



# Policy Advisory

No. 2009-01

## **FOREIGN LAND OWNERSHIP: A SURVEY OF REGULATORY APPROACHES IN SELECTED COUNTRIES**

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**Congressional Planning and Budget Department  
House of Representatives**

## ABSTRACT

*The global financial crisis is expected to have major consequences for investment—foreign and local—in 2009 and onwards. Already tighter credit conditions and lower corporate profits have weakened companies' capability to invest. In fact, world FDI flows were estimated to have already declined by 21% in 2008.*

*Despite this gloomy prospect, positive driving forces remained at work. There are a number of reasons why foreign investors might remain committed to FDI, even in the midst of the crisis. In particular, new sources of FDI have emerged, especially from the South-South investment. Hence, to effectively deal with the crisis and take advantage of the available opportunities for new investment, it is important for governments to resist the temptation of protectionism, and instead maintain an overall favorable and open business and investment climate.*

*The proposed House measure to liberalize land ownership is a positive step to enhance the country's locational advantage of FDI, and sends a clear signal for renewing its commitment for a quick recovery in FDI inflows. However, it is important to learn the lessons and performance of other countries in their land liberalization policies. Many of the states cited in this paper discriminate against foreign ownership and foreign use of land through various restrictions and regulations.*

*Moreover, it is important to point out that before any efforts to liberalize land ownership, the existing market inefficiencies in the land sector should be addressed. Specifically, reform measures should be made to improve the efficiency of national land use policies and land administration system and processes. Finally, FDI inflows are also influenced—to a larger extent—by other economic fundamentals such as large market size, higher education levels and productivity, better infrastructure and lower domestic lending rates. Hence, the government should work towards reducing operational barriers, e.g. approval process, and sectoral restrictions.*

The views, opinions, and interpretations in this report do not necessarily reflect the views of the House of Representatives as an institution or its individual members.

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## FOREIGN LAND OWNERSHIP: A SURVEY OF REGULATORY APPROACHES IN SELECTED COUNTRIES<sup>1</sup>

### Current Efforts to Amend the 1987 Constitution

The House of Representatives filed House Resolution 737 last August 2008 which will amend Sections 2<sup>e</sup> and 3<sup>d</sup>, Article XII of the Philippine Constitution to allow “the acquisition of foreign corporations and associations and the transfer or conveyance of alienable public and private lands”.

The rationale for this present effort was to spur investment especially in Mindanao which has been at the tail-end of investment destination in the country.<sup>4</sup> In general, the economic provisions of the 1987 Constitution have long acted as barriers to foreign capital thereby burdening the economy with loss of competitive capacity.<sup>5</sup> In fact, the Philippines is one of the few countries with strict rules on foreign capital written in its constitution. The resulting economic laws thereafter have to align with this constitutional mandate. As it would turn out, areas of industrial promotion, retail distribution, banking and finance, as well as the promotion of investments in public utilities, land and natural resources have to be consistent with these restrictive provisions.

These constraints on investment inflows into the economy have contributed to enlarging macro-economic resource gaps. Due to weak domestic capital formulation, the government has to rely on foreign savings, particularly on borrowing, to finance its investment needs. Savings rate in the Philippines averaged only 20% of GDP in 2000-2005 compared to our neighbours' 29%-48%. Moreover, investment level here averaged only 16% of GDP compared to the rest of ASEAN at 18%-35%.

The prevailing levels of investment and savings are not adequate to support present and future economic growth. Hence, the lack of domestic capital renders foreign direct investment (FDI) the most likely source for development projects.

With the current global financial crisis and as in the past crises, by the question of the appropriate policies for recovery and for future sustainable development is again paramount. To deal with the crisis and its economic aftermath, it is important for policymakers to resist the temptation of protectionism, and instead maintain an overall favourable and open business and investment climate.

The proposed measure to liberalize land ownership is a positive step to enhance locational advantage of the country for FDI. It sends a clear signal for renewing its commitment for a quick recovery in FDI inflows. However, it is imperative to learn the lessons and performance of other countries in their land liberalization policies. Many of the states cited in this survey discriminate against foreign ownership and foreign use of land through various restrictions and regulations. These can range from an outright ban or a simple requirement that notice of foreign ownership be given to the appropriate Institutions or authorities.

