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Property PIE

Before investing in Malaysian real estate, it is worth gaining a better understanding of the various legal restrictions which may be applicable. Yap Hui Lu, Partner at Abdullah Chan & Co, explains.

First Rule

Most important of all, have a search conducted on the title to the target land at the relevant land office where the title is registered. The search results will provide information on, among other things:

- the registered owner of the land;
- the tenure of the holding ie freehold/perpetual or leasehold - limited to the term specified in the individual title deed, generally 60 or 99 years;
- the category of land use: Malaysian real property is generally categorised as being for agricultural, industrial or building (commercial or residential) use;
- whether the land is Malay reserved;
- whether there are any registered encumbrances, such as charges, caveats, liens, or other third party interests like easements, leases or endorsed tenancies; and
- whether there are any express conditions of title - generally regarding its use, or restrictions in interest - for example whether State Authority consent for any sale, transfer, charge, lease or dealing with the land is required.

Legal Landscape

Peninsular Malaysia real property dealings are subject to the relevant land rules and Malay reservation enactments for the respective State, as well as the provisions of the National Land Code 1965 (NLC). The Torrens system of land registration is embodied in the NLC and applicable to real properties throughout the Peninsula.

Anyone who has been registered with the relevant land office/registry as a proprietor of Malaysian real property enjoys immediate, indefeasible title to the same. Exceptions are where fraud or misrepresentation has been perpetrated, the registration was obtained by forgery or by means of an insufficient or void instrument, or the title or interest was unlawfully acquired in the purported exercise of any power or authority.

Ownership of Malaysian real property is generally evidenced by an individual title document issued by the relevant land of-

office for landed real properties, or by strata titles for individual parcels in subdivided, stratified buildings.

Obtaining Consent

Under the NLC, save for industrial land, State Authority consent is required for the acquisition of Malaysian real property by non-citizens or foreign companies. This includes locally incorporated companies with 50 percent or more of the voting shares held by non-citizen(s) and/or by another foreign company.

State Authority approval is also required for a non-citizen or foreign company to bid in a court-ordered auction where the land is subject to the category "agriculture" or "building" or to any condition requiring it to be used for agricultural or building purposes. Residential buildings also fall within the "building" category.

It may take around three months from the application date to obtain consent, which is generally granted as a matter of course, provided all documents are in order.

In addition, the price of the residential property in question must meet the minimum value required by the relevant State. For example, at least RM2 million in Selangor, at least RM1 million in the Federal Territories of Kuala Lumpur and Putrajaya, at least RM2 million in Penang for landed properties and a minimum of RM1 million for stratified properties, and at least RM1 million in Johor.

The Malaysia My Second Home programme does allow lower minimum values for certain States. In addition, there is the RM1 million minimum value threshold set by the Economic Planning Unit (EPU) of the Prime Minister's Department.

The transfer of Malaysian real property to foreigners based on family ties such as immediate family members, blood ties or adopted children, or as part of a will and court order, does not require EPU approval.

Other exempted transactions include:

- Residential units under Malaysia My Second Home (subject to the minimum property value for the respective State)

- Multimedia Super Corridor (MSC) companies - acquisition of properties in the MSC area to be used for their operational activities or employees' residence
- Acquisition of industrial land by manufacturing companies
- Acquisition of properties in regional development corridor areas or by companies with special status eg International Procurement Centres, Operational HQ, Representative/Regional Offices, Labuan entities, Bio-Nexus status.

Prior approval of the EPU will however be required where, for instance, the proposed acquisition involves real property valued at RM20 million or more that results in a dilution of Bumiputera interests and/or those of a government agency. It also applies where there is a change of control of the company owned by Bumiputera interests and/or government agency having more than 50 percent of its total assets.

Malay Reservations

Certain land is designated as Malay reserved under the Malay Reservations Enactment (FMS Cap. 142), as well as being protected in the Constitution.

If, for example, you have your eye on a nice property but that happens to be sited on Malay reserved or native land, then be forewarned - foreign interests, as well as non-Bumiputera and non-native residents, are not allowed to acquire the land or properties built on them, irrespective of value.

Instruments which are utilised to enable foreign, non-Bumiputera or non-native residents to indirectly own such lands are not without real risks. This is especially true in States where trust arrangements, powers of attorney and/or dealings which are contrary to the State's Malay reservation enactment are expressly stated as being null and void, unenforceable, or limited in effect.

Such approval requirements may seem daunting, but are par for the course for real property transactions in Malaysia. However, with careful selection, a little planning and professional advice, it is achievable.

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