

INFORMATION

PROPERTY INVESTMENT BY FOREIGNERS IN MALAYSIA

A GENERAL GUIDELINE

Compiled By

**Z E R I N
P R O P E R T I E S**

TYPES OF PROPERTY

1) Developments in Progress

Common for developer to sell properties before building.

- **Residential Properties**

- Governed under the Housing Development (Control & Licensing) Act 2005 (“HDA”).
- Mandatory to use standardized Sale and Purchase Agreement (“SPA”) from HDA.
- Payment of purchase price is periodic and by instalments based on stages of work done
- Completion of SPA is within 24 months (houses) or 36 months (apartment / condominium) from date of SPA.
- Memorandum of Transfer will be executed upon issuance of title to the property.

TYPES OF PROPERTY

1) Developments in Progress (continues...)

Common for developer to sell properties before building.

- **Commercial Properties**

- A standardized format of SPA is adopted but not a mandatory form like the Residential Properties.
- Payment of purchase price is periodic and by instalments based on stages of work done and
- Completion of SPA is usually within 36 months from date of SPA.
- Memorandum of Transfer will be executed upon issuance of the title for the property.

TYPES OF PROPERTY

2) Completed Properties

Houses or commercial properties buildings that are completed.

- Terms are usually “as is where is basis”
- Residential properties not governed under HDA.
- Commercial properties are also not governed under HDA.
- Payment of purchase price is usually within 3 months from date of SPA.
- Completion of SPA is usually upon full payment and then ownership of property is transferred.
- Memorandum of Transfer will be executed simultaneously upon execution of SPA if title is available.

LOCAL TERMINOLOGY TO DESCRIBE SOME TYPES OF RESIDENTIAL PROPERTIES

1) Bungalow

A detached house on its own land

2) Semi-D

Short for semi-detached house and refers to a house joined to another. Two houses make up one building.

3) Terraced

Several units of houses that adjoined on both sides with each other where the end or corner unit connected on one side with usually some land space.

LOCAL TERMINOLOGY TO DESCRIBE SOME TYPES OF RESIDENTIAL PROPERTIES

4) Apartments / Condominiums

Multi-storey building or buildings comprising accommodation parcels within a land with shared services and facilities.

5) Gated & Guarded Community

Generally refers to houses guarded with security system and perimeter fencing for the surrounding development and usually with some shared services or facilities.

CATEGORY OF LAND

- 1) **Freehold** – held in perpetuity; or
- 2) **Leasehold** – land owned by the state and leases are for a term of usually for 60 or 99 years. Renewal of leases is fairly easy for further equivalent term with payment of premium to the State.

Foreigners can acquire both freehold and leasehold Properties

DOCUMENTS OF TITLE

Freehold or leasehold Properties are either issued with:

- 1) **Individual Title** – issued under the **National Land Code 1965 (“NLC”)** for land, houses, commercial properties that are commonly not multi-storey; or
- 2) **Strata Title** – issued under the **Strata Titles Act 1985 (“STA”)**
Commonly issued for multi-storey buildings eg. apartments, condominiums, commercial properties and now even for houses in gated and guarded communities.

Both types of titles have same legal status and rights and are protected equally under the NLC.

WHAT PROPERTIES CAN FOREIGNERS ACQUIRE?

All residential and commercial properties EXCEPT these types which are **restricted**:

- 1) Properties valued less than RM1,000,000 per unit;
- 2) Residential units under the category of low and low-medium cost as determined by the State Authority;
- 3) Properties built on Malay reserved land; and
- 4) Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

Note:

- Property acquisitions by foreigners are subject to the minimum price established for foreigners by the different states in Malaysia.
- They start from minimum RM1,000,000 per unit for most states, from 2014.
- ***Land is a state matter and it is important to check state laws before making any commitment, as the minimum purchase price is not standardized between states.***

APPROVALS TO BE OBTAINED

- In line with the announcement made by the government on June 30, 2009 to liberalise property acquisition by foreigners, the Foreign Investment Committee (FIC) guidelines were repealed.
- Previously, any acquisition of property by foreign interest requires the approval of the FIC under the FIC guidelines.
- The approval for property acquisitions will now only be required from the **Economic Planning Unit of the Prime Minister's Department (EPU)** where the acquisition involves:
 - i. Direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputera interest and/or government agency; and
 - ii. Indirect acquisition of property by other than Bumiputera interest through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, having property more than 50 percent of its total assets, and the said property is valued more than RM20 million

APPROVALS TO BE OBTAINED (continues..)

- All property acquisitions by foreign interest that do not require the approval of the Economic Planning Unit, Prime Minister's Department but fall under the purview of the relevant Ministries and/or Government Departments as follows:
 - a. Acquisition of commercial unit valued at RM1,000,000 and above;
 - b. Acquisition of agricultural land valued at RM1,000,000 and above or at least five (5) acres in area for the following purposes:
 - i. to undertake agricultural activities on a commercial scale using modern or high technology; or
 - ii. to undertake agro-tourism projects; or
 - iii. to undertake agricultural or agro-based industrial activities for the production of goods for export.
 - c. Acquisition of industrial land valued at RM1,000,000 and above;

APPROVALS TO BE OBTAINED (continues..)