Nevertheless, some changes in the basic land laws—which ease ownership restrictions—in Asia and Europe have occurred in response to regional and global developments. For instance, European Union access criteria has prompted attention to the issue of foreign ownership in many countries contemplating future EU membership, and a number of relevant provisions are under discussion at this time. It also appears that the economic crisis in the Asia has inspired a number of countries, including Korea and Thailand to consider changes to their restrictions on foreign land ownership to bolster sagging property markets.

### Policy Developments—Improving the Investment Climate

Liberalization policies have been one of the major drivers of FDI inflows. The 2006 World Investment Report indicated that many countries continued to liberalize their investment environment. Of the total policy changes identified by United Nations Conference on Trade and Development (UNCTAD) in 2005, about 80% made conditions more favorable for foreign companies to enter and operate.<sup>6</sup> The types of measures most frequently adopted were related to sectoral and cross-sectoral liberalization (57 policy changes), promotional efforts (51 policy changes), operational measures (22 policy changes) and FDI admission (19 policy changes). In terms of regional distribution, Asia and Africa were the leading regions in terms of introducing further sectoral liberalization, accounting for about 50% of these policy changes.

**Table 1. National Regulatory Changes, 1992 - 2005**

| Item  | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Number of countries that introduced changes in their investment regimes | 43   | 57   | 49   | 64   | 65   | 76   | 60   | 63   | 69   | 71   | 70   | 82   | 102  | 93   |
| Number of regulatory changes  | 77   | 100  | 110  | 112  | 114  | 150  | 145  | 139  | 150  | 207  | 246  | 242  | 270  | 205  |
| More favourable to FDI <sup>a</sup>                                     | 77   | 99   | 108  | 106  | 98   | 134  | 136  | 130  | 147  | 193  | 234  | 218  | 234  | 264  |
| Less favourable to FDI <sup>b</sup>                                     |      | 1    | 2    | 6    | 16   | 16   | 9    | 9    | 3    | 14   | 12   | 24   | 36   | 41   |

Source: UNCTAD, database on national laws and regulations

<sup>a</sup> Includes further liberalization, or changes aimed at strengthening market functioning, as well as increased incentives.

<sup>b</sup> Includes changes aimed at increasing control, as well as reducing incentives.

The table above indicates that it is now common for countries to have liberal FDI entry and ownership requirements, as well as streamlined admission procedures, and to offer standard guarantees and protection to foreign investors (in such areas as national treatment, expropriation, dispute settlement, arbitration and the repatriation of funds). As competition for FDI increases, the countries worldwide are expected to become more proactive in their investment promotion efforts. The UNCTAD's Global Investment Prospects Assessment for 2005-2008 projected that the majority of these

countries intend to continue increasing the number and range of FDI-attracting initiatives in the short and medium-term.<sup>7</sup>

### Trends in FDI inflows

Due to continued liberalization policies, coupled with steady global economic growth from 2003 to 2007, FDI flows in 2007 reached a historic record of \$1.8 trillion.<sup>8</sup> Of that total flow, developing countries in the Asia-Pacific region accounted for 19% or \$325 billion which was more than triple the inflows of 2002. It must be pointed out the progress in attracting FDI across developing countries in the region is uneven. For example, four countries and one territory (China, India, Russian Federation, Singapore and Hong Kong, China) accounted for 75% of total FDI inflows to the Asia-Pacific region.

Flows to ASEAN sub-region increased by 18% from \$51 billion in 2006 to \$61 billion in 2007.<sup>9</sup> Nearly all ASEAN countries received higher inflows. Singapore, Thailand, Malaysia, Indonesia and Vietnam, in that order, were the largest FDI recipients, together accounting for more than 90% of flows to the sub-region. On the other hand, the Philippines' share to total inflows from 2006-2007 averaged only at 4%. It has also received so little from the incremental increase in FDI inflows in the sub-region in 2007. As indicated in the table below, the Philippines still continues to lag behind other Asian countries in attracting FDI.

Net Foreign Direct Investment (FDI), 2006-2007, (in billion US\$)

| Countries   | 2003   | 2004   | 2005   | 2006   | 2007   |
|-------------|--------|--------|--------|--------|--------|
| Philippines | 0.491  | 0.688  | 1.854  | 2.921  | 2.928  |
| Malaysia    | 2.473  | 4.624  | 3.967  | 6.048  | 8.403  |
| Thailand    | 5.235  | 5.862  | 8.048  | 9.010  | 9.575  |
| Indonesia   | -0.507 | 1.896  | 8.337  | 4.914  | 6.928  |
| Singapore   | 11.664 | 19.828 | 13.930 | 24.743 | 24.137 |
| Vietnam     | 1.450  | 1.610  | 2.021  | 2.360  | 6.739  |
| China       | 53.505 | 60.603 | 72.406 | 72.715 | 83.521 |

