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We spoke to her in September about the recent repercussions of the May 15th Land Department directive requiring greater scrutiny of land purchases by companies with foreign investors.

**Has there been a lot of inaccurate reporting regarding the new regulations?**

I don't know if the press has been inaccurate or not – it all depends on what you read. I've read some interviews with lawyers and some consultants saying 'this structure would do and that structure would do.' This made me raise my eyebrows – it depends on what you read and in what context. The press, with regard to foreign shareholding of companies and the foreign ownership of land, is very hot. These kinds of structures have been around for a long time but because of the present Shin and Temesak deals have come to the fore.

**A few of months have passed since the regulation was announced, what do you think the impact has been?**

Because there was so much confusion the initial reaction of the land office was not to register the titles of land of companies that had any foreign shareholding at all. They didn't know how to apply those regulations. Later on, on July 15, there was a clarification as to how this regulation should be applied and what document threshold was required from the applicant. That clarification was actually not publicly noted. It says that if it is for less than one rai, it is all right for foreigners to own up to 49%, which is like it used to be. When the May

15 regulation came out, the general interpretation was that foreigners couldn't be part of companies that own land. The July clarification says that for less than one rai and if the land is going to be used as a residence for the company's director, then that's fine and will not be subject to the so much scrutiny.

**Why do you think the clarification was issued? Was there pressure from somewhere?**

There could have been. I don't know the inside story of it, but it could have been pressure plus the confusion. The land office didn't know what to do at that time. For fear of that they might break the law, they either applied strict interpretation of the regulation, or simply sent everything back to the land department in Bangkok.

**So the message is that it is OK for a small private investor to have a house in Thailand, but a property developer must have active Thai involvement?**

Even with smaller investors they want to see active Thai involvement. It's just the level of scrutiny that's different.

**Has your business been affected?**

It was for a very short period. We learnt about the second clarification in August – the other land offices were not aware of this clarification until the second week in August – and we

were actually the ones trying to educate the officers. Whether business has been affected or not? We haven't actually seen any impact because it was a very short period. We had clients who were trying to transfer titles and their transactions had to be put on hold when the notification came. At that time, my advice was to 'wait and see,' until the dust settles. Some were quite anxious and restructured their companies at a high cost.

**Do you realistically see the crackdown widening?**

I've spoken with some policy makers and it is not a crackdown they are focusing on, but more of the abuse of the law by certain sectors. I think the policy trend now is to come up with amendments to the law. Maybe not as far as we would want, with foreigners being allowed to directly hold land, but probably amendments allowing foreigners to get involved in certain sectors that have been closed up until now – like the service sector, for example. With respect to the land, I think it will stay the same, because it's very close to the Thai people and a very political issue.

**The debate on foreign ownership of property has now widened to encompass the whole of foreign investment in Thailand. Do you think it is putting Thailand at a crossroads with regard to how open a country it wants to be?**

Among the developing

countries in Asia, it is only really Thailand that closes out foreigners from participation in service areas. That actually results in nominee transactions and they want to prevent that, and so are coming up with structures that will do so. Like opening certain areas whereby foreigners can participate in, but the controls are not through shareholding, but in another manner. They are looking into those issues.

**Various real estate agents have begun lobbying for a change in the law and have proposed things such as a limited freehold scheme and an extension of leasehold. What do you think the best solution would be?**

The direct holding of land for foreigners may be very difficult – I don't think it's on the radar of policy makers right now. It would cause a lot of economic imbalance in society, so it's something they would probably not be willing to do. Extending leasehold term is probably something that is more palatable to them. Also, designating certain areas where foreigners can own land has been suggested, but I don't think it's going to go that far, as it wouldn't be interesting for foreigners either. It would create an enclave and I don't think foreigners would be interested in that.

**There are still legal ways for foreigners to invest in freehold property in Thailand.**

**Are people generally aware of what the options are?**

Investors who come from abroad and do not have residency in Thailand get most of their information from agents and a lot of them are making misrepresentation. Some are saying that you can lease properties for 120 years, which is impossible under Thai law. When they come to us a lot of investors are not aware what the basic laws are in Thailand.

**Could the whole situation be ultimately good for your business as people start to seek out higher quality legal advice?**

Yes. We are quite expensive and don't deal with nominee structures. We have had a long tradition of not offering ourselves as nominees. When clients come here we tell them from the outset, 'please find a real Thai partner that you can trust and then come to us and we'll structure the transaction.'

**As a foreigner working in Thailand, do you think the rules regarding investment are fair?**

In Thailand, things are very flexible. They have the law, but the law is actually applied in different ways. So far the authorities have turned a blind eye to infractions of the law, but if they want to enforce it, it's there. There is a legal structure. Practically speaking it's been so free, but the issue is very politicised at the moment. ☐