

STRATEGIC GUIDE FOR FOREIGNERS IN ACQUIRING RESIDENTIAL PROPERTIES IN MALAYSIA

Malaysia, a country known for its rich cultural heritage, diverse ethnic groups and picturesque natural landscapes, has consistently lured the interest of both tourists and expatriates. The country's strategic location, combined with a blend of modern infrastructure and tradition, along with a favourable investment environment, makes Malaysia an ideal choice for foreigners looking to acquire residential properties. Various policies have been established to encourage foreign investments in Malaysia's real estate market. However, acquiring property in an unfamiliar country requires a sufficient understanding of the country's legal requirements specific to foreign property buyers. This article looks to provide a strategic guide for foreigners intending to acquire residential properties in Malaysia, ensuring informed decision-making.

Legally, acquisition of residential properties by foreigners in Malaysia ("**Foreign Acquisition**") is governed by the National Land Code 1965 ("**NLC**"), the Economic Planning Unit ("**EPU**")'s Guidelines on the Acquisition of Properties ("**EPU Guidelines**") and regulations issued by each State relating to land matters. The NLC provides for land ownership by non-citizens or foreign companies[1], while the EPU Guidelines explains the procedure for property acquisition, including by foreigners. The Foreign Acquisition, however, does not require approval from the EPU.[2] As land matters fall under State jurisdiction, States may impose other requirements on the Foreign Acquisition.

General Requirements & Restrictions for the Foreign Acquisition

Type of Properties

According to the EPU Guidelines, foreigners are generally **prohibited** from acquiring the following property types[3]:

- 1) Properties valued at less than RM1,000,000 per unit;
- 2) Residential units under the low-cost and medium-low-cost categories as determined

by State Authorities;

3) Properties built on Malay Reserved Land; and

4) Properties allocated for Bumiputera ownership in a development project as determined by State Authorities.

Minimum Threshold

The minimum threshold for the Foreign Acquisition varies according to State. The following are some examples of the minimum threshold in Wilayah Persekutuan Kuala Lumpur, Selangor, Pulau Pinang and Johor:

STATE	MINIMUM THRESHOLD	
WILAYAH PERSEKUTUAN KUALA LUMPUR[4]	RM1 Million	
SELANGOR[5]	Zone 1 (District of Petaling, Gombak, Hulu Langat, Sepang & Klang)	RM2 Million
	Zone 2 (District of Kuala Selangor & Kuala Langat)	RM2 Million
	Zone 3 (District of Hulu Selangor & Sabak Bernam)	RM1 Million
PULAU PINANG[6]	Strata properties	Seberang Perai (Mainland) – RM500,000.00 Island - RM1 Million
	Landed properties (including landed strata properties)	Seberang Perai (Mainland)– RM1 Million Island – RM3 Million
JOHOR[7]	RM1 Million	

However, in the State of Pulau Pinang, the Penang Housing Board (LPNPP) has extended the Home Ownership Campaign (“**HOC 3.0 Plus**”) until 31 December 2024. Under the HOC 3.0 Plus, foreigners are given the opportunity to acquire overhang properties in Pulau Pinang at a lower threshold, ranging from **RM400,000 to RM1.5 Million**.^[8]

According to the National Property Information Centre (NAPIC) under the Valuation and Property Services Department, Ministry of Finance, “property overhang” refers to residential, commercial and industrial units that have been completed and issued with a Certificate of Completion and Compliance/Temporary Certificate of Fitness for Occupation but remained unsold for more than nine months after it was launched for sales on or after 1st January 1997.

State Consent

As previously mentioned, land matters fall under state jurisdiction. Section 433B of the NLC require non-citizens and foreign companies to seek State consent before acquiring any land in Malaysia. Therefore, foreigners intending to acquire properties in Malaysia

must first obtain the State consent from the State Authority where the property is located. Since it involves different States, the approval process may vary in terms of complexity, timeframe and application fee. However, the appointed solicitors will typically assist with the State consent process.

Important Factors to be Considered for the Foreign Acquisition

Malaysia My Second Home (“MM2H”)

For foreigners who do not intend to acquire residential properties as an investment but rather for relocation purposes, the MM2H program is the ideal option. Through the MM2H program, foreigners may be able to acquire residential properties at prices that may fall below the minimum threshold, depending on the State. That said, the process for applying to the MM2H program is not straightforward. It involves a strict and lengthy application procedure, with applicants required to meet specific financial criteria, including liquid assets and monthly income requirements.