Source: BSP, 2008; UNCTAD, 2008

## The Global Financial Crisis: Challenges and opportunities for FDI

The global financial crisis is expected to have major consequences for FDI in 2009 and onwards. Tighter credit conditions and lower corporate profits will weaken companies' capability to invest. Moreover, the crisis will dampen business confidence and likewise companies' propensity to expand internationally. According to a preliminary estimate by UNCTAD, world FDI flows were expected to have declined by 21% in 2008.<sup>10</sup>

Recent data from the *Bangko Sentral ng Pilipinas* (BSP) indicate that FDI already plunged 52% to only \$13 million in January 2009 from \$27 million in the same period last year and \$184 million in January 2007.<sup>11</sup> Domestic industries/sectors that are most affected by the global crisis are manufacturing; electricity, gas and water; transportation, storage and communications; agriculture, hunting and forestry and services.

In spite of the downtrend in the inflow of FDI in 2008, other industries /sectors such as construction; and financial intermediation managed to attract more foreign direct investments. Real estate and mining were barely affected by the FDI downtrend. The BSP attributed much of the rise in November 2008 FDI to an infusion of equity capital coming from Hong Kong that was invested in the mining industry.<sup>12</sup>

Notwithstanding the gloomy outlook for global FDI, positive driving forces remain at work. There are a number of reasons why foreign investors might remain committed to FDI even in the midst of the crisis. In particular, new sources of FDI have emerged, especially from the South-South investment.<sup>13</sup> Emerging economies and countries well-endowed with natural resources are becoming a growing source of FDI.<sup>14</sup> This will help boost FDI to developing countries, such as Viet Nam (where most FDI is from other developing countries), which is expected to register record FDI levels in 2008.<sup>15</sup>

Moreover, quickly-growing industries—where land access will be critical—are presently characterized by very promising FDI prospects.<sup>16</sup> Among these are agro-food industries (intermediate food products, processed seafood, and aquaculture products); and, in energy, chemistry, and environmental conservation: improvements in existing materials, photovoltaic energy, wind power, water processing, recycling of wastes and non-food use of agricultural products (e.g. bio-fuels, bio-polymers, bio-solvents, bio-materials). Data from the 2008 World Investment Report supports this trend as the primary sector (agriculture and mining) in the ASEAN region registered the largest increase in FDI inflows to \$5 billion from a little under \$2 billion in 2006.

Given the weakened position of advanced economies to invest abroad, the rise of South-South FDI as a new source for investment is relevant to developing countries. Estimates from UNCTAD suggest that South-South FDI have reached \$127 billion in 2004 and is expected to grow even more. It is important to stress that the bulk of South-South FDI is intraregional in nature. During 2002-2004, intraregional FDI already accounted for almost half of total flows to Asia, and was particularly pronounced between and within East Asia and Southeast Asia.

Among the key factors that motivate companies from the South to invest in other developing countries is the need to procure raw materials. Demand for raw materials has increased in tandem with economic development and population in developing countries. In order to secure provision of these materials, companies invest in critical inputs such as oil and agricultural commodities in other developing countries. Recent examples are China's FDI in pulp projects in Chile and the Russian Federation, iron ore and steel mills in Peru, oil in Angola and the Sudan, and Malaysian state-owned Petronas' investments in South Africa, Viet Nam, Cambodia and the Lao People's Democratic Republic.

In order to effectively attract this pool of inward FDI, access to natural resources, especially land, is particularly important for companies active in the primary sector, i.e. agriculture, fisheries and mining. Difficulties in gaining access to land can be an obstacle to foreign investment. The ability to acquire property, with secure rights of ownership or lease, at transparent prices and with limited restrictions, is an essential ingredient of a foreign investors' decision whether to invest in a new market.

### **Policy Framework on Access to Lands**

Public lands (15.8 million hectares) comprised over half of the land area of the Philippines. Most of these are classified as forest lands. However, as of 1997, only 5.4 million hectares (ha.) were forested, barely 0.8 million ha. were old growth forests, and 2.7 million ha. residual forests.<sup>17</sup>

Key elements of country's public land policies affect overall investment climate in the primary sector, among which are the following:

- The Constitutional preference for domestic nationals (the 60:40 rule) in the exploitation of natural resources and land ownership;
- The 25 + 25 years limits on public land lease (Article XII, Section 3, Philippine Constitution).

