

Luther.

Purchasing Land in Malaysia



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A. Introduction

Malaysia continues to go from strength to strength as an economic powerhouse in Southeast Asia. Ranked first in emerging Southeast Asia in the Milken Institute's 2022 Global Opportunity Index, 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.

The acquisition and development of land in Malaysia by a foreign company or individual can be a journey with many steps. The following outline is only that of a typical transaction, the process of each particular case will vary depending on its facts. Nevertheless, with proper assistance and guidance in navigating the local requirements for foreign ownership and use of land, it is not only achievable but often very attractive, given the balance of cost, stability and accessibility that Malaysia offers.

B. Transaction Overview

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

■ 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 maintaining and developing the land. For instance, the purchase may apply for planning permission, which, once granted, will allow land development, building construction or renovations of existing structures to begin.

Each of these phases is considered in more detail below.

I. Phase 1: Pre-contract

Any land purchase in Malaysia begins with a thorough investigation by the prospective purchaser, including eligibility checks, cost considerations, land searches and surveys. Once the purchaser has identified the land and the terms on which they wish to acquire it, they can begin to negotiate a land purchase agreement with the current owner.

1. Eligibility: the Basics

Malaysia has a dual land tenure system, with states and federal territories having their own land laws. Land in Malaysia is typically classified as either leasehold or freehold. Leasehold land is held for a fixed term, usually 99 or 999 years, and reverts to the government at the end of the term. Freehold land, on the other hand, provides perpetual ownership rights.

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 fact that the requirements for such consent vary from state to state. Different states may divide the land into different zones and set different minimum values for land that can be purchased by foreigners. States may also have different types of reserved land which is not available for foreign ownership. In the Federal Territory of Kuala Lumpur, for example, the minimum threshold for foreign purchases is set at MYR 1 million. In the Petaling district of the neighbouring state of Selangor, the minimum threshold for commercial and industrial properties is three times higher at MYR 3 million.

Consequently, the rules that apply depend on the state and the zone in which the target property is located: The zone determines not only the minimum threshold, but also how the land can be used and developed. Different areas are typically zoned for specific uses, such as residential, commercial, industrial, agricultural or recreational. Understanding these regulations is crucial as they can have a significant impact on the future use of the land being purchased. Some areas may have restrictions on the height, size and design of buildings. These restrictions are in place to preserve the aesthetic and environmental qualities of the area.

If you are planning to change the use of the land, you may need to obtain the necessary permits and approvals from local authorities. Changing land use can be a complex process and it is important to understand the requirements and potential challenges in advance.

It is therefore crucial for a purchaser to establish at the outset of a proposed transaction whether there are any governmental barriers to their ownership of the target property.

2. Land Searches and Surveys

Malaysia is a geographically diverse country, offering a range of property types from urban land in bustling cities to tranquil rural landscapes. It is therefore crucial to consider the location's accessibility, proximity to amenities and potential for capital growth.

“*Caveat emptor*” or “buyer beware” is a principle which, in this context, means that the purchaser of land must make their own assessment of the condition of the land before purchasing it. The buyer assumes the risk of purchasing the land and later discovering defects that were not immediately apparent.

To mitigate this risk, the purchaser must conduct searches and surveys to find out as much as possible about the target property. Land surveys are usually carried out by specialist companies, while land searches (particularly title searches) can be carried out by the purchaser's legal advisers. If a defect is found, it can be taken into account when negotiating the sale and purchase agreement..

A basic land search can establish the following:

- 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, certain approvals may be required to transfer the land, or there may be charges, disputes or liens on the land. Any zoning restrictions on the land will also be identified at this stage.

It is also common for technical surveys to be carried out at this stage to determine, for example, the suitability of the soil or potential environmental contamination.

Another critical factor that should not be overlooked is the availability and reliability of essential infrastructure and utilities. Access to reliable sources of water, electricity, sewerage systems and well-maintained road access are paramount to ensuring the feasibility and cost-effectiveness of the acquisition. The cost of bringing entirely new utility infrastructure to a property can be substantial, often involving complex regulatory procedures and significant financial investment. Conducting thorough due diligence on the existing infrastructure and utilities prior to the purchase is therefore not just a matter of convenience, but a vital consideration.

3. Costs

To enable financial planning, a purchaser should be aware of the basic costs of the transaction at an early stage. These costs typically include:

- the purchase price of the land
- stamp duty, payable on an instrument of transfer
- application fees for government approval
- legal fees.

A purchaser should also consider the ongoing maintenance costs of the land that they will be responsible for once they own it.

a. Purchase price

The purchase price will depend on market conditions. It is therefore important to conduct a comprehensive analysis of the local real estate market, including property values, trends and the potential for appreciation or depreciation in the area. Understanding the dynamics of the market will help you make an informed decision and negotiate effectively. It is advisable to keep an eye on factors such as economic growth, infrastructure development and government policies that may affect property values. In addition, consulting local property experts and keeping abreast of market conditions can go a long way towards ensuring a sound and fair investment in Malaysian land.

b. Stamp duty

Stamp duty is a tax levied on legal documents relating to the purchase or transfer of property in Malaysia. It is payable within 30 days from the date of the Sale and Purchase Agreement (“SPA”) or the Memorandum of Transfer (“MOT”), whichever is earlier. The amount of stamp duty depends on the type and value of the property and the status of the buyer.

There are two main types of stamp duty: stamp duty on the instrument of transfer and stamp duty on the loan agreement. Stamp duty on the instrument of transfer is based on the price of the property or the market value, whichever is higher. The rates are as follows:

- 1% on the first MYR 100,000
- 2% from MYR 100,001 to MYR 500,000
- 3% from MYR 500,001 to MYR