

NEW MINISTRY OF INTERIOR POLICY TO PREVENT PURCHASE OF LAND FOR THE BENEFIT OF FOREIGNERS



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Thailand, with its rich culture and beautiful sites, presents a very attractive destination to foreigners from many countries—for visit, travel, or even retirement purposes. Some of these foreigners wish to own property in Thailand, either as an investment or as personal residence. Thai laws are quite explicit concerning foreign ownership of property, stating that a foreign individual, foreign entity or a Thai company with more than 49% of its shares held by foreigners cannot own land in Thailand, except for particular investment purposes under certain laws such as the Investment Promotion Act, Industrial Estate Authority of Thailand Act, and property fund regulations. These exceptions providing benefits to foreign direct investment in Thailand were intended mainly to promote the country's economy. To enjoy the benefits of these exceptions, foreign investors must meet multiple requirements set out by the relevant legislation and undergo strict scrutiny from authorities.

Foreigners wishing to own land in Thailand have attempted to circumvent Thai laws through a legal arrangement establishing a Thai entity where they own part of the shares and induce Thai nationals to act as nominees holding 51% or more of the company's shares without true control. On May 15, 2006, the Ministry of Interior issued a policy addressed to all provincial

governors regarding the avoidance of law in the acquisition of land by an entity with foreign shareholders. The policy seeks to prevent the purchase of land for the benefit of a foreigner in accordance with Section 74, paragraph 2, of the Land Code and directs competent officials to be more vigilant in the purchase of land by an entity with a foreign shareholder or director, or where reasonable grounds exist to believe that a Thai is a nominee shareholder on behalf of a foreigner. The policy requires the competent official to carefully scrutinize the supporting evidence submitted for consideration, with particular attention to the occupation, duration of work and monthly income of the Thai shareholder. If, after the investigation, it is the opinion of the competent official that the registration of transfer represents an avoidance of law or that a Thai is trying to purchase land for the benefit of a foreigner, he should conduct further investigation and submit the case to the central Land Department for a ministerial directive. As each competent official has discretion in the implementation of the policy, the method of investigation by land offices could vary from province to province.

In a further proactive step, the Ministry made clear its concern that some companies avoid the Land Code by accepting a land transfer when foreign shareholders do not

hold more than 49% of a company's shares, but foreign shareholders then acquire more shares in the company or increase their capital in the company after the transfer. This results in foreign shareholders holding more than 49% of the company, making the company a foreign entity under the Land Code subject to the requirement to sell the land within one year or a period specified by the Director-General. Land offices have, from time to time, conducted investigations by cross-checking companies holding land in their jurisdiction with the relevant authorities of the Ministry of Commerce to verify the shareholding structure of each company. If the search shows that the shareholding of foreigners amount to more than 49%, the authority will force that company to sell the acquired land.

The property sector in Thailand, especially projects targeting foreign customers, has been somehow affected by this policy. At the very least, the transfer of land to a company with foreign shareholders is not as simple or certain as before. Nonetheless, at its core, this policy presents nothing new. This policy merely reasserts, adjusts and attempts to put current practice in line with the already existing law relating to the transfer of property to companies with foreign shareholders. ♦