



e-Alert

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PART 1 - Foreign Ownership of Residential Properties in Malaysia in General

Malaysia is a friendly country and welcomes the foreigners from all over the world from purchasing the properties in Malaysia, whether it is for the purpose of investment or otherwise.

As in all other countries, a foreigner who intends to acquire residential properties in Malaysia would need to comply with specific requirements set-out by the relevant authorities to buy and own residential properties in Malaysia. Therefore, it is important for foreigners to be aware of these requirements before embarking on any acquisition of residential properties in Malaysia.

To begin with, it is best to understand the meaning of "Foreign Ownership in our applicable laws. The definition of foreign interest is stated under Section 433A of the National Land Code 1965 of which can be summarized as follows:-

- a non-citizen, which means a natural person who is not a citizen of Malaysia; or
- a foreign company, which is a company, corporation society, association or other body incorporated outside of Malaysia with fifty percent (50%) or more of its voting shares are held by a non-citizen or a foreign company or by both;

Upon understanding the definition of foreign interest, foreigners who intend to acquire properties in Malaysia should take note and comply with the following four (4) main requirements:-

- Minimum Threshold on Purchase Price;
- Off-limit (types) of Properties;
- Foreigner Consent Application; and
- Real Property Gain Tax application on Foreigners

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There are two (2) main ways in buying properties in Malaysia, namely:-

- ✓ **buying the newly launched properties** directly from the property developers, which can be the completed units or properties which are still under construction; or
- ✓ **buying the sub-sale properties**, ie. basically buying the properties from the secondary market that are being offered by the existing owners

Upon identifying the ways to own the property, we now examine the four (4) main requirements as stated above, whereby it can be further elaborated as follows:-

1. **Minimum Threshold on Purchase Price**

This is the first requirement that a foreigner needs to be aware of. What is “minimum purchase price of the property that was currently set by the relevant authority in Malaysia to allow the property to be acquired by a foreigner. This simply means that a foreigner can purchase a property in a particular state in Malaysia if the purchase price of the property is above a certain threshold. What is the minimum pricing set or the applicable threshold depends on the guidelines from each respective state and is generally governed by the respective state government.

2. **Off-limit (types) of Properties**

The next important requirement that a foreigner needs to be aware of is the types of property that they are allowed to purchase. In general, there are certain category of properties that are not allowed to be acquired by the foreigners. Below are the categories/types of property which are off-limits to foreigners:-

Properties valued at less than the threshold amount;

- Low or Low-Medium Cost properties;
- Properties which carry the description of “Malay Reserved Land”; and
- Any property allocated under “Bumiputera interest (Lot)” in a development project

3. **Foreigner Consent Application**

Other than the two requirements as stated above, a foreigner who intends to purchase a property in Malaysia is also required to apply for the State Authority Consent. This is pursuant to the provisions under Section 433B of National Land Code 1965, which provides that prior written approval from the relevant State Authority is required for any acquisition of property by non-citizens and/or foreign companies.

In essence, each respective State Authority in Malaysia has its own respective guidelines to govern this foreign consent application. Applicants are usually required to submit the prescribed forms together with the application fees to be paid; and each state has its own application fee. As a rule of thumb, as long as the first two requirements as stated above are complied with, the State Authority Consent application should normally be an administrative one. However, as in any other government application, there is no guarantee that the requisite consent will surely be granted.

4. Real Property Gain Tax application on Foreigners

The Real Property Gains Tax ("RPGT") is also an important consideration for a foreigner who intends to purchase any immovable property in Malaysia, not so much on the acquisition per se but rather when he intends to dispose of his or her property. RPGT is a form of disposal tax imposed by the Inland Revenue Board of Malaysia and is chargeable on property owners when they dispose of their land or real property with a resale price that is higher than the original purchase price.

In accordance with the current rulings of Inland Revenue Board of Malaysia, the following is a reproduction of the existing RPGT rates against gains/profit made which are imposed on any disposal of immovable properties by foreigners:

DISPOSAL	By Non-Citizens
WITHIN FIRST 3 YEARS	30%
WITHIN 4 TH YEARS	30%
WITHIN 5 TH YEARS	30%
MORE THAN 5 YEARS	10%

Under the circumstances, as foreigners would need to comply with all the specific requirements as set-out above when buying residential properties in Malaysia, it is therefore important for the foreigners themselves to be fully aware of those requirements to enable them to make a well informed decision.

