

## **Thailand Ministerial Notification Land Department Notification (concerning use of Thai nominees to Acquit Land on Behalf of Foreigners) 4 August 2008**

*RE: Evidence used to investigate the acquisition of land by a juristic person in which a foreigner has vested interests.*

On 4 August 2551 B.E. (2008 A.D.), the Land Department announced this Ministerial Notification concerning the basis for an investigation of the acquisition of land by a juristic person in which a foreigner has vested interests.

1. In the event a limited company, partnership, or registered ordinary partnership requests transfer of land ownership for the purpose of engaging in the real estate business, such as the sale or hire out of real estate, engaging in the hotel business, or construction of resort homes, if a foreigner is a shareholder or a director, investigation is to be conducted on the source of funds used by a Thai shareholder to purchase shares.

2. In the event a limited company, partnership, or registered ordinary partnership requests transfer of land ownership although not for the purpose of engaging in the real estate business, yet there is reason to believe that a Thai person is holding shares on behalf of a foreigner, investigation is to be conducted on the source of funds used by a Thai shareholder to purchase shares. The reasons for the investigation are as follows:

- The foreigner is an authorized signatory of the entity.
- The foreigner is a promoter of the entity.
- The foreigner holds preferential shares with a majority of voting rights.
- The major Thai shareholder's occupation is not directly involved in the investment business, such as in the profession of an attorney or broker.

Evidence to be used for investigating the occupation and income of the Thai shareholders as follows:

- The submission of an employment certificate stating the person's position, when he/she started work, monthly salary, and other credible evidence.
- Investigation must be conducted on the source of funds used for purchasing shares, including evidence such as the following:

- Savings: Savings Bank Statement
- Sale of Land: Sales and Purchase Agreement
- Inheritance: Evidence of receiving inheritance
- Loan: Loan Agreement

**Note:** In the event a Thai shareholder loans money for purchasing shares from a foreigner, investigation must be conducted on the source of funds because of the fact that a foreigner has lent the funds and there is reason to believe that the Thai person is holding shares on behalf of a foreigner.

3. If the shareholder is a Thai juristic person, regardless of whether such juristic person is comprised of a foreign shareholder or a director or not, the officials shall investigate the source of funds for purchasing shares by having the representative of the shareholding juristic person present evidence showing the source of funds for purchasing shares. In the event a loan had been obtained for purchasing shares, evidence must be presented as follows:

- Balance sheet
- If it is claimed that a loan was obtained to purchase shares, evidence in the form of a loan agreement and a report of meeting related to this issue must be presented.

4. In case a juristic person purchases the land at a price higher than the amount registered, such as registering for 500,000 baht, but purchasing the land for 10,000,000 baht, and there is no mortgage on the land, officials shall investigate the source of funds for purchasing the land and require the submission of evidence. In the event a loan had been obtained, a report of meeting regarding this issue, the Loan Agreement, and relevant documents shall be provided as follows:

4.1 If the lender is a foreigner, or a foreign juristic person, evidence showing the source of funds, such as evidence showing remittance of funds from overseas, or withdrawal of money from a Savings account and a report of meeting of the lending juristic person, is needed.

4.2 If the lender of the money is a Thai national, or a Thai juristic person (even though the lending juristic person has no foreign shareholders or directors), evidence shall be provided showing the source of funds, such as the entity's balance sheet, withdrawal of money from a Savings account, including the report of meeting of the lending juristic person.

5. If a foreign juristic person leases or possesses other long-term rights over the land, officials shall investigate the purpose of the lease, and whether the possession of the land is on behalf of a foreigner or conflicts with the Foreign Business Act B.E.2542 (A.D. 1999) or not

Thailand Law Forum