



ISSUES IN OWNERSHIP OF REAL ESTATE

MALAYSIA Skrine

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1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Land ownership in West Malaysia may be in perpetuity (i.e. freehold) or for a term of years not exceeding ninety-nine (99) years (i.e. leasehold). This depends on the tenure as stated in the document of title to the Land.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

In West Malaysia, the usual instruments include:-1. Memorandum of Transfer of the real estate in Form 14A pursuant to the National Land Code 1965 (where there is an individual title issued to the real estate). 2. Deed of Assignment (where there is no individual title issued yet to the real estate).

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

In West Malaysia, in respect of every piece of land alienated by the State, there will be two documents prepared, namely, the register document of title and the issue document of title. The latter will be issued to the registered proprietor meanwhile the former will be retained at the land registries (for titles evidenced by Grant or State Lease) or land offices (for titles evidenced by Mukim Grant or Mukim Lease), where it is bound in a register book and made available for inspection by the general public subject to payment of the prescribed fee for such searches to be conducted.

Where the register document of title is computerised pursuant to National Land Code 1965, a private search can be obtained immediately upon application and payment of the prescribed fee.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

In West Malaysia, the State does not guarantee title nor does it indemnify nor compensate any person for having a defeasible title due to no fault of their own. There is also no provision under the National Land Code 1965 for an assurance fund relating to title insurance. Title insurance is rarely obtained in Malaysia.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles include companies, foreign companies, joint ventures and partnerships. There is no one vehicle which is most tax efficient.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes. Real Estate Investment Trusts (REITs) in Malaysia come under the purview of the Securities Commission (SC) which has issued guidelines on REITs.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

- (a) 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.
- (b) Registration Fees – The 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.
- (c) 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%.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

- (a) Stamp Duty – In general, 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).
- (b) Real Property Gains Tax - As stated above, 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%.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Dealings in real estate in Malaysia are highly regulated.

There are two (2) land administration systems within Malaysia : (i) Torrens System in West Malaysia under the National Land Code 1965 and Sarawak under the Sarawak Land Code (Cap 81); and (ii) Non-Torrens System in Sabah under the Sabah Land Ordinance (Cap 68). Each State has its own land rules and the quit rents, fees, registration fees in respect of dealings of real estate may vary from State to State.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Only the registered proprietor is required to be registered on the title. Trust Deeds can also be filed at the Land Office but it is not compulsory.