

## SARAWAK LAND OWNERSHIP RIGHTS FOR NON-SARAWAKIANS

Sarawak, the largest state in Malaysia, is renowned for its rich cultural heritage, breathtaking natural beauty, and rapidly developing economy. As the state attracts increasing attention from domestic and international investors, the question of land ownership often arises. While Sarawakians[1] enjoy relatively unrestricted land ownership rights, non-Sarawakians – which include foreigners (non-Malaysians) and Malaysians from other states – are subject to certain restrictions.

### **Legislative Framework**

The legal framework governing land ownership in Sarawak is primarily comprised of the Sarawak Land Code,[2] which has been amended numerous times since its enactment in 1958. Apart from that, the Guidelines on the Acquisition of Properties[3] and any directives issued by the State government are also relevant sources providing for land ownership in Sarawak. These laws outline the application processes, eligibility criteria, and restrictions applicable to non-Sarawakians.

### **Classification of Land in Sarawak**

Before delving into the Sarawak land ownership rights of non-Sarawakians, it is paramount to appreciate the various categories of land in Sarawak. How a piece of land is categorised will have an impact on the acquisition of the land, as certain classifications of land are exclusive for specific groups of persons. It is interesting to note that the classification of land is done primarily to regulate land use in a multi-racial society, and to define the interest and land rights of the natives.[4]

Land in Sarawak is classified into five categories pursuant to the Land (Classification) Ordinance 1948 (which has since been repealed by the Sarawak Land Code),[5] which are:-

1. Mixed Zone Land (“**MZL**”), which refers to land that may be held by Malaysian citizens or permanent residents in Sarawak (be it natives or non-natives);[6]
2. Native Area Land (“**NAL**”), which refers to land held by natives under a registered document of title;[7]
3. Reserved Land (“**RL**”), which refers to land reserved by the Government under Section 38 of the Sarawak Land Code or prior corresponding laws, that is comprised within a National Park, Forest Reserve, Protected Forest or Communal Forest, and is occupied by the Federal or State Government;[8]
4. Native Customary Land (“**NCR**”), which refers to land in which customary rights, whether communal or otherwise, have lawfully been created prior to 1 January 1958 and still subsists today;[9] and
5. Interior Area Land (“**IAL**”), which refers to land which is not MZL, NAL, NCR, or RL.10 It is the only type of land over which the natives can create new native customary rights.[11]

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

Generally, as stipulated under Section 13A of the Sarawak Land Code, foreigners are prohibited from owning land in Sarawak.[12] They cannot acquire residential properties categorized as low-cost and low-cost plus land, vacant lands (without buildings), landed commercial properties, properties reserved exclusively for sale to the natives, etc.

Additionally, non-Sarawakians (as well as the non-natives in Sarawak) are prohibited from acquiring native land, which includes NAL, NCL, and IAL under Section 8(a) of the Sarawak Land Code.[13] This restriction is essential in safeguarding the cultural identity and ancestral legacy of the indigenous communities.

### **Exceptions to the General Restrictions**

Notwithstanding the general restriction elucidated above, there are still some exceptions to them. Foreigners who are permanent residents of Sarawak and non-Sarawakian Malaysian citizens may acquire land classified as MZL which are meant for residential purpose. Section 13B of the Sarawak Land Code also allows for land to be acquired by a specified group of persons should the Minister’s consent be obtained.[14]

Furthermore, according to Section 13E(2) of the Sarawak Land Code,[15] a foreign person, foreign company, foreign corporation or other foreign body may acquire an estate, interest or right in:-

- (a) any land within Special Development (Exemption from Prohibition of Foreign Interests) Area;

(b) any of the individual parcels within a building which has been sub-divided pursuant to the Strata Titles Ordinance 1995 (For example, high rise properties such as apartments and condominiums); and (c) any land with a building thereon for residential purpose and the market value of such land and building is not less than such amount as may be determined by the Minister by a direction published in the Gazette.

In relation to paragraph (c) of Section 13E(2) of the Sarawak Land Code, as per The Land (Market Value of Property for Foreign Acquisition) (Amendment) Direction, 2019, the market value for the land must be at least RM500,000 (for other divisions outside of Kuching) or RM600,000 (within the Kuching division). This is also one of the conditions for foreigners wishing to purchase residential properties under the "Sarawak- Malaysia My 2nd Home" (S-MM2H) campaign. Non-Sarawakians wishing to acquire high-rise and landed properties in Sarawak are only allowed to do so under their own names. This means they are unable to jointly purchase these properties with any Malaysian individual, be it their spouse, child, relative or friend.

### **Application Process to Acquire Property in Sarawak for Non-Sarawakians**

Non-Sarawakians must obtain prior approval from the Minister or State Planning Authority before acquiring property in Sarawak. The application process involves writing and submitting a detailed proposal justifying their intended acquisition of the land. Thus, the proposal will need to outline details including but not limited to the intended use of the land (i.e., the projects to be endeavoured on the land), the minimum equity holding as per the Guidelines on the Acquisition of Properties, the applicant's financial capability to purchase, develop, and utilise the land, and its potential contribution to the state's economy. The Minister or State Planning Authority will then carefully review each application, considering factors such as compliance with laws and regulations, economic benefits, and the impacts on the local community.

### **Conclusion**

Sarawak's land ownership landscape presents a unique set of opportunities and challenges for non-Sarawakians seeking to acquire land. The laws and regulations surrounding land ownership in Sarawak are designed to strike a balance between protecting the interests of native Sarawakians while also fostering economic development. The restrictions in place protect the rights and interests of the indigenous communities of Sarawak, while the exceptions open more window of opportunities for economic investments.

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1. At this juncture, it is important to note that Sarawakians consist of the natives and non-natives. The Sarawakian natives refer to the indigenous groups mentioned under the Schedule to Section 3 of the Interpretation Ordinance, 2005 (Cap. 61). Land ownership rights also differ among the natives and non-natives of Sarawak.

2. Land Code 1958 (Cap. 81).
3. Unit Perancang Ekonomi, Jabatan Perdana Menteri. (2014). Garis Panduan Perolehan Tanah. Retrieved from <[https://www.ekonomi.gov.my/sites/default/files/2020-03/GP\\_EPUJPM.pdf](https://www.ekonomi.gov.my/sites/default/files/2020-03/GP_EPUJPM.pdf)>.
4. Adam, F. J. (1998). Native Customary Rights over Land in Sarawak. *Journal of Malaysian and Comparative Law*, 25, 217-231, 224.
5. Land (Classification) Ordinance 1948 (repealed).
6. Land Code 1958 (Cap. 81), s 2.
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. Land Code 1958 (Cap. 81), s 5.
12. Land Code 1958 (Cap. 81), s 13A.
13. Land Code 1958 (Cap. 81), s 8(a).
14. Land Code 1958 (Cap. 81), s 13B.
15. Land Code 1958 (Cap. 81), s 13E(2).

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