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Penang has earned its place as a thriving business hub, especially in the manufacturing and logistics sectors. Located in the middle of the Northern region of Malaysia, its strategic location, growing infrastructure, and industrial potential have made it an attractive destination for businesses looking to expand.

If you're considering setting up a business in Penang especially when it involves the manufacturing industry, one of the major decisions you'll need to make is whether to buy or lease industrial land.

Each option brings its own set of advantages and legal considerations, and understanding these can help you make the right choice for your business.

This guide is here to simplify things and walk you through key factors like foreign ownership rules, zoning restrictions, necessary legal documents, government incentives, and financing options.

Understanding the Legal Landscape

In Malaysia, all land-related matters are governed by the National Land Code (NLC) 1965, which shapes how land ownership and transactions are handled. The system is based on the Torrens System from Australia, which ensures that land ownership is clearly defined and recorded in a Document of Title, giving landowners legal security and clarity.

Buying Industrial Land: Is It the Right Choice?

Owning industrial land can give your business the long-term stability and control it needs. However, ownership comes with its own set of obligations and costs. Here's what you need to know if you choose to buy.

1. Legal Requirements: Sale and Purchase Agreement (SPA)

When buying industrial land, the process begins with drafting a Sale and Purchase Agreement (SPA), prepared by an experienced lawyer. This document is critical as it lays out the terms and conditions of the transaction and protects the legal interest of both parties.[1] It is crucial that all terms and conditions are thoroughly negotiated by the lawyer.

Another route to consider is land alienation, where the state allocates land directly to buyers for specific industrial projects. This option may be advantageous if you're planning a large-scale development, but the process requires navigating state authorities and meeting specific criteria.

2. Development Obligations

Buying land in Penang often comes with an implied condition that the land must be developed within a certain timeframe, usually two years. This requirement, outlined under **Section 116 of the National Land Code**, serves to prevent idle land use.[2]

Penang is known for strict adherence to these obligations. Failure to meet development deadlines can result in penalties or even forfeiture of the land.

3. Costs and Risks

The initial investment required to buy industrial land is significant. Beyond the purchase price, you must budget for stamp duties, legal fees, property taxes, and ongoing costs such as quit rent and maintenance. There's also the risk that market conditions or changes in zoning could affect the value of the land, or that your business plans might not proceed as expected. It is essential to plan for these long-term financial commitments.

4. Financing Options for Purchasing Land

For businesses considering purchasing industrial land in Penang, various financing options are available. Local and foreign investors can secure financing through Malaysian banks, which offer commercial loans tailored to industrial land acquisition. Financial institutions such as Maybank, CIMB, and Public Bank offer competitive rates and flexible repayment terms for industrial property loans.

Additionally, the government offers financial assistance through schemes like the Soft Loan Scheme for Small and Medium Enterprises (SMEs)[3] and the Green Technology Financing Scheme (GTFS), aimed at promoting sustainable business practices.[4] It must be considered, however, that GTFS is applicable to any company with a minimum of 60% ownership of a Malaysian citizen or corporate entity.

Special Requirements for Foreign Investors

However, it is important to understand that Penang, like other states, has its own additional regulations, particularly around zoning and development.

If you're a foreign investor, the legal landscape becomes more complex. Non-Malaysians must obtain approval from the Penang State Authority under Section 433B of the National Land Code to purchase land.

Additionally, the state imposes minimum value thresholds for property purchases, which foreign buyers must meet. The value of acquired land must be RM 3 million and above if the land is located on the island and if the land is located on the mainland, the minimum value of the land is RM 1 million[5].

Delays in obtaining state approval can often frustrate the process, and in some cases, certain properties may be restricted for foreign ownership.

Exploring these options early can help businesses reduce the financial pressure associated with upfront land acquisition costs.

Leasing Industrial Land: A More Flexible Option

If buying seems like too big a commitment, leasing might be the ideal solution. Leasing offers flexibility, and it's often a more financially manageable option for businesses that want to conserve cash or test the market before fully committing to land ownership.

1. Legal Requirements: Lease Agreement and Registration

Leasing is often more straightforward but still requires a properly prepared lease agreement. For leases exceeding three years, the lease must be registered on the land title. A lawyer will ensure the agreement is properly executed and stamped for legal validity. It is worth noting that unregistered tenancies (leases of less than three years) may not offer the same legal protections, particularly in disputes.