The constitutional bias for domestic ownership cuts across all avenues of investments in natural resources: forestry, pastures, fishponds, and mining. Notwithstanding this inherent advantage, Filipino nationals have limited access to large and long-term financing for the development of long term crops, specifically timber trees. In the process, many lands are underutilized.

The constitutional land limit has long discouraged large-scale tree crop development in Mindanao in contrast to Malaysia and Indonesia.<sup>18</sup> The 1935 Constitution provides that corporations can own up to only 1,024 ha. of agricultural lands.

As a result, few multinational companies engaged in development of rubber industry in the 1950s to the 1970s invested in the Philippines. This land ownership limit was later validated by the 1973 and 1987 Constitution. This provision contributed to the slow (and smaller scale) development of oil palm, rubber and other tree crops. In stark contrast, there were no (or less) stringent limits in Indonesia, Malaysia and Thailand where rubber and later oil palm plantations flourished.<sup>19</sup>

If the 1,024 ha. limit was something investors could live with, the maximum lease rule is deemed by investors as short for two cycles of rubber (70 years) and even of oil palm (60 years). Some even cited three cycles to even out the fluctuation of world prices of commodity crops.

#### **Motivations for Land Ownership Restrictions**

Land is a finite resource and key factor of production whose management and utilization have been controlled and regulated by the government. Given its relative importance to the economy, the range of approaches to regulate foreign land ownership is striking. In one sense this should not be surprising given that the issue is largely unregulated by international law, leaving states to legislate in accordance with their own policies and requirements.<sup>20</sup>

A number of different possible reasons and policies exist for restricting and regulating foreign ownership and use of land and for adopting different techniques. Some of these include the following:

- To protect National Security;
- To prevent general foreign economic domination;
- To prevent or restrict foreign-based speculation in land;
- To preserve the social fabric of the nation;
- To indirectly control immigration; and,
- To control the amount of direct foreign investment.

On the other hand, the objective of complete deregulation of foreign land ownership (or at least a reduction in levels of restriction) is to create an environment favourable to foreign investment. Such policies may be freely chosen or in response to external pressures to liberalize the foreign investment regime. They may seek to specifically encourage investment in land, but more frequently land ownership will be ancillary to industrial or agricultural investment. In this context, it can be important for a foreign investor to own the land on which their investment is sited not only to acquire the benefits of use which ownership affords, but also to use the land as security to raise capital by way of charge or mortgage. Consequently the ability to own land and the ease with which such ownership can be acquired may be a factor in investment decisions.

### **Legal Sources of Restrictions**

The range of sources for restrictions on land ownership is also very broad. Although most restrictions result from legislation, other legal authority includes constitutions, administrative regulations, and even judicial decisions. In some countries restrictions are contained in specific laws, in the general land law or code, in investment laws and in laws restricting the rights of foreigners in general.

Meanwhile, there is no consistent method by which constitutions deal with the issue of land and foreign land ownership. Generally, constitutions may address the matter in one of a number of ways. First, there may be no reference to land or foreign land ownership. Second, they may address the issue of compensation for expropriation which is more of a fundamental rights issue than a land management concern. Third, constitutions may provide that foreign states can only acquire land for diplomatic and consular purposes. Finally, a constitution may contain restrictions or even outright prohibitions on foreign ownership of land. Examples include Mexico, Honduras and Guatemala, whose constitutions limit the areas in which foreigners can own land.<sup>21</sup>

In some countries, the constitution imposes a total ban on foreign land ownership, such as Cambodia, which restricts the right to land ownership to Khmer citizens and Khmer legal entities (Article 44(1)).<sup>22</sup> Bulgaria also provides an absolute prohibition, as even property acquisitions through legal inheritance must be transferred (Article 22(1)).<sup>23</sup> In a similar situation however, the Philippines appears to permit those who acquire land by hereditary succession to keep it.

While it is questionable whether the location of such a restriction in a country's constitution will affect its normative strength, it certainly may affect the chance of it being amended. A regulation, for example, is easier to amend than a restriction entrenched in a state's constitution.

### **Regulatory Approaches to Land Ownership: A Survey of Selected Countries**

There is wide variety of techniques in ownership regulation being applied across the world (*See Annex A*). Different approaches adopted by similar countries (in terms of stage of development, location, resource base) suggest that more subjective factors, such as public opinion, play a role in determining certain measures. The Food and Agriculture Organization (FAO) have broadly categorized these approaches as follows:<sup>24</sup>

- **The Outright Ban.** Few countries surveyed have an outright ban on foreign ownership or use of land. Some countries such as China, Vietnam, Ethiopia and a number of others form a distinct category in which nationals are not permitted to own land. However, it is important to note that China grants 'equal treatment' to foreigners by giving them land-use rights up to seventy (70) years. By the end of 1990, China had sold lands located in special economic zones in Shenzhen to both domestic and foreign investors.

