



ISSUES RELATING TO FOREIGN INVESTMENT

MALAYSIA Skrine

CONTACT INFORMATION

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1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

Yes. Pursuant to the National Land Code 1965, a non-citizen or a foreign company may acquire real estate only with the prior approval of the State Authority save and except where the real estate is subject to the category "industry" or to any condition requiring its use for industrial purposes.

In addition, the approval of the Economic Planning Unit of the Prime Minister's Department ("EPU") may be required depending on the nature of acquisition. Please refer to Paragraph 2 for further details.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

In addition to the State Authority's consent referred to in Paragraph 1, pursuant to the *Guideline on the Acquisition of Properties* issued by the EPU:



A. Foreign interest is not allowed to acquire:

- i) Residential units valued less than RM500,000 per unit (prior to 1 January 2010 the threshold was RM250,000);
- ii) Properties other than residential units valued less than RM500,000 per unit;
- iii) Residential units under the category of low and medium cost as determined by the State Authority;
- iv) Properties built on Malay reserved land; and
- v) Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

B. Subject to Paragraphs 1 and 2C, the approval of EPU is not required for acquisition by foreign interest of commercial unit, agricultural land and industrial land valued at RM500,000 and above but the property must be registered under a locally incorporated company and this condition must be complied with and notified to the EPU before the real estate is transferred.

Subject to Paragraph 1, the approval of EPU is not required for acquisition by foreign interest of residential units valued more than RM500,000 per unit or pursuant to the "Malaysia My Second Home" Programme.

C. The following property acquisitions, except for residential units, require the approval of the EPU:

- i) All 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) All 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% of its total assets and the said property is valued more than RM20 million.

The approval would be subject to the following conditions:

a) Equity:

The locally incorporated company is to have at least 30% Bumiputera interest shareholding;



- b) Paid-Up Capital:
 - 1) The locally incorporated company, if owned by local interest, is to have at least RM100,000 paid-up capital;
 - 2) The locally incorporated company, if owned by foreign interest, is to have at least RM250,000 paid-up capital.

D "Bumiputera" means:

- i) for Peninsular Malaysia
Malay individual or aborigine as defined in Article 160(2) of the Federal Constitution;
- ii) for Sarawak
individual as defined in Article 161A(6)(a) of the Federal Constitution;
- iii) for Sabah
individual as defined in Article 161A(6)(b) of the Federal Constitution.

"Bumiputera interest" means any interest, associated group of interests or parties acting in concert, which comprises:

- i) Bumiputera individual; and/or
- ii) Bumiputera institution and trust agency; and/or
- iii) local company or local institution whereby the parties as stated in item (i) and/or (ii) hold more than 50% of the voting rights in that local company or local institution.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Acquisitions that come within Paragraph 2C would be subject to the equity condition stated at Paragraph 2C(a).

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?



(i) Stamp Duty

Generally, stamp duty will be chargeable on the transfer instruments of the real estate. The amount of stamp duty payable is prescribed under the Stamp Act 1949. The stamp duty chargeable on a Memorandum of Transfer (Form 14A) or a Deed of Assignment for a sale of a real estate is : For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater- (i) RM1.00 on the first RM100,000; (ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000; RM3.00 on any amount in excess of RM500,000. The stamp duty for acquisition of a real estate is normally paid by the buyer.

Generally, stamp duty will also be chargeable on the transfer of interests in entities whether it owns real estate or not. The amount of stamp duty payable on transfer of any shares in entities as prescribed under the Stamp Act 1949 is: RM3.00 for every RM1,000 or fractional part of RM1,000 (to be computed on the price or value thereof on the date of transfer, whichever is the greater).

(ii) Registration Fees

Registration fees will be imposed on the Memorandum of Transfer (Form 14A) upon presentation of the same for registration at the Land Registry or Land Office. This varies from State to State. Generally, the registration fees are borne by the buyer of a real estate.

(iii) Real Property Gains Tax

Under the Real Property Gains Tax Act 1976 a disposer of real property or shares in a real property company has to pay real property gains tax on the chargeable gains arising from the disposal. Under the Real Property Gains Tax (Exemption) (No.2) Order 2009 (P.U.(A) 486/2009), any person is exempted from the payment of tax on the chargeable gain in respect of any disposal of a chargeable asset on or after 1 January 2010 where the disposal is made after five years from the date of the acquisition of such chargeable asset. Where disposal of a chargeable asset is made within five years from the date of acquisition of such chargeable asset, the payment of tax on the chargeable gain in respect of the disposal of such chargeable asset on or after 1 January 2010 is based on the condition that the amount of chargeable gain shall be determined in accordance with the formula provided under Section 2(2) of the Real Property Gains Tax (Exemption) (No.2) Order 2009 (P.U.(A) 486/2009). The effective rate of Real Property Gains Tax is currently 5%.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Pursuant to Paragraph 1, applications are to be made to the State Authority for their prior approval for the acquisition of real estate by non-citizen or foreign company. Pursuant to Paragraph 2C, applications are made to the EPU for their approval for direct acquisition and indirect acquisition of real estate.

For purposes of Real Property Gains Tax, both the disposer and acquirer are required to submit returns through prescribed forms with the Director General of Inland Revenue within a prescribed time.