2. Cost-Effective and Reduced Responsibility

Leasing typically involves less upfront capital than buying. You avoid the long-term risks of ownership such as property taxes and major maintenance costs, which are often the responsibility of the landlord. Leasing provides the flexibility to focus your resources on business operations while retaining the option to relocate or scale up if needed.

3. Tenancy vs. Lease

It's important to understand the legal differences between tenancy and lease agreements in Malaysia. Tenancies are short-term (usually up to three years) and are not registered on the land title, making the process simpler and quicker. However, leases—typically for longer terms—must be registered and offer more security, such as the right to make property improvements or sublet.

4. Risks Associated with Lease Renewals

While leasing provides flexibility, there is the potential risk of uncertain lease renewals. Businesses should carefully review the lease terms to understand the renewal process and negotiate for renewal options upfront. Some landlords may impose higher rents or new terms, creating business disruption.

To mitigate this risk, negotiating long-term leases with favourable renewal clauses is critical. Engaging legal counsel to ensure the lease provides security for future operations is important, especially if your business plans involve significant property development.

Key Considerations for Buying or Leasing

1. Zoning and Use Restrictions

Before buying or leasing, it's crucial to ensure the land is zoned for industrial use. Failing to comply with local zoning laws can result in fines, restrictions on development, or even the inability to operate your business. Engage legal counsel to conduct thorough land searches and verify that your intended use aligns with local zoning regulations.

2. Environmental Regulations and Mitigation Strategies

Manufacturing and other high-impact businesses must comply with strict environmental regulations set by the Department of Environment (DOE). Non-compliance can result in heavy fines, operational restrictions, or even the forced closure of your facility.[6]

One of the first steps is conducting an Environmental Impact Assessment (EIA), mandatory for certain industrial projects. Working with environmental consultants and legal advisors will ensure your operations meet environmental standards while minimising potential impacts. Investing in eco-friendly technologies, such as waste reduction systems or energy-efficient machinery, can not only ensure compliance but also help qualify your business for government grants promoting sustainability.[7]

3. Foreign Ownership Restrictions

Foreign investors face additional restrictions under **Section 433B of the National Land Code**, requiring state approval to purchase land. This process can be time consuming and uncertain, and certain properties may be restricted for foreign ownership. For many foreign businesses, leasing presents a simpler and faster option that bypasses the complexities of ownership.

4. Government Incentives for Industrial Investment

Penang is a hotspot for industrial investment, and the Malaysian government offers incentives designed to attract both local and foreign investors. Agencies like the **Malaysian Investment Development Authority (MIDA) and the Penang Development Corporation (PDC)** provide **tax breaks, grants, and subsidies** to support new business developments.[8]

For instance, foreign companies can benefit from **Pioneer Status (PS)**[9] or **Investment Tax Allowance (ITA)**, which offer income tax exemptions for a set number of years.[10]

Specific sectors such as manufacturing and high-tech industries may also qualify for special R&D grants. These incentives are critical in reducing the financial barriers to setting up industrial operations in Penang.

The Role of Legal Counsel

Navigating Malaysia's complex land laws—especially in a state like Penang—requires careful legal guidance. We at Azmi and Associates can guide you through the entire process, from conducting land searches and preparing sale or lease agreements to ensuring all documents are properly registered and stamped.

Our local expertise is particularly valuable when dealing with state authorities for approvals, such as zoning checks or foreign ownership issues. Engaging legal counsel early in the process helps anticipate and mitigate potential roadblocks.

Conclusion: What's Right for Your Business?

Deciding between buying or leasing industrial land in Penang depends on your long-term business goals and financial position. Buying offers long-term security and control, but it also comes with significant legal and financial obligations. Leasing, on the other hand, offers flexibility and a reduced financial commitment, making it an attractive option for businesses seeking operational agility.

By exploring government incentives, considering market trends, and understanding legal complexities, businesses can make informed decisions. Whether you decide to buy or lease, partnering with knowledgeable legal counsel will ensure your business complies with Malaysia's property laws, allowing you to focus on what matters most—growing your business in one of Malaysia's most dynamic industrial regions.

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Written by:

Mohamad Redzuan Idrus
Partner
redzuan@azmilaw.com

Nur Insyirah Mohamad Noh
Associate
insyirah@azmilaw.com

Corporate Communications
Azmi & Associates
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