Other countries which prohibit foreign outright ownership are economies in transition in Eastern Europe and the former Soviet Union, and many of these states are becoming more liberal, as in the case of Slovenia and Lithuania. In Albania, foreigners are not allowed to own land but they can enter into lease agreements. In Armenia, foreigners cannot own land but they can enter into land-use agreements. Finally, Saudi Arabia does not allow foreign land ownership.

- **Intermediate Restrictions.** Of the countries considered, the majority adopt an intermediate approach to foreign land ownership, to wit:
  - ◆ ***The “Key Sector” Approach.*** This approach limits or excludes foreigners’ rights in real property that affect certain economic areas of particular importance to the country, e.g. land for essential economic purposes such as agriculture or mining, and designated strategic sections of a country such as land along borders and coasts.

A number of states place restrictions on the acquisition of rural and agricultural land by foreigners. In Ireland, resident foreigners for less than seven years are not allowed to purchase, lease or acquire interests in rural land unless permitted by the Land Commission. Similarly, in Brazil, restrictions are placed on the rights of foreign individuals and companies to purchase and rent rural lands.

In New Zealand, prior approval of the Land Valuation Tribunal is required with respect to purchase (or lease for over 3 years) by foreigners of land classified as “public reserve” or land above a certain size which

is not classified for commercial, residential or industrial purposes.

While foreigners can purchase land in Turkey, they are not permitted to buy land in villages. In Finland, foreigners are prohibited from owning land for recreational purposes to preserve the integrity of the Finnish countryside. By contrast, in Australia, restrictions apply to acquisitions by foreigners of urban lands (land not used wholly or exclusively for business of primary production).

- ◆ **Land Quantity Restrictions.** A limit may be set on the amount of land a foreigner may own with or without prior authority as in the case of Trinidad. In the United States, owners are required to report the size of land holding. Such restrictions apply to all types of land or only to specific types of land, as in the case of New Zealand.

## Conclusion

Legal restrictions on ownership and use of land by foreigners are designed to achieve a variety of policy objectives that may be unique to the circumstances of each state. Regardless of the implications of foreign land ownership, it is an issue that can evoke nationalist and protective sentiments. In most countries, public perceptions frequently play a significant role in determining the nature and extent of the restrictions imposed.

However, the economic imperatives for developing countries like the Philippines to finance its development requirements have renewed efforts to reform the country's land use and ownership policies as embodied in the 1987 Constitution. More so, the challenges and opportunities posed by the global financial crisis have underscored the need to ease restrictions in land use and ownership following the examples of Korea and Thailand during the Asian financial crisis.

Perhaps the basic reform in this case requires a simple act of removing the provisions on foreign capital from the Constitution and placing them within the ambit and control of the legislature. Specifically, the proposed amendment to the Constitution means simply to delete those specific provisions that delimit actions on the role of capital in sectors of the economy. Thereafter, the legislature is empowered to enact the appropriate laws governing the following issues:

- Foreign land ownership; and,
- Fixed equity ratios between foreign and domestic capital in the matter of land ownership and natural resource exploitation by corporations in the country.

It would be instructive for Congress to look at the various regulatory approaches presented in this paper in relation to foreign land ownership.

These could be applied to all the land within the national borders or be based upon the following:

- type of land (agricultural or recreational);
- type of use for which land is designated (residential);
- location of the land (border or urban areas);
- purpose for which the land is required (such as implementing an approved investment);
- quantity of the land (either per foreigner or the total amount available for foreign ownership).

Despite the variety of techniques available in this regard, it is important for policy makers to resist the temptation of deeper protectionism, and instead maintain an overall favourable business and investment climate. Moreover, it is important to point out that before any efforts to liberalize land ownership, the existing market efficiencies in the land sector should be addressed. Specifically, reforms measures should be made in the following:

- national land use policy to define and delineate uses of land;  
and
- an efficient land administration system.

Finally, FDI inflows are also influenced—to a larger extent—by other economic fundamentals such as large market size, higher education levels and productivity, better infrastructure and lower domestic lending rates. Moreover, FDI inflows from developing countries are influenced more by costs like tariffs and fiscal incentives. Hence, the government should work towards reducing operational barriers, e.g. approval process, and sectoral restrictions, e.g. equity participation, limiting FDI inflows.