- d. Transfer of property to a foreigner based on family ties is only allowed among immediate family members.
- e. Acquisition of residential unit by foreign interest valued at RM1,000,000 and above. This acquisition, however, do not require the approval of the Economic Planning Unit, Prime Minister's Department but falls under the purview of the State Authorities; **State Authority (Section 433B NLC).**

Application for State Authority Consent

- Land rules varies from state to state in Malaysia.
- Standard forms, payment of registration fees (about RM150 to RM500) and consent approval fees (from RM1,000 to RM10,000 depending on state). Payable to the State.
- Solicitors will usually provide services in application for State Authority consent.
- Decision of State Authority will usually be known within 2 to 3 months from application, depending on the efficiency of each State
- If consent not obtained, SPA will be terminated and moneys usually refunded without interests.

CONDITIONS IF EPU APPROVAL IS REQUIRED

Where approval from the EPU is required, the proposed acquisition is subject to equity and paid-up capital conditions as follows:

Equity condition

- Companies to have at least 30 percent bumiputera interest shareholding

Paid-up capital conditions

- Local company owned by local interest to have at least RM100,000 paid-up capital
- Local company owned by foreign interest to have at least RM250,000 paid-up capital

For direct acquisition of property, the equity and paid-up capital conditions imposed by the EPU must be complied with before the transfer of the property's ownership.

For indirect acquisition of property, the equity and paid-up capital conditions imposed by the EPU must be complied with within one year after the issuance of written approval.

BANK FINANCING FOR FOREIGN PURCHASER

- Local or foreign based Banks offer loan packages.
- In general, most foreigners are able to get margin of financing up to 70% and the length of loan can range up to 30 years or to maximum age of 65, whichever is earlier.
- Loan approvals subject to the foreign purchaser's financial standing.
- Malaysia My Second Home 10-years visa holders will usually entitled to higher margin of financing, up to 80%.
- Loan will be disbursed to Developer or owner of property upon satisfaction of all documentation, payment of the difference between the purchase price and loan amount granted and commonly upon payment of fees (legal, bank's processing fees, registration fees and property taxes).

FEES AND PROPERTY TAXES

Purchasers will pay the solicitors for the following upon acquisition of any property:

1) Legal Fees for:

- Sale / Transfer Documents
- Security / Loan Documents

Value of Property / Loan	Scale of Fees
1 st RM150,000	1% (min. of RM300)
Next RM850,000	0.7%
Next RM2,000,000	0.6%
Next 2,000,000	0.5%
Next RM2,500,000	0.4%
If excess of RM7,500,000	Negotiable but not exceeding 0.4% of such excess

FEES AND PROPERTY TAXES

(Continuation....)

1) Legal Fees for:

- Sale / Transfer Documents
- Security / Loan Documents

(If property purchased from Developer / Loan granted to purchase property from Developer)

Value of Property / Loan	Scale of Fees
RM450,000 or below	RM250
Between RM45,001 to RM100,000	75% of scale fee (i.e. less 25%)
Between RM100,001 to RM500,000	70% of applicable scale fee (i.e. less 30%)
Excess of RM500,000	65% of scale fee (i.e. less 35%)

FEES AND PROPERTY TAXES

2) Stamp Duty

The following are payable to the relevant authorities:

a) SPA

RM10 per SPA

b)

On Transfer of Property - Value	Rate
Up to RM100,000	1.0%
RM100,000 to RM500,000	2.0%
RM500,000 upwards	3.0%
On Principal Loan Sum - Value	Rate
Any sum	0.5%

FEES AND PROPERTY TAXES

3) Real Property Gains Tax (RPGT)

RPGT is levied on chargeable gains arising from the disposal of real property situated in Malaysia, or on any interest, option or other rights in or over such land, as well as the disposal of shares in real property companies.

The RPGT rates for non-resident individuals are as follows:

Time of Sale	Tax Rate %
Disposal within five years after the date of acquisition	30%
Disposal in the sixth year after the date of acquisition or thereafter	5%

FEES AND PROPERTY TAXES

3) Real Property Gains Tax (RPGT) – (Continuation...)

The RPGT rates for foreign companies are as follows:

Time of Sale	Tax Rate %
Disposal within two years after the date of acquisition	30%
Disposal in the third year after the date of acquisition	20%
Disposal in the fourth year after the date of acquisition	15%
Disposal in the fifth year after the date of the acquisition or thereafter	5%

FEES AND PROPERTY TAXES

4) Goods and services tax (GST)

- The effective date for the imposition of GST is from April 1, 2015 onward.
- GST replaces the sales tax and services tax with a rate of 6 percent (standard rate).
- The sale and letting out of residential properties are exempted from GST
- However, a person is liable to be GST- registered only if the annual turnover from letting out commercial property and, in some circumstances, the disposal of commercial property exceeds RM500,000.

THANK YOU

The information contained has been compiled to be used as a general guideline and reference of the conditions for acquisition of properties in Malaysia by foreigners.

It is advisable to seek the advice from solicitors about each individual's circumstances, special requirements and the governing laws and regulations in relation to the acquisition of any property in Malaysia.