

## A LOOK INTO LAND OWNERSHIP IN SABAH FOR NON-SABAHANS

Situated on the enchanting island of Borneo, Sabah, often referred to as "*The Land Below the Wind*", stands as Malaysia's second-largest state. Sabah attracts people with its rich natural resources, diverse culture, and beautiful landscapes as many are drawn to its growing economy, both locally and internationally. For non-Sabahans aspiring to own land in this picturesque region, it is essential to navigate through specific regulations. This article seeks to unravel the intricacies of land ownership, offering insights into both the opportunities and challenges inherent in the process.

### **Legislative Framework**

Pursuant to the Federal Constitution of Malaysia, land matters generally lie within the jurisdiction of the State Authority of each state in Malaysia.[1] In Sabah, the main ordinance regulating the alienation and occupation of State Lands is the Sabah Land Ordinance 1930 (Cap 68).[2] Furthermore, it also encompasses the Land Acquisition Ordinance 1950 (cap 69) which authorizes the acquisition of land for public purposes and directives mandated by the State Government.[3] These legislative measures serve as valuable resources, offering insights into the nuanced landscape of land acquisition. They delineate the meticulous application procedures, eligibility, criteria, and constraints specifically applicable to individuals seeking land ownership in Sabah.

### **Classification of Land in Sabah**

Land classification plays a pivotal role in comprehending the varied geographical terrain of Sabah, shedding light on both its diverse nature and the associated land-use restrictions. Notably, certain types of land can only be acquired by specific groups, adding an additional layer of complexity to the understanding of land in the region. To start off, lands in Sabah can be categorized into four types, namely:

(a) State Lands.[4]

(b) Reserved Lands.[5]

(c) Forest Reserve.[6]

(d) Alienated Lands.[7]

Additionally, under the Sabah Land Ordinance, State Land is further divided into the following classes:[8]

(a) Town Lands. Town Land signifies all land included within the boundaries of a town declared under this or any previous Land Ordinance.

(b) Country Lands. Country Land signifies all State or alienated land not included within the boundaries of a town declared under this or any previous land ordinance.

Moreover, land is registered under various categories:[9]

(a) "**NT**" for Native Title, which means an entry in the Native Title Register or in the Field Register under Part IV. It is designated for native ownership.

(b) "**FR**" for Field Register, which means a land classified under Native Title. It is a temporary title whereby the final title has yet been issued by the land office.

(c) "**CL**" for Country Lease, are land classified outside town area and leases are either freehold, 999, 99 or 60 years.

(d) "**PL**" for Provisional Lease, which refers to land that are yet to be surveyed by the Land and Survey Department and subject to availability of land.[10]

### **Restrictions on Land Ownership for Non-Sabahans**

The Sabah Land Ordinance was meticulously crafted to implement a range of mechanisms designed to protect the rights and interests of the indigenous population in Sabah. It expressly provides that except with the written permission of the Minister all dealings in land between non-natives and natives are expressly forbidden and no such dealings shall be valid or recognised in any court of law unless they shall have been entered into and concluded before the 16th day of January, 1883, or in the terms of the next following clause. [11]

Therefore, individuals who are non-Sabahans, as well as non-indigenous individuals in the state, are restricted from acquiring native land and this includes land classified under the Field Register.

## **Exceptions to the General Restrictions**

Despite the aforementioned limitations, there are still specific exemptions that allow foreigners to bypass these restrictions on land ownership. The Government of Sabah has released a Circular on the Guidelines for the acquisition of real estate by foreign interests in the State of Sabah 2022.[12] This guideline is an amendment to the 2021 Guidelines, and it aims to explain the procedures and conditions for the acquisition of real estate by foreign interests in the State of Sabah.

In the Guideline, foreign interests are defined as non-Malaysians, permanent residents, foreign companies or foreign institutions and local companies or local institutions where parties in details (a) and/or (b) and/or (c) own more than 50% of the voting rights in the local company or local institutions concerned.

Acquisition of only one residential and residential and office unit with a minimum value of RM500,000 per unit is granted for the following category:[13]

- (a) Foreign nationals of commercial officer status who are currently serving the government;  
or
- (b) Foreign nationals of commercial officer status who are currently serving with non-governmental organisations who receive a minimum monthly income of RM8,000; or
- (c) Permanent residents who hold a red identity card.