PART 2 - Foreign Ownership of Residential Properties in the State of Johor

As explained above, since the law governing the properties in Malaysia is considered as a state matter and every State Authority has its own guidelines in terms of acquisition of properties by foreigners in the respective state. As such, the State of Johor is of no exception to this rule. In Johor, a variety of properties are available for foreigners to purchase and/or acquire, which include both landed and high-rise properties alike. In addition, there are a variety of residential properties that can be purchased by foreigners either through a direct purchase from a housing developer or through a secondary market as explained earlier. Albeit the means of purchase, the guidelines and applicable state laws for foreign ownership in Johor are generally similar in nature.

Minimum Threshold and Types of Properties for State of Johor

Pertaining to the foreign interest acquiring a residential property from a developer, the prominent applicable law is none other than the Housing Development (Control and Licensing) Act 1966 ("HDA 1966"). This law is applicable within Peninsular Malaysia and the federal territory of Labuan, including Johor, whereby it provides the rules and regulations and even the statutory prescribed form of the Sale and Purchase Agreement to be entered into between the parties when purchasing a property from a housing developer in safeguarding the interest of property buyers while compelling the developers to abide by the provisions of the statutory contract. In addition to the aforementioned HDA 1966, the Johor State Government has also specifically provided the guidelines for the requirements to be complied with by foreign buyers. For instance, the following chart states the minimum purchase price for the category of land and types of property which are allowed to be acquired by a foreigner from a housing developer as well as under sub-sale transaction:-

Category	Required Types of Property	Minimum Price
Residential Properties	1. Two Storey Terrace House and above 2. Two Storey Cluster House and above 3. Double Storey Link House and above 4. Two (2) Storey Bungalow and above 5. Empty Lot for Bungalow 6. Condominium / Apartment 7. Holiday Home	RM1 million and above

The above requirements are applicable for both types of transactions, ie. Direct purchase from housing developer or sub-sale transactions. In essence, the threshold for the requisite purchase price and the types of the properties allowed are clearly stated.

Updates for Foreigners Buying a Property in Malaysia and Johor

During the Budget 2020 announcement and in order to rejuvenate the property industry and to reduce the overhang of the condominiums and apartments in the country, the government has lowered the threshold condition on the minimum purchase price from the existing RM 1 Million to RM600,000-00 only for the current year of 2020. However, the aforesaid special allowance is subject to and applicable only to the following types of properties:-

- High-rise stratified residential project, Service Apartment and properties under definition of Small Office, Home Office (SOHO); and
- the said properties must have been fully launched and unsold for a period of over nine (9) months from issuance of Certificate of Completion and Compliance ("CCC").

As such, property projects that are not in compliance with the above terms will not qualify for this special Incentive. The Johor State Authority has also adopted the said guidelines introduced by the federal government. The above measures are subject further to some administrative requirements/procedures to be complied by the property developers who intend to benefit from such Incentive.

As the above measure is only effective temporary during the implementation of Budget year 2020, there is currently no indication from the relevant authority whether such Incentive measure will be extended further.

Foreigner Consent Application

In addition to the above, another prominent pre-condition to be noted is the requirement for the State Authority Consent imposed by the State Government in relation to acquisition of residential property by foreigner in Johor. In other words, it is mandatory for a foreign interest to apply for the State Authority approval for properties to be acquired from both developer and sub-sale cases. The State Authority consent letter is required before the residential property can be transferred to the foreigner. An application fee of RM1,000-00 only will be payable for each application for foreign consent to transfer. Once the approval has been duly 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 minimum of RM20,000-00, whichever is higher, to the land registry within thirty (30) days from the date of the consent letter. The State Authority Consent granted herein is typically valid for one (1) year from the date of the consent letter.

Off-limit (types) of Properties

In light of the requirements highlighted above, as under the national level, it must also be noted that there are certain categories of residential properties that are still out of bounds from foreign buyers. Specifically, any residential property categorised as low cost or medium low cost properties are not allowed to be acquired by a foreigner. Apart from that, one storey or one and a half storey terrace houses are also considered off-limits from foreign buyers. Hence, all the above

matters have to be put into consideration when a foreign interest intends to acquire the residential properties in the state of Johor.