## Endnotes

- <sup>1</sup> Prepared by Novel V. Bangsal and Leni Lebrilla of the Congressional Planning and Budget Department, April 2009.
- <sup>2</sup> Sec. 2. "All lands of the public domain, waters, mineral, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration development and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture or production sharing agreements with Filipino citizens, or corporations or associations [at least sixty per centum of whose capital is owned by such citizens], **DOMESTIC OR FOREIGN**. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant."
- <sup>3</sup> Sec. 3. "Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the users to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. **CITIZENS OF THE PHILIPPINES AND [P]private corporations and associations, DOMESTIC OR FOREIGN** may [not] hold such alienable lands of the public domain [except] by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares area, OR ACQUIRE SUCH ALIENABLE LANDS, NOT TO EXCEED TWENTY-FIVE HECTARES IN AREA, BY PURCHASE OR GRANT. [Citizens of the Philippines may lease not more than five hundreds hectares, or acquire not more than twelve hectares thereof by purchase, homestead or grant.]"

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- 4 Press release, House of Representatives, September 2009
- 5 Gerardo Sicat, UPSE, 2006.
- 6 2006 World Investment Report, UNCTAD
- 7 Global Investment Prospects Assessment for 2005-2008,  
UNCTAD
- 8 2008 World Investment report, UNCTAD
- 9 Ibid.
- 10 UNCTAD Investment Brief No. 1, 2009
- 11 BSP website, 2009
- 12 Ibid.
- 13 An emerging trend in FDI is the rise of FDI from developing  
countries. Most of these investments end up in other  
developing countries, contributing to “South-South” economic  
growth.
- 14 2006 World Investment report, UNCTAD
- 15 Ibid.
- 16 Ibid.
- 17 DENR, 2002 Philippine Forestry Statistics
- 18 Roland Dy, World Bank, 2005
- 19 Ibid.
- 20 Stephen Hodgson *et al*, FAO Legal Papers Online No. 6,  
December 1999
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 Discussions in this section were based on FAO Legal Papers  
Online No. 6.

### Annex A. Provisions on Foreign Ownership of Land by Country

| Country     | Legal Provisions   |
|-------------|--|
| China       | Foreign companies are not allowed to own land though they may avail of land use rights via the contract and compensation system. Up to 100% foreign ownership is allowed in a few sectors of the economy, but is prohibited and restricted in so many areas, particularly those which are not in line with the State Plan  |
| Indonesia   | Land cultivation right is given to legal entities domiciled in Indonesia including foreign companies and can be used as collateral or transferred to a 3 <sup>rd</sup> party under the government approval. The title is normally granted for 35 years but may be extended to 60 years and it can be renewed for a maximum period of 35 years if the land is properly maintained and managed.  |
| Malaysia    | Foreigners are allowed to acquired land and buildings for business and residential purposes. Ownership of industrial land developed by the State Economic Development Corporation are usually on leasehold basis from 30 to 99 yrs.  |
| Philippines | The 1987 Constitution bans foreigners from owning land. The Investors' Lease Act (1994) allows foreign companies investing in the Philippines to lease land for 50 years, renewable for another 25 years, for a maximum of 75 years. The 1995 Mining Act (RA 7942) gave foreign investors 100% control over a maximum of 81,000 hectares of mineral lands for 25 years, renewable for another 25 years.  |
| Singapore   | Foreign companies lease land from the government for 30 yrs and can be extended to 60 yrs.   |
| Sri Lanka   | Foreigners are permitted to own land, but there is now a 100% transfer tax for foreigners in Sri Lanka, thus effectively doubling the price of property. This may be circumvented by arranging very long term leases, or, in condominium, by buying above a certain story. A recent law has banned construction within 330 feet of the shore.  |
| Thailand    | <p>Property ownership for foreigners in Thailand is carefully controlled. Without special permission from the Minister of the Interior, foreigners are not allowed to own the land on which any piece of property is found, or to own a condo in a building if 49% of the other condos are foreign-owned.</p> <p>For those with 49 million bath (\$1,100,000) to spare, no problem, as this sum will allow you to acquire just over a third of an acre.</p> <p>For the less well-heeled, one of the most common solutions is setting up a Thai-registered limited liability company and buying real estate through this company, but there must be at least seven shareholders in the company, and the foreign shareholder cannot hold a stake of more than 49%. The Ministry of Interior, while ostensibly not wishing to stymie foreign investment, is cracking down on the use of Thai-owned companies which appear to hold land for foreigners, so more foreigners are looking at alternatives to this method. Purchase of land through a Thai spouse is one of these alternatives? if the spouse is prepared to sign a declaration that the property was purchased with funds that they had before the marriage</p> <p>Foreigners can lease land through a Thai nominee for up to 30 years, which can be renewed. The initial period of lease and subsequent extensions should be clearly stated in the contract, along with the declaration that these have been paid in advance. An option can be included in the contract to allow the lease to purchase the land outright if the law changes to allow foreign ownership.</p> <p>A right of usufruct provides temporary ownership rights for a period of up to 30 years, which may be renewed, but although these rights can be sold or transferred, they cannot be inherited as they expire upon the death of the holder.</p> |
| Mongolia    | Foreign citizens may lease land for at least 15 years and for up to 60 years with a single extension of up to 40 years. In other words, the maximum duration of lease in any given case is 100 years.  |