Additionally, foreign interests may also acquire residential units such as high-rise housing/apartments, condominiums, or high-rise commercial suites in mixed development valued at RM600,000 and above per unit that has been completed or is still under construction. This decision is in effect for a period until the State government decides to review the selling price threshold value for high-rise housing/apartments, condominiums and commercial ownership residences for foreign ownership.[14]

Moreover, Sabah's Chief Minister Hajiji Noor has announced that they will table a revised version of the Sabah Malaysia My Second Home ("**SMM2H**") programme in the state assembly soon.[15] SMM2H is the state government's initiative that allows foreigners to stay in Malaysia on a long-term basis. While the SMM2H program itself does not provide direct property ownership, it allows participants to purchase residential property in Sabah.

The guidelines for property ownership may vary, and participants are usually allowed to buy property above a certain value. The anticipated revision of the SMM2H program, as announced by Chief Minister Hajiji Noor, is poised to enhance Sabah's appeal and attract increased investments.

## **Applications Process to Acquire Property in Sabah for Non-Sabahans**

At the time of writing this article, the application process entails following the specific guidelines and procedures set forth by the Sabah Land and Survey Department. Prospective buyers typically need to submit a formal application, specifying the intended use of the land and providing relevant details. The authorities then review the application, taking into consideration factors such as the purpose of land use and compliance with local regulations. The application process may also involve scrutiny of the applicant's background and adherence to financial requirements. Throughout the process, seeking professional legal advice can be beneficial to navigate the intricacies of land acquisition, ensuring compliance with the current laws and regulations governing property ownership in Sabah for non-Sabahans.

## **Conclusion**

In conclusion, navigating the intricacies of land ownership in Sabah for non-Sabahans requires a thorough understanding of the legal framework and application procedures. While the process may involve certain restrictions, it is designed to safeguard the cultural, environmental, and economic interests of the state. Sabah's rich cultural and environmental tapestry beckons, and with careful consideration and due diligence, non-Sabahans can embark on a rewarding journey of property ownership in this vibrant Malaysian state.

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1. Ninth Schedule, List 11- State List, Federal Constitution of Malaysia.
  2. Sabah Land Ordinance 1930 (Cap 68).
  3. Land Acquisition Ordinance 1950 (cap 69).
  4. S. 5, Land Acquisition Ordinance 1950 (cap 69).
  5. S. 28. Land Acquisition Ordinance 1950 (cap 69).
  6. S. 5A. Forest Enactment (No.2 of 1968).
  7. S. 9(1), Land Acquisition Ordinance 1950 (cap 69).
  8. S. 7, Land Acquisition Ordinance 1950 (cap 69).
  9. Property Hunter, The Hands-Down Best Guide on How to Buy Land in Sabah.  
<https://propertyhunter-my.shorthandstories.com/news/1970/01/8012/the-hands-down-best-guide-on-how-to-buy-land-in-sabah/index.html>.
  10. Sabah Law, FAQ - What rights do you have when purchasing property in Sabah with a loan,  
<https://www.sabahlaw.com/FAQsabahland.html#%3A~%3Atext%3DAI%20lands%20that%20are%20alienated%2Cco>.
  11. S. 17(1). Land Acquisition Ordinance 1950 (Cap 69).
  12. Pekeliling Mengenai Garis Panduan Perolehan Hartanah oleh Kepentingan Asing di Negeri Sabah Tahun 2022 (Pindaan ke alas Garis Panduan Tahun 2021),  
<https://www.sabah.gov.my/ecircular/incoming/skn/docs/out/skn000195.pdf>.

13. Part VI. No. 7.1, Pekeliling Mengenai Garis Panduan Perolehan Hartanah oleh Kepentingan Asing di Negeri Sabah Tahun 2022 (Pindaan ke atas Garis Panduan Tahun 2021), <https://www.sabah.gov.my/ecircular/incoming/skn/docs/out/skn000195.pdf>.

14. Part VI. No. 7.2. Pekeliling Mengenai Garis Panduan Perolehan Hartanah oleh Kepentingan Asing di Negeri Sabah Tahun 2022 (Pindaan ke atas Garis Panduan Tahun 2021). <https://www.sabah.gov.my/ecircular/incoming/skn/docs/out/skn000195.pdf>.

15. Revised Sabah MM2H to be tabled soon says Hajiji. <https://www.freemalaysiatoday.com/category/nation/2023/09/26/revised-sabah-mm2h-to-be-tabled-soon-says-hajiji/>.

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