In conclusion, it must be emphasized that all the requirements, rules and regulations as discussed above must be adhered to in order for a foreigner to acquire a residential property in Malaysia, specifically for the State of Johor. As Malaysia is an Investment-friendly country, these rules and regulations should not be viewed as a deterrent and/or burden to foreigners when considering to acquire residential properties in Malaysia, but rather, they mainly serve as a guideline to ensure the process of acquiring the residential property can be done efficiently and effectively, while also maintaining and protecting the interests of the citizens of Malaysia and in the state of Johor in particular.

PART 3 - Foreign Ownership of Residential Properties in the State of Wilayah Persekutuan and Selangor

Property acquisitions will ONLY require the approval of the Economic Planning Unit of the Prime Minister's Department (EPU) where it involves a dilution of bumiputera or government interest for property valued at RM20million and above, whether directly or indirectly (via acquisition of company shares that hold the property).

All other property transactions (residential/commercial) including those between foreigners and non-bumiputeras will NO LONGER require FIC/EPU approval, subject to the general pricing threshold of RM1.0million and above per unit.

Foreign Interest is NOT allowed to acquire:

- Properties below RM1.0million per unit
- Residential units under low and low-medium cost as determined by the State Authority
- Properties on Malay Reserved Land
- Properties allocated to Bumiputera interest in any property development, as determined by the State Authority
- Exempted from EPU approval also includes (and allowed to purchase only 1 residential unit valued at minimum RM250,000 (except Kuala Lumpur, Johor and Penang) and the matter is under State jurisdiction)
- Any acquisition of residential unit under MM2H Programme
- Multimedia Superior Corridor (MSC) status companies are allowed to acquire any property in the MSC area provided that property is ONLY used for operational activities including residence of their employees
- Acquisition of properties in approved area in any regional development corridor by companies that have been granted the status by the local authority as determined by Government
- Acquisition of properties by a company that has endorsement from the Secretariat of Malaysian International Islamic Financial Centre (MIFC)

- Acquisition of residential unit to be occupied as hostel for company employees. However local companies owned by foreign interest are only allowed to acquire residential units valued at RM100,000 and above and this matter is under the jurisdiction of the relevant state authorities
- Transfer of property to foreign interest pursuant to a will and court order
- Acquisition of industrial land by manufacturing company
- Acquisition of properties by the Ministries and Government Departments (Federal and State), MOF Incorporated, Menteri Besar Incorporated or Chief Minister Incorporated, State Secretary Incorporated and listed GLCs
- Acquisition of properties under privatization projects (Federal and State)
- Acquisition of properties by companies granted status of International procurement centers, Operational HQ, Rep Offices, Regional Offices, Labuan Offshore companies, Bio-Nexus or other special status by MOF, MITI, and other ministries of EPU
- Acquisition of residential unit for accommodation purposes by foreigner with expatriate status serving Government or non-governmental organisations and receiving minimum monthly salary of RM8000 or Permanent Residents with red NRIC
- State Authority Consent for Transfer of the Properties is still required for foreign acquisitions under Section 433B National Land Code of Malaysia (NLC)

What is the Minimum Threshold of the Purchase Price ?

- KL/Putrajaya/Labuan : RM1.0 million for all types of property (Revised: During Budget 2020 this threshold has been reduced to RM600,000)
- Selangor: comprises of 3 Zones
 - Zone 1 + 2 = District of Petaling, Gombak, Hulu Langat, Sepang, Kuala Selangor, Kuala Langat
 - Zone 3 = District of Hulu Selangor, Sabak Bernam
 - RM2.0million for property in Zone 1 + 2 (effective 1 Jan 2020, state government has reduced the foreign ownership threshold for strata properties to RM1.5million, whereas bungalows and semi-detached units maintain at RM2.0million)
 - RM1.0million for property in Zone 3
- Foreigners, Permanent Residents (PR) and foreign companies are only permitted to acquire commercial and industrial properties at minimum price of RM3million in all 3 Zones and are not permitted to buy landed properties unless in a gated community (e.g. landed strata title)

(Ref : Guidelines for Acquisition of Property by Foreign Nationals / Permanent Residents / Foreign Companies in the State of Selangor)

Expatriates Entry Permission into Malaysia

As at 24 June 2020, the Government of Malaysia has lifted all restrictions and application for permission of entry of expatriates into Malaysia.

(Link for more information: <https://rpt.talentcorp.com.my/news/latest-update-as-of-24th-june-2020-entry-permission-for-expatriates-with-an-active-pass-and-approved-application-who-are-abroad-as-announced-by-the-malaysian-government-on-19th-june-2020>)



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