|              |  |
|--------------|--|
| Fiji Islands | The real estate market in this part of the Pacific is unregulated, so theoretically, foreigners are permitted to buy land and buildings. Only 8.2% of the land (around 142,000 hectares) can be bought freehold, with consent from the Ministry of Lands for land over 1 acre. The remaining land is available for lease, a small part (8.4%) from the Crown, and the rest from the indigenous people of Fiji. For the purchase of a residential property of less than 1 acre, buyers will need a residence or work permit.  |
| Tahiti       | French Polynesia, where Tahiti is found, now enjoys "overseas Country Status, giving it more autonomy over local affairs, while remaining under French jurisdiction for sectors including real estate. This means that, just as in metropolitan France foreigners have the same rights as locals when purchasing land or property.   |
| Canada       | There are few restrictions on foreign ownership of property in Canada, apart from land belonging to the British Crown. Some of this land may come up for sale, but will not be freehold. The restrictions tend to be at provincial or territorial level: on Prince Edward Island, for instance, non-residents need permission to buy more than 5 acres of property, and, in Saskatchewan, the acquisition of property of over 10 acres is not permitted. Nova Scotia, Newfoundland, and New Brunswick, the other east coast provinces, as well as the provinces of Quebec, Ontario, and British Columbia do not have restrictions on foreign ownership.  |
| Argentina    | There are no restrictions on foreign ownership of property in Argentina. Foreigners have the same rights in this respect as nationals, except for Argentine land near a foreign border. In this scenario, some additional paperwork is required  |
| Bahamas      | Non-Bahamians must register any purchase with the Foreign Investments Board, and special permits are required, if the property is land of over 5 hectares in size, if the property is to be used for rentals ? even partially? or if it is to be developed commercially. Foreigners should also register any property investment with the Exchange Control at the Central bank of the Bahamas if they wish to sell and take the proceeds out of the country in the original currency of the transaction.   |
| Belize       | Government approval from the Ministry of Natural Resources is needed for any property purchased by non-locals, but there are few restrictions. Some coastal areas and cayes are restricted and require municipal approval for freehold sale. The real estate market is totally unregulated.  |
| Brazil       | Foreigners can buy almost any property in Brazil, enjoying similar rights with the nationals of this country. There are only restrictions for foreign ownership of property situated in or near areas of national security, near the coast, and near borders with other countries.   |
| Ecuador      | Foreigners wishing to purchase real estate in Ecuador need permission (usually granted) to acquire land within 30 miles of the coast or a border. Certain land considered an area of national security by the government cannot be bought.   |
| Honduras     | There are some restrictions on owning real estate in Honduras. Individual foreigners are allowed to buy property not exceeding 3 quarters of an acre. Coastal land, and land within 25 miles of international borders is restricted but a purchase may be permitted subject to the approval of Tourism Institute and construction starts within 36 months.   |
| Mexico       | Article 27 of the Mexican Constitution does not allow foreign land ownership within the strip of land 100 kilometers wide along the borders and 50 kilometers wide along the country's beaches. Since the issuance in 1971 Decree, however, the Ministry of Commerce and Industrial Development has been able to authorise foreign investors and Mexican companies with foreign shareholders to obtain beneficial rights in Mexican trusts owning property in the zones. Legal title is held by a financial institution, the trustee, and the trust interest is marketed by a means of trust participation certificates. The trust will last up to 30 years after which new trusts can be granted on the same terms and conditions if the same foreign investor appears as beneficiary of the new trust. |
| Nicaragua    | Foreigners have the same rights as Nicaraguans regarding property ownership. The only areas to be wary of is in the autonomous regions, where the government needs to consult the indigenous people.   |

