

Purchasing Land in Malaysia



Malaysia continues to go from strength to strength as an economic powerhouse in Southeast Asia. Ranked 12th in the World Bank's Ease of Doing Business Ranking of 2020, offering modern infrastructure and low labour costs, as well as a remarkably liberal regime on foreign landholding, Malaysia has in recent times enjoyed an influx of multinational corporations and overseas SMEs acquiring land for the establishment of production and distribution centres.

For potential purchasers considering entry into the Malaysian real estate market, this overview serves as a preliminary guide to a typical acquisition of land for the purpose of development for industrial use.

Overview of Transaction

An archetypal purchase of land for later industrial development can be divided into three main phases, as follows:

■ *Phase 1: Pre-contract*

At this initial stage, a purchaser ensures that they are eligible for the purchase of the target land and attempts to find out, via searches and surveys, as much as possible about the land. The parties negotiate the terms of the land purchase agreement and, once in accord, the agreement is concluded.

■ *Phase 2: Post-contract*

The post-contract stage commonly involves the parties obtaining the regulatory approvals relevant to the transaction. Any outstanding steps necessary for a transfer of title to land are taken. A successful transfer of title is known as "completion".

■ *Phase 3: Post-completion*

Post-completion, the purchaser (now the owner of the land) handles matters such as applying for planning permission,

which, once granted, allows for land development, building construction or renovations of existing structures to begin.

Each of these phases are considered in more detail below.

Phase 1: Pre-contract

a) Eligibility: The Basics

In general, a foreign investor can only acquire title to land in Malaysia with the consent of the relevant State authority. The complexity here arises from the variation in conditions for such consent from one State to another. As examples, different States set different minimum values of land eligible for foreign purchase, and may have different types of reserved lands not available for foreign ownership.

It is therefore crucial for a purchaser to identify at the very start of a planned transaction whether there are any barriers at the State level to their ownership of the target land.

b) Land Searches and Surveys

“*Caveat emptor*” or “buyer beware” is a principle which, in this context, means the purchaser of land must examine for himself the condition of the land prior to purchase. The purchaser assumes the risk of acquiring the land and later discovering defects not immediately apparent.

To mitigate this risk, the purchaser conducts searches and surveys to find out as much as possible about the target land. If a defect is found, it can then be taken into consideration in the negotiation of the land purchase agreement.

In a basic land search, the following can be established:

- The holder of the title of land; in other words, the purchaser can verify whether the seller indeed owns the land he purports to sell;
- Encumbrances and restrictions on the land; for example, special approvals may be needed for the land to be transferred, or there may be charges over the land.

It is also common for technical surveys to be carried out, for instance to identify soil suitability or potential environmental contamination.

c) Costs

To enable financial planning, a purchaser ought to have early awareness of the basic costs of the transaction. Such costs commonly include the following:

- The purchase price of the land;
- Stamp duty, which is chargeable on an instrument of transfer;
- Application fees for government approval; and
- Legal fees.

d) Negotiation of the Land Purchase Agreement

The terms of land purchase agreements are normally the subject of intensive negotiations between the parties. It is common practice for a vendor to prepare the first draft of a purchase agreement which, as a matter of course, is weighed heavily in their own favour. The purchaser will, through their legal representatives, contest and mitigate as many adverse terms as possible in an attempt to minimise risks, liabilities and costs.

Phase 2: Post-contract

Once the purchase agreement is concluded, the parties enter the post-contract phase, during which the parties carry out the respective obligations they agreed to fulfil prior to the transfer of title.

Obtaining governmental approvals and satisfying other regulatory requirements form a significant part of this phase. In particular, prior to completion, the following commonly need to be achieved:

- Grant of State authority consent for the acquisition of land by a foreign company;
- Approval from the Economic Planning Unit where necessary for the type of land and purchase in question,
- Payment of stamp duty; and
- Completion of preparations for the registration of the purchaser's title to the land.

Upon registration, title to the land is transferred and the land purchase part of the transaction is complete.

Phase 3: Post-completion

The purchaser is, at this point, the owner of the land. The details of this post-completion phase largely depend on the purchaser's planned use of land.

As examples, the purchaser may apply for approval to amalgamate several plots of land into one or, in contrast, subdivide a single plot of land. The purchaser may also apply for the category of land use to be changed, for example from agricultural land to industrial land.

Where, for instance, the purchaser's end goal is to have a production centre, they may have acquired land with an existing functional facility, acquired land with a "ready-to-use" but not operational facility, or acquired an empty plot of land with a view to building a facility from scratch. Depending on the particular industry of the purchaser, their facility may be subject to prescriptive regulatory specifications.

Such circumstances determine the next actions of the purchaser, touching on fields ranging from planning and environmental law to engineering and construction. Given the utilisation of a wide area of expertise, coordinated teams of both legal and technical advisors are indispensable for the post-completion phase.

Conclusion

The purchase and development of land in Malaysia by a foreign company may be a trail with many steps. As mentioned, the above outline is only that of a typical transaction; the process of each case in reality will vary depending on its facts. That said, with proper support and guidance in navigating the local requirements for foreign ownership and use of land, it is not only achievable but, with the balance Malaysia offers between costs, stability and accessibility, often very attractive.



Luther in Malaysia

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For further information regarding real estate transactions, please contact –



Pascal Brinkmann, LL.M. (Stellenbosch)

Lawyer, Accredited Tax Practitioner
(Income Tax) (Singapore)

Partner

Luther Corporate Services Sdn Bhd

Unit 17-2, Level 17,

Wisma UOA II,

No. 21, Jalan Pinang,

50450 Kuala Lumpur, Malaysia

Tel. +60 3 2166 0085

pascal.brinkmann@luther-services.com

Imprint

Luther Corporate Services Sdn. Bhd. (200901028935 (872040-W))
Unit 17-2 - Level 17, Wisma UOA II, No. 21, Jalan Pinang, 50450 Kuala Lumpur, Malaysia

Tel +60 3 2166 0085/Fax +60 3 2166 0087, Contact: malaysia@luther-services.com

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