

GUIDE TO ACQUISITION OF REAL ESTATE IN MALAYSIA BY FOREIGNERS

Introduction

Property prices in Malaysia are still among the cheapest in Asia making its property market attractive to foreign investors. Malaysia is continuously undergoing both economic and policy transformations to welcome foreign investments in various sectors including the real property market. This guide aims to provide foreign investors with a general overview on foreign ownership of property in Malaysia as well as to address some of the pertinent issues that may arise. Please note that this guide is not intended to be exhaustive, and we strongly recommended that specific legal, accounting or other applicable professional advice be sought if more comprehensive advice is required.

Overview of Real Property Law in Malaysia

In West Malaysia, land law is governed by the National Land Code, 1965 (“**NLC**”) which is modelled on the Torrens system. The states situated in East Malaysia (Sabah and Sarawak) are governed by their respective land laws. Under the NLC, no title to or interest in land will be transferred or created until the instruments effecting a dealing which is capable of being registered (i.e. transfers, leases, charges and easements) has been registered with the relevant local land registry or office. All relevant data, records and information pertaining to a real estate in Malaysia is kept by the local land registries or offices and shows the ownership and other rights that exist on the real estate. This record is open to public inspection upon payment of a fee. There are two categories of titles in Malaysia available for property owners, namely, freehold title (owner has permanent ownership of the property) and leasehold title (owner has possession of the property for a limited period).

Restrictions on Foreign Ownership of Property

Non-Malaysian citizens and foreign companies (“**Foreign Purchasers**”) are allowed to buy properties in Malaysia provided that they comply with certain requirements and restrictions imposed under the NLC, the Guidelines on the Acquisition of Properties (“**EPU Guidelines**”) issued by the Economic Planning Unit (“**EPU**”), and the relevant rules and regulations that may be imposed by the state authorities.

NLC Requirements

Under the NLC, Foreign Purchasers are not allowed to acquire any land (other than industrial land) in West Malaysia unless approval of the relevant state authority has been obtained.

EPU Requirements

Under the EPU Guidelines, Foreign Purchasers are NOT ALLOWED to acquire:-

- properties valued less than RM1 million per unit;
- residential units under the category of low and low-medium cost as determined by the state authority;
- properties built on Malay reserved land; and
- properties allocated to Bumiputera interest in any property development project as determined by the state authority (*NB. Bumiputera means a Malay individual or aborigine as defined in Article 160(2), Article 161A (6)(a) and Article 161A (6)(b) of the Federal Constitution of Malaysia*).

Further, the acquisition of any residential unit by Foreign Purchasers valued at RM1 million and above does not require the approval of the EPU (but falls under the purview of the state authorities and requires the relevant state authorities’ consent).

State Authority Requirements and Consent

Minimum Purchase Price

As land is a state matter, each state authority may impose conditions in respect of real property transactions involving foreign interests. For instance, the minimum purchase price for properties imposed on Foreign Purchasers in the Federal Territory (Kuala Lumpur and Putrajaya) is at RM1 million, whereas the minimum purchase price for residential properties imposed on Foreign Purchasers in the state of Selangor is at RM2 million (Zones 1¹ & 2²) and RM1 million (Zone 3³). Further, Foreign Purchasers are prohibited from purchasing landed residential properties in the state of Selangor unless the said property is issued with a landed strata title (e.g. gated community). Set out below are the various minimum purchase price for properties imposed on Foreign Purchasers as at 1 August 2018:-

¹ Districts of Petaling, Gombak, Hulu Langat, Sepang and Klang

² Districts of Kuala Selangor and Kuala Langat

³ Districts of Hulu Selangor and Sabak Bernam

STATE	MINIMUM THRESHOLD FOR FOREIGN RESIDENTIAL PROPERTY PURCHASE	
TERENGGANU, PAHANG, W.P KUALA LUMPUR, W.P PUTRAJAYA, PERAK, NEGERI SEMBILAN, KELANTAN, LABUAN and SABAH	RM 1,000,000	
PERLIS and SARAWAK	RM 500,000	
SELANGOR	RM 2,000,000 (for Zones 1 & 2)	RM 1,000,000 (for Zone 3)
PULAU PINANG	RM 500,000 (in Penang mainland with strata title)	RM 3,000,000 (on Penang island with landed or strata landed title)
KEDAH	RM1,000,000 (in Kedah State)	RM1,000,000 (on Langkawi Island)
MELAKA	RM 500,000 (with strata title)	RM 1,000,000 (with landed with strata title title)
JOHOR (<i>NOTE: Johor state government has given exemptions and special status to different parts of Johor. Further enquiries are necessary for each transaction.</i>)	RM1,000,000	

NOTE: The minimum purchase price in table above and other conditions imposed by the state authority may change from time to time and it is prudent for Foreign Purchasers to obtain legal advice on this matter.