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| Panama         | There are few limitations on foreigners owning land in Panama. Property within six miles of international borders is out of bounds, and there are restrictions on some island and waterfront property unless it is situated in one of the Tourism Zones. Beachfront properties must provide a right of way. Building over the water also requires a permit with a special concession from the maritime authorities and the Ministry of Finance, with the exception of Isla Contadina in the Pearl Islands.   |
| Spain          | There are no restrictions on property ownership for foreigners, with the exception of military land and land near international borders.   |
| Australia      | Foreigners not living in Australia, and corporations, can acquire up to 50% of residential developments, and are permitted to buy new property or land for building as long as construction starts within 12 months of purchase. Older properties can be purchased on condition that at least 50% of the purchase price is spent on renovation, further construction or other improvements on the property. In all cases, however, foreign nationals need to obtain approval from the Foreign Review Board. This application should take roughly 40 days.  |
| Bulgaria       | There are no restrictions for foreigners wishing to buy buildings in Bulgaria, but land is restricted to Bulgarian nationals only. This can be legally circumvented by setting up a Bulgarian company and buying the land through the company. When Bulgaria joins the EU, this restriction is expected to be lifted.  |
| Croatia        | Foreigners can purchase real estate in this country if they have approval from the Ministry of Foreign Affairs. The approval is issued if Croatians can purchase real estate in the country of the purchaser. This approval can take up to 12 months, but can be reduced if the property is bought via a domestic company, which can be entirely owned and controlled by a foreigner.  |
| Czech Republic | Real estate may be acquired by EU citizens with a Czech spouse of those who are permanent residents in the Czech Republic. An officially registered legal entity can also buy real estate. These restrictions are expected to be lifted in 2009, when the Republic's first five years' membership of the EU is up.   |
| Estonia        | There are no restrictions for foreigners purchasing property in Estonia. Citizens of the EU, Norway, Iceland, and Liechtenstein can buy land of up to 24.7 acres with permission from the local country governor. Land can be bought through a foreign corporation, but for large plots of forest, the company needs to be on the Estonian commercial register, and to have been active in the forestry or agricultural produce sector for at least three years.   |
| Hungary        | Under the Land Law foreigners may acquire land, except agricultural land, with the permission of the Ministry of Finance according to the set criteria, though a resident foreigner with Hungarian ID card does not require such permission. Purchase of land by foreigners is limited to 6,000 square meters; leases may be granted for 10 years for up to 300 hectares.  |
| Poland         | Foreign individuals and companies registered abroad or controlled by foreigners can buy land with the permission of the Minister of Internal Affairs and, depending on the location of the land, consent of the Ministers of Defense and Agriculture. Applicants are required to prove their ties with Poland (not a formal requirement): that they are licensed to do business in Poland; and the acquisition of the property must be justified by "actual needs". Under liberalized requirements passed in 1996, foreign individuals and firms may own an apartment, 0.4 hectares of urban land or up to one hectare of agricultural land without the need for a permit. These provisions are independent of the special regime in place for EU companies. |
| Romania        | The acquisition of apartments and buildings is unrestricted for foreigners, but land is not allowed to pass to non-Romanians unless it is via a Romanian company (even 100% foreign-controlled). Some land, such as forest land, reserves and coastline, cannot be bought by anyone, regardless of nationality.  |
| Cyprus         | EU citizens are allowed to buy an apartment or a villa, and more than one plot of land if they wish. Non Europeans can buy an apartment villa, if the villa is on land or no more than 1 acre. In either case, buyers must apply to the Council of Ministers to enable the transfer of the title deeds to go from  |

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| Belgium     | There are no foreign ownership restrictions in acquiring Belgian property.  |
| France      | There are no restrictions on who can acquire real estate in France, and foreigners are treated the same as French citizens when buying property.  |
| Italy       | There are no restrictions on who can buy property in Italy.   |
| New Zealand | There are no restrictions on foreign property ownership under NZ\$10 million. Acquisition over NZ\$10 million are controlled by the Overseas Investment Commission (OIC), a statutory body established under the Overseas Investment Act of 1973. In assessing applications for foreign investment, OIC considers the extent to which the proposal will promote New Zealand's economic growth and development through the efficient utilization of resources. |

Sources:

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