Financing Options

According to the Central Bank of Malaysia (“**BNM**”)’s Foreign Exchange Policy Notices (Notice 2 – Borrowing, Lending and Guarantee) and Frequently Asked Questions (FAQ) on Non-Resident Borrowing in Malaysia (Notice 2), a non-resident is allowed to borrow from local banks to finance the purchase of immovable property in Malaysia.[9] However, obtaining such financial assistance from Malaysian banks is subject to specific conditions, which may include limits on the financing margin and a stricter approval process for foreigners.

Stamp Duty

It is important to highlight the applicable stamp duties that the Foreign Acquisition is subject to when transferring property ownership. The stamp duty rates for property sale and purchase transactions, including those involving foreigners, are provided under the Stamp Act 1949. Following the announcement of Malaysia Budget 2024,[10] effective from 1 January 2024, non-citizens and foreign companies (excluding permanent residents) are subject to a flat rate stamp duty of 4% on instruments of transfer.[11]

Real Property Gains Tax (“RPGT”)

Furthermore, foreigners who have previously acquired residential property in Malaysia and intend to sell it are subject to the RPGT. The RPGT rates for foreigners are provided under the Real Property Gains Tax Act 1976 as follows[12]:

YEAR OF DISPOSAL	RPGT RATES
Within 5 years of acquisition	30%
After 5 years of acquisition	10%

Foreign Acquisition in Summary

STEP 1	Identifying the Residential Property of Choice Foreign buyers must ensure that the property meets the applicable minimum threshold and complies with the foreign ownership requirement under relevant laws and regulations discussed above.
STEP 2	Entering into Sale and Purchase Agreement and Loan Agreement Upon Step 1, foreign buyers enter into a sale and purchase agreement and, if applicable, a loan agreement. This process involves foreign buyers appointing solicitors as their legal representatives.
STEP 3	Applying for State Consent Upon Step 2, foreign buyers must apply for State consent from the relevant State Authority. This process is typically assisted by the foreign buyers' appointed solicitors.
STEP 4	Completing the Sale and Purchase Upon Step 3, foreign buyers' appointed solicitors will manage the transfer of ownership by submitting the necessary documentation to the relevant land office. If a loan is opted for by foreign buyers, the completion of the transaction will be dependent on the disbursement of the loan.
STEP 5	Handing Over of the Property Once the transaction is completed, ownership of the property is transferred to the foreign buyers and the new title is issued to the new owner.

Conclusion

As Malaysia continues to intensify its efforts in becoming a preferred investment destination, it would be wise for foreign property buyers to take advantage of the current favorable investment environment. By having sufficient understanding of the requirements involved, foreign investors can strategically acquire residential properties in Malaysia. For potential foreign property buyers, seeking legal advice is prudent to ensure smooth management of the process.

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1. Section 433A & 433B of the NLC.
 2. Paragraph 2.3 of the EPU Guidelines.
 3. Paragraph 10 of the EPU Guidelines.
 4. Pekeliling PPTG WP Bil. 7/2020.
 5. Pekeliling Bil. 1/2014.
 6. Garis Panduan Perolehan Hartanah oleh Warganegara Asing atau Syarikat Asing bagi Negeri Pulau Pinang.
 7. Pekeliling PTG Bil. 2/2014.
 8. Pelanjutan Pelaksanaan Kempen Pemilikan Rumah/Home Ownership Campaign (HOC 3.0 Plus) dan Dasar Rangsangan Sektor Hartanah Peringkat Negeri Pulau Pinang Tahun 2024 bertarikh 29 Disember 2023 [LPNPP/08/0151/1/3 (19)].
 9. Part D, Notice 2 & Question & Answer no. 4 of FAQ on Non-Resident Borrowing in Malaysia (Notice 2).

10. Paragraph 257 of the Malaysia Budget 2024.
11. Item 32(aa) of the First Schedule of the Stamp Act 1949.
12. Part III, Schedule 5 of the Real Property Gains Tax Act 1976.

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