State Authority Consent Application

Under the NLC, state authority consent is required by a Foreign Purchaser prior to any acquisition of land in Malaysia. The solicitor for the Foreign Purchaser will submit the application for the state authority consent and this application process would typically require at least 2 months for its approval. Where the Foreign Purchaser takes a loan for the acquisition of a property and the application of the state authority consent is rejected, the bank providing the loan will not release the loan sum to the developer

or vendor. Subsequently, the developer or vendor may terminate the sale and purchase agreement (“SPA”).

Procedures for Acquiring a Property by a Foreigner

Foreign Purchaser to sign the developer’s sales form in the case of sub-sale transaction, to sign the offer to purchase form with the vendor)



Foreign Purchaser to apply for financing to purchase the property (if necessary)



Foreign Purchaser to provide the following documents to the solicitor:
(i) photocopy of the Foreign Purchaser’s passport
(ii) correspondence address and contact number(s) of the Foreign Purchaser
(iii) income tax number of the Foreign Purchaser and the place of submission of the income tax (applicable for sub-sale purchase only)



Within fourteen (14) days from the date of signing of the sales form (or offer to purchase), the Foreign Purchaser to sign the SPA, deed of mutual covenant (if applicable) and other transactional documents. Foreign Purchaser to pay the deposit of 10% of the purchase price to the developer or vendor



Solicitor to apply for state authority consent. Foreign Purchaser to provide the following documents to the solicitor:-
(i) One (1) certified true copy of the SPA
(ii) One (1) certified true copy of the Foreign Purchaser’s passport
(iii) One (1) certified true copy of constitution (if the Foreign Purchaser is a foreign company)
(iv) Latest quit rent and assessment receipt of the property
(v) Application form under Section 433B of the NLC



Foreign Purchaser to pay the balance purchase price in accordance to the Third Schedule of Schedule H HOUSING DEVELOPMENT (CONTROL AND LICENSING) (AMENDMENT) REGULATIONS 2015 (“Schedule H”) or the SPA



Pursuant to Schedule H, the developer shall deliver vacant possession of the property within 36 months from the date of the SPA (or such later date as may be approved by the relevant authority). Upon delivery of vacant possession, the developer shall deliver the strata title and certificate of completion and compliance to the Foreign Purchaser. In the case of sub-sale transaction, vendor shall deliver vacant possession to the foreign purchaser in accordance to the terms of the SPA.

Real Property Gains Tax (“RPGT”)

Under the Real Property Gains Tax Act 1976, every person including Foreign Purchasers are subject to real property gains tax and is required to file CKHT Form 1A to the Inland Revenue Board of Malaysia for chargeable gains on any disposal of any property. Set out below are the applicable RPGT rates imposed on capital gains arising from the sale of any property with effect from 1 January 2019:-

RPGT 2019	RPGT Rate		
	Individual (Citizen/ Permanent Residence)	Individual (Non-Citizen)	Company
Disposal within 3 years from the date of acquisition of the property	30%	30%	30%
Disposal in 4 th year	20%	30%	20%
Disposal in 5 th year	15%	30%	15%
Disposal in the 6 th year and subsequent years	5%	10%	10%

Legal Fees and Stamp Duties

It is pertinent for a Foreign Purchaser to note that every conveyance of any property in Malaysia shall be subject to the following stamp duties with effect from 1 July 2019:-

Stamp Duties	Example of Purchase Price of RM2,000,000
1% on the first RM100,000	1% x RM100,000 = RM1,000
2% on the amount from RM100,001- RM500,000	2% x RM400,000 = RM8,000

3% on the amount from RM500,001- Rm1,000,000	3% x RM500,000 = RM15,000
4% on the subsequent amount	4% x RM1,000,000 = RM40,000
Total	RM64,000

Further, a Foreign Purchaser may also be subject to the payment of legal fees based on the Solicitors’ Remuneration (Amendment) Order 2017 as stated in the scaled table below:

LEGAL FEE (SPA and Loan Agreement)	
Value of the Property (RM)	Rate
For the first 500,000	1% (subject to a minimum fee of RM500)
For the next RM500,000	0.80%
For the next RM2,000,000	0.70%
For the next RM2,000,000	0.60%
For the next RM2,500,000	0.50%
Where the adjudicated value exceeds RM7,500,000	Negotiable, but shall not exceed 0.50%

Messrs. PW Tan & Associates

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PW TAN & ASSOCIATES

CONTACT US

For further information, please contact us at
+603 6211 1126 or email our Partners:-

Dominic, Tan Pei Wei at dominic.tan@pwta.com.my
Shermaine, Tan Jyy Me at jyyemei.tan@pwta.com.my
Marieta Abdull Hamidat marieta@pwta.com.my

PW Tan & Associates
13A-5, Menara 1 Mont Kiara,
No. 1, Jalan Kiara, Mont Kiara,
50480 Kuala Lumpur, Malaysia.

www.pwta.com.my