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Property investment in Malaysia:
The procedures of acquisition by foreign interest

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1. Introduction

Quoted from the statement by the Malaysian Investment Development Authority (MIDA), Malaysia is recognized as one the most sought-after investment destinations by foreign entities for its favourable investment environment. Due to its strong position at global level, many investors have considered Malaysia as their manufacturing and global supply chain hub as well as services and regional operation hub. Further, Malaysian data centre market is rapidly growing and the market has witnessed significant investments in the recent times.

Many investors have leveraged the above factor in expanding their business and operation by acquiring properties in Malaysia. Investors outside Malaysia are allowed to acquire properties in Malaysia however they are restricted by certain regulations applicable to the property's dealings in Malaysia and this article will explain the current legal framework for properties acquisition by foreign interest.

2. What is "Foreign" interest?

"Foreign Interest" as defined under the guidelines issued by the Economic Planning Unit, under the Prime Minister's Department ("EPU") means any interest, associated group of interests or parties acting in concert which comprises:

(a) individual who is not a Malaysian citizen; and/or
(b) individual who is Permanent Resident; and/or

(c) foreign company or institution; and/or

(d) local company or local institution whereby the parties as stated in item (a) and/or (b) and/or (c) hold more than 50% of the voting rights in that local company or local institution.

3. The regulatory requirements

3.1 Approval of the State Authority - The National Land Code 1965 ("NLC")

The NLC is the primary legislation enacted to govern the laws related to lands, among others, the registration of land title, dealings, transfer of lands and others. The NLC also stipulate the requirement for a non-citizen or a foreign company in acquiring a property, specifically under Section 433B which states that a non-citizen or a foreign company can only acquire lands with the approval of State Authority.

The NLC was amended in 2017, which prior to such amendment, a foreign company acquiring an industrial land is exempted from obtaining the State Authority's approval. However, the amendment in 2017 has rendered all foreign acquisition to be subjected to the State Authority, regardless of the categories of the land.

<u>Who is State Authority?</u>

Malaysia is subdivided into 13 states and 3 federal governments and each state is ruled under the "State Authority" comprising of an assembly and government headed by the chief minister.

The State Authority is the planning authority in the State, responsible for general policies of the development and use of all lands and buildings in the state. Due to this vested power, any acquisition of lands or buildings in which they are located, is subject to the approval of the respective State Authority.

<u>State Authority's restrictions relating to Foreign Acquisition</u>

Foreign interests are allowed to acquire properties in Malaysia, whether its residential, industrial, commercial, agricultural and others however subject to the restrictions enacted under each respective States. The restrictions include the following:

(1) **Types / Categories of properties** – foreign interests are not allowed to purchase properties built on Malay reserved land, properties defined as low-cost or medium-cost units as determined by the respective State or properties allocated only for *Bumiputera* groups. Certain States may also prohibit certain categories from being acquired by foreign interest. For example, the foreign buyers in Selangor are only allowed to buy commercial, industrial and residential properties but for residential, only landed properties with landed strata titles are allowed. Foreigners are not allowed to purchase agricultural land in Selangor.

(2) **Minimum properties' price** – each State in Malaysia sets out the minimum threshold of property prices eligible for foreign acquisition. For example, the State of Johor and Selangor, the threshold is RM2 million. Whereas majority of States in Malaysia such as the Federal Territories of Kuala Lumpur, Putrajaya and Labuan, Terengganu, Pahang, Perak and Negeri Sembilan, the threshold is RM1 million and above. Meanwhile for some other States such as Kedah, Perlis and Sarawak the threshold is RM500,000.00. Foreigners are not allowed to acquire properties regardless of the type or the categories valued below the threshold determined by each State. Foreigners holding the Malaysia My Second Home (MM2H) Visa may also purchase properties in Malaysia at different threshold, generally about RM1 million and above, depending on the State where it is located.

<u>Will State Authority approve foreign acquisition?</u>

The State Authority will decide the foreign acquisition of properties at their absolute discretion. However, it has been long proven that State Approval will most likely be granted when the required documentations are in order. As such, it is established that the processes are regarded as administrative and the approval process takes approximately within 3 to 6 months for the State Authority's consent to be issued.

3.2 Approval of the Economic Planning Unit ("EPU")

<u>Who is EPU?</u>

The EPU is the principal government agency under the Prime Minister's department that is responsible for the preparation of development plans for the nation of Malaysia. Established in 1961, EPU's objective is to *'focus on development planning, on major problems in plan execution and on all forms of foreign aid'*.

EPU's Guidelines relating to Foreign Acquisition

When the acquisition of a property where the worth of the acquisition is more than RM20 Million, and the acquisition itself will result in a dilution of *Bumiputera* ownership on the property, then an EPU prior approval, as an additional requirement is necessary prior to the State Authority consent could be applied.

An indirect acquisition is not exempted from this requirement. When a property is acquired by other than *Bumiputera* interest through other means such as by way of 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% of its total assets, and the said property is valued more than RM20 million, such exercise will require prior approval from the EPU.

What is *Bumiputera* interest?

Bumiputera means the persons of Malay race or from the aboriginal or indigenous tribes in Malaysia as defined in the Constitution of Malaysia*. "Bumiputera* interest" is defined as interest, associated groups of interest or parties acting in concert that compromises, of a *Bumiputera* individual and/or, *Bumiputera* institution and trust agency and/or, local company or local institution whereby the *Bumiputera* entities hold more than 50% of the voting rights in that local company or local institution.

Situation where EPU approval is not required

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;
d) transfer of property to a foreigner based on family ties is only allowed among immediate family members; and
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 EPU but falls solely under the purview of the State Authorities.

How EPU considers approval?

EPU considers many factors including the location of the properties, the status of the land (as freehold or a leasehold), the capital standing of the foreign entities, the purpose of investment and many others. However, one of the mandatory conditions under the EPU guidelines is that the foreign company must procure 30% *Bumiputera* equity partner in the company. This should be done prior to the transfer of the deed of properties' title.

4. Conclusion

Despite the complex and strict approach of the local laws in Malaysia relating to the foreign acquisition of properties, many investors have managed to acquire properties in Malaysia as Malaysia is considerably open in accepting foreign investments, as part of the nation's development plans.

Malaysia will continue to offer the favourable investment environment to foreign investors through its availability of excellent infrastructures, telecommunication services, financial and banking services, supporting industries, skills and trainable workforce, as well as market opportunities offered through the 16 Free Trade Agreements that Malaysia has signed.

If you are considering to acquire properties in Malaysia and would like to obtain our legal services, please do not hesitate to contact us.

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