up to 49% of all units of a condo without obtaining any approval.</p>	<p>Except for foreign invested companies conducting investment in residential houses for lease or sale, other foreign invested companies are only allowed to lease the land on annual payment or one-off payment basis.</p> <p>Foreigners have the right to own residential houses or apartments (subject to circumstances) in residential projects with a limited number of residential houses or apartments to be owned, and the ownership period is limited to 50 years (extendable).</p> <p>Foreign organisations must also have an investment certificate or an operation certificate for the validity of the ownership.</p>
<p>Registration with the Office of the Registration of Deeds.</p>	<ul style="list-style-type: none"> • Registration of a charge (Remedy : Order for Sale); and • Entry of a caveat on the land title to prevent further dealing with the real property 	<ul style="list-style-type: none"> • Registration of real rights with a competent land office • Registration of mortgage with preferential rights • Attachment- to prevent transfer of land 	<p>Foreigners may protect their property rights by obtaining a certificate for land use rights, residential house ownership and other assets attached to the land. This certificate is applied in all cases including: allocation of land, lease of land, ownership of residential houses.</p>
<ul style="list-style-type: none"> • Stamp Duty (depending on the duration of property/land use right); • Legal fees (if engaged); and • Land Revenue. 	<ul style="list-style-type: none"> • Property tax (subject to the type of property); • Stamp duty (graduated rates); • Goods and Services Tax (on non residential properties); • Corporate tax (17%); and • Income tax (0-20%) 	<ul style="list-style-type: none"> • Adjudication/Registration fee • Transfer fee (2% of the value of property) • Special Business Tax (3.3% of value/ sale price- Revenue Code) • Stamp Duty (1 Baht : 200 Baht over the value/sale price) • Withholding tax (Individuals -progressive rate, corporations- 1%) 	<ul style="list-style-type: none"> • Stamp duty fee; • Registration fee; and • VAT (only applicable to real property other than land).
<p>Yes, governed by the Income Tax Law and Union Tax Law:</p> <ul style="list-style-type: none"> • 10% on gains of the private sectors, cooperative societies and state owned economic organizations; • 10% on capital gains of a foreigner residing abroad; • 40%- 50% on capital gains of companies in the oil and gas sector. 	<p>No tax is imposed on capital gains from the sale of real property, unless forming part of the seller's ordinary income.</p>	<p>None. Investors are only subject to the taxes and duties prescribed above.</p>	<p>Yes, governed by legislation relating to corporate income tax (for enterprises) and personal income tax for individuals).</p> <p>For enterprises, the current tax rate is 22% and will reduce to 20% as from 1 January 2016.</p> <p>For individuals, the tax rate is 2% of the transfer price as recorded in the transfer contract.</p>
<p>Restricted. Foreigners are prohibited from buying and selling immovable property.</p>	<p>No restrictions, subject to full payment of duties, taxes and other fees payable.</p>	<p>No restrictions, but subject to conformity with other laws (e.g. the Exchange Control Act)</p>	<p>Repatriation is subject to fulfilling any financial, legal and tax obligation owed to the State of Vietnam.</p> <p>For individuals, the law is unclear as to conditions for repatriation, but applicable tax obligations and foreign exchange regulations must be fulfilled.</p>

Recent trends in ASEAN real estate policy

Myanmar



Foreign property ownership in Myanmar is likely with recent government initiatives which would allow developers to sell up to 40% of condominiums on the sixth floor or above to international buyers under the draft Condominium Law.

Thailand



In a fresh bid to reduce public outcry, the Finance Ministry has decided to exempt the value of buildings from the controversial land and building tax bill. Only land will be levied thus reducing the burden on home and building owners.

Malaysia



The Strata Management Act 2013 (Act 757), which replaces the Building and Common Property (Maintenance and Management) Act 2007 came into force in June 2015. With the enforcement of the Act, a Strata Management Tribunal is set up to help resolve problems or disputes among residents and interested parties simply, quickly and cheaply.

Laos



Cambodia



With the set-up of Special Economic Zones (SEZs), cross-border trade between Cambodia, Laos, Myanmar, Thailand and Malaysia has gone up to around Bt 900 billion in 2014 and is expected to grow to more than Bt 1 trillion this year. The inauguration of the Thailand-Laos Friendship Bridge has resulted in economic growth for the Nakhon Panom province, the main destination for cross-border trade and investment.

Vietnam



New laws such as the Law on Enterprise, Law on Investment, Law on Residential Housing and Law on Real Estate Business contain provisions which help create a conducive legal environment for domestic and foreign real estate investors alike. The revised Law on Residential Housing came into force on July 1 which allows foreigners to own property in Vietnam for a period of 50 years. A new decree has also been issued which requires housing developers to get guarantees from banks before selling or leasing out units. This is to safeguard buyers' rights since many people failed to obtain refunds when projects stalled.

Singapore



Real estate has been embraced as a new asset class for crowdfunding in Singapore whereby property deals will be "match made" with investors spanning from land banks to development projects to completed income-yielding buildings. Risks remain high though as the governing regulatory framework is still vague.

Indonesia



Although it may be restricted to properties valued over a certain threshold, the Indonesian Government is currently reviewing Government Regulation No. 41/1996 with a view to allow foreign individuals to hold a Right of Use (Hak Pakai) title for a longer period of time (i.e., for 95 years and extendable).

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