AZMI & ASSOCIATES
advocates & solicitors

Introduction

This article provides information on the foreign purchase or leasing of commercial properties, industrial properties or agricultural land in Malaysia. Malaysia is renowned for its foreign-friendly property ownership regulations, making it relatively open for foreigners to invest in.

As one of the fastest-growing nations in the region, Malaysia is ranked among the top emerging markets for investment. Renowned for its investor protection and responsiveness in facilitating business needs, Malaysia is a foreign investor's ideal destination for investments and business ventures.

1. Investment Guarantee Agreements

Malaysia has entered into Investment Guarantee Agreements ("**IGAs**") which aim to promote a conducive environment for investments. IGAs will:

(a) protect against nationalisation and expropriation;

(b) ensure prompt and adequate compensation in the event of nationalisation or expropriation;

(c) provide free transfer of profits, capital and other fees; and

(d) ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

The list of signed and in force IGAs can be viewed on the Ministry of Investment, Trade and Industry's official portal.[1]

2. Economic Planning Unit, Prime Minister's Department ("EPU"): Foreign Entities' Acquisition of Land and Properties

Foreigners face minimal restrictions when purchasing commercial properties, typically only needing to meet certain minimum investment criteria. The acquisition of property or land by a foreign company is subject to the Guideline on the Acquisition of Properties ("**Guideline**") issued by the EPU and the relevant rules and regulations imposed by the respective State Authorities.

There are several important aspects outlined in this Guideline that need to be adhered to closely before a foreign company acquires property or land in Malaysia.

Firstly, any acquisition of the property where the acquisition price is more than **Ringgit Malaysia Twenty Million (RM20,000,000.00)** and where such acquisition will result in diluting Bumiputera ownership of the property, is subject to prior written approval from the EPU.

Acquisitions by foreign interests of commercial units, agricultural land and industrial land valued at **Ringgit Malaysia One Million (RM1,000,000.00)** and above must be registered under a local company.

Foreign interest is defined as any interest, associated group of interests or parties acting in concert which comprises of:

(a) an individual who is not a Malaysian citizen; and/or

(b) an individual who is a Permanent Resident; and/or

(c) a foreign company or institution; and/or

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

There are restrictions against acquisitions by foreign interests, whereby the foreign interest is not allowed to acquire:

(a) properties valued at less than **Ringgit Malaysia One Million (RM1,000,000.00)** per unit;

(b) residential units under the category of low and low medium cost as determined by the state authority ("**State Authority**");

(c) properties built on Malay reserved land;

(d) properties allocated to Bumiputera's interest in any property development project as determined by the State Authority.

3. Foreigner's Consent

Foreign investors purchasing property or land in Malaysia must be made aware of the requirement to apply for foreigner's consent. According to **Section 433B of the National Land Code 1965**, prior approval from the relevant State Authority is required for any acquisition of property by non-citizens and foreign companies ("**foreigner's consent**").

It is to be noted that each State Authority in Malaysia has its own internal process for approving this foreigner's consent. Applicants are required to submit forms and application fees are to be paid. As long as the first two requirements above are met, the application should not be rejected.

Once approval has been granted by the State Authority, the foreign purchaser is required to pay the approval fee/levy amounting to two percent (2%) of the total purchase price of the property or a minimum of **Ringgit Malaysia Twenty Thousand (RM20,000.00)**, whichever is higher, to the land registry within thirty (30) days from the date of the consent letter ("**State Authority Consent**"). The State Authority Consent granted herein is typically valid for one (1) year from the date of the consent letter.

4. Stamp Duty for Foreign Purchasers in 2024

To regulate real estate prices, the government announced in the **2024 Budget** that a flat-rate stamp duty of four percent (4%) has been imposed on the transfer of ownership of a real estate by non-citizen individuals and foreign-owned companies (except permanent residents in Malaysia). This applies to instruments of transfer executed from 1 January 2024.

Conclusion

To conclude, since Malaysia has invested significantly in infrastructure development, including transportation networks, telecommunications and utilities, these developments enhance connectivity and accessibility, further driving investment opportunities in the property sector.

Also, Malaysia has a well-established legal framework that protects property rights and ensures a transparent and efficient property market. This provides assurance to foreign investors regarding the security of their investments.

Therefore, the combination of strategic location, economic growth, affordability, quality of life, infrastructure development and a robust legal framework makes Malaysia an attractive destination for foreign investors seeking to invest in property or land.

1.“Investment Guarantee Agreements (IGAs)” (Ministry of Investment, Trade and Industry) <https://www.miti.gov.my/index.php/pages/view/771?mid=1219>.

Written by:

Syed Muhammad Ridza
Partner
ridza@azmilaw.com

Fazlyn Yu Mohd Farid Yu
Associate
fazlyn.farid@azmilaw.com

Corporate Communications
Azmi & Associates
14 June 2024