

CHAPTER TWO

REVIEW OF LITERATURE

This chapter reviews the literature in three main areas along with a summary: (1) laws and regulations related to ownership of land in Thailand, (2) opinions of Thai academics and well-known persons regarding foreign ownership of land in Thailand, and (3) relevant study.

2.1 LAWS AND REGULATIONS RELATED OWNERSHIP OF LAND IN THAILAND

Ownership of land in Thailand is governed by the Land Code B.E. 2497 (1954), the Civil and Commercial Code, Land Reform for Agriculture Act B.E. 2518 (1975) and the Regulations set forth by the Ministry of the Interior. In general, Thai law prohibits foreigners from owning land in Thailand. The prohibition applies to foreign individuals and juristic entities (e.g., companies or partnerships). Additionally, it applies to Thai registered juristic entities, which are owned or controlled by foreigners. Under the Land Law, the definition of a foreigner includes Thai registered companies or partnerships in which more than 49% of the capital is owned by foreigners or of which more than half the shareholders or partners are foreigner.

In the past, a foreigner could acquire land in Thailand only by virtue of the provision of a treaty in accordance with Section 86 of the Land Code. Obtaining such acquisition was subject to the provision of the Land Code and the Ministerial Regulations and the permission had to be obtained from the Ministry of Interior. Thailand had executed the treaty with 16 countries i.e. USA, England, Switzerland, Germany, Denmark, Norway, the Netherlands, France, India, Belgium, Sweden, Italy, Japan, Burma, Portugal, and Pakistan. However, all treaties were terminated on February 27th, 1970. Since then, Thailand has not made any treaty with any country to allow foreigners to acquire land in Thailand.

Nevertheless, since January 19th, 2002, the Land Code has been amended with Section 96 bis providing that a foreigner is allowed to purchase land in Thailand for residential purpose and the land to be purchased shall be not more than one rai in area, and the following rules and conditions must be met:

1. Bringing money not less than Baht forty million into Thailand for investment and maintaining the investment not less than five years;

2. Permission must be obtained from the Minister of Ministry of Interior;

3. Money brought into Thailand shall be invested in one of the following businesses or activities;

3.1 to purchase bonds of Thai Government, bonds of Thai National Bank, bonds of State Enterprise or bonds for which the Ministry of Finance secures the capital or interest,

3.2 an investment in a property mutual fund, a property mutual fund or a mutual fund for resolving financial institution problems established under the law on Securities and Stock Exchange,

3.3 an investment in share capital of a juristic person who is granted permission of investment under the law on promotion of investment,

3.4 an investment in an activity as declared by the Board of Investment to be an activity eligible to be granted promotion of investment under the law on promotion of investment;

4. The land to be acquired shall be located in Bangkok Metropolis, Pattaya City, or Tassaban (Municipality), or in the area specified as residential zone according to the law on Town and Country Planning and shall not be located in a military safety zone according to the law on Military Safety Zone;

5. A foreigner, who is granted permission, shall utilize the land only for residence for his/herself and the family in a way that is not contrary to the local custom or good living of the local community;

6. If a foreigner, who is granted permission to acquire such land, does not comply with the rules and conditions specified, he/she shall dispose of such land in the portion of his/her possession within the period of time specified by the Director General of the Department of Lands which shall be not less than one hundred eighty days and not more than one year. If the time limit elapses, the Director General shall have the power to dispose of such land;

7. If a foreigner, who is granted permission to acquire such land, does not utilize the land for residence within two years from the day the registration for land acquisition is made, the Director General shall have the power to dispose of such land.

Besides the aforementioned rules and conditions, an foreigner may acquire land by inheritance as statutory heir; in this instance, the land devolved when combined with the land already acquired shall not exceed that specified by law, for examples, land for residential purpose not exceeding 1 rai per household, land for commercial purpose not exceeding 1 rai, land for industrial purpose not exceeding 10 rais, and land for agricultural purpose not exceeding 10 rai per household. In addition, an foreigner whose spouse is a Thai national either legitimate or illegitimate, that Thai national can purchase land but the foreign spouse of that Thai national must give a joint written confirmation that the money which that Thai national will expend on purchasing the land is wholly the separate property or personal effects of that Thai national and not the Sin Somros or jointly acquired property.

The other exception to the prohibition of foreign ownership of land is under the Investment Promotion Act. It authorizes the Board of Investment (BOI) to grant a foreign owned company permission to own land for the purpose of conducting the promoted activity. The area of the land must be approved by the BOI, which will review the land and proposed construction plans to determine that the land's size is suitable for the promoted activity. The use of the land must be limited to the promoted activity, and if the promoted business is later dissolved the land must be sold within one year of the termination of that business. The BOI exception to the prohibition against foreigners owning land is primarily limited to the ownership of land and factory for a promoted manufacturing activity. In addition to permitting foreign ownership of land for the purpose of conducting a promoted business, BOI privileges can authorize a foreign owned company to conduct business activities which would otherwise be prohibited under the Foreigner Business Law.

2.2 THAI ACADEMIC AND WELL-KNOWN PERSON'S OPINIONS RELATED TO OWNERSHIP OF LAND IN THAILAND

There are some important and interesting opinions of Thai academics and well-known persons regarding foreign ownership of land in Thailand such as the following.

2.2.1 Dr. Surachai Sirikrai, a lecturer at the Faculty of Politics, Thammasat University, commented and disagreed on ideas of the proposal to liberalize restriction and allow a foreigner to purchase land the rights of long term leasehold for 90 years proposed by the Former Deputy Minister of the Interior Ministry; Mr. Prasong Kosithanont in August 2008 as follows; no government in any country allows foreigners to purchase or occupy domestic lands unless there are specific reasons such as to promote investment; however, there must be measure for controlling the land use. Without measures to control land use, no country would allow its land to be sold to foreigners. He mentioned that most foreign countries allow land to be leased for no longer than 30 years. He further commented that selling land to foreigners endangers national security. During the economic slowdown, rush-purchase of land by foreigners could cause the land price to increase; so the government must be careful. He also cited that the proposal would not be passed by the parliament and it shall be objected by many people”.

2.2.2 Assistant Professor Bancherd Singhakanati, a lecturer at the Faculty of Law, Thammasat University mentioned that “if the law is amended, it will significantly affect the land ownership system of Thailand, because foreign capital values are higher than Thai currency. Even though they cannot take the land out, having the ownership, they are able to take advantage of such lands. Foreigners could rush-purchase land in order to take advantage; consequently, Thai people would become employees and would not have ownership. He believed that land is basic for productions; it possible results in Thai people who are bound with land and agriculture to trespass forests for manufacturing” (ไทยโพสต์. 11 กันยายน 2008, จวกขายแผ่นดินแดนเขตกว้างซี้ด.”).

2.2.3 Dr. Sapon Pornchokchai, the president of Thai Appraisal Foundation expressed his opinion on the issue of foreign ownership of land in Thailand that “In fact, it is unnecessary to sell lands of Thailand to foreigners, there is nothing breach of international regulations. Foreign investors have other alternatives for investments which have high return on investment and less complicated than purchasing properties”. He further commented, “foreign investments in the real estate sector do

not support or stimulate the economy at all; it only spins up the land's price and causes trouble to the country, which lacks proper measures to control spinning up prices and exorbitant profits. He provided the example that foreigners occupied lands in tourist areas such as Phuket and Samui islands, which he thought happened because of conspiracy and fraudulence between local officers and relevant local people. He urged that it should be remedied, because it will develop into a serious problem in the future. He also said "Cutting lands for sale is not professional conduct. (โสภณ พรโชคชัย (2551).

2.2.4 Ms. Rodsana Tositakul is a Bangkok Senator and a former activist. She disagreed with the proposal to liberalize the foreign ownership of land. She commented, "if the law is submitted to the parliament, it is absolutely certain that it would not be passed, because it leads to loss of national sovereignty". She further added "if foreigners who have a lot of money purchase land all over the country, what can the country do and if land is owned by foreigners, it cannot be retrieved, because existing mechanisms including legal provisions could not be used to retrieve it". (ไทยโพสต์. 11 กันยายน 2008, *จวกขายแผ่นดินแดแขกกว่านซื้อ*.)

2.3 RELEVANT STUDY

There were some relevant studies in many countries such as in the United States, Poland, Philippine and South Africa on the issue of the ownership of land by foreigners which focus on economic and social matters. Two important official studies and reports in South Africa regarding the foreign ownership of land are the followings;

2.3.1 The Report by the Panel of Experts on the Development of Policy on the Regulation of Ownership of Land in South Africa by Foreigners

The Panel of Experts on Foreign Ownership of Land (PEFOL) was constituted by the Minister of Agriculture and Land Affairs, South Arica on 17 February 2006 because there were strong public opinions that unregulated ownership of land and landed property such as housing by foreigners causes significant lack of readily available and affordable land for land reform. Therefore, the panel had responsibility

to investigate and made recommendations regarding the nature and impact of the acquisition and use of and investment in land by non-South African citizens, impact on the property markets, distinguishing between land use for residence, commerce, agriculture, and eco-tourism/tourism. After investigation, the Panel recommended measures to the government in order to assist the government in regulating the registration records of foreign ownership of land, and to facilitate investigations of the impact of foreign land ownership on land use and prices and consequently on the prospects for meaningful land reform. A moratorium on the purchase and sale of land to non citizens was imposed with immediate effect, as an interim measure until appropriate legislation could be promulgated.

2.3.2 The Report on Measures for Controlling Foreign Ownership of Land in South Africa

This report was proposed to South Africa's government on September 3, 2007. The report recommended that on the grounds of national interests, environmental considerations, areas of historical and cultural significance, and national security, the private ownership of land by foreigners and certain South Africans should be prohibited. The prohibited areas should include National Key Points, coastal areas, conservation areas, land close to military installations, water catchment areas and land along borders and international boundaries. Ordinary citizens both black and white, felt very strongly that acquisition of prime land by foreigners was denying them affordable access to land and rendering them strangers in their own country.

Those two reports above reflected opinions and studies on potential effects of the foreign ownership of land in South Africa, which are significant. They concerned issues and effects such as causing significant lack of readily available and affordable land for people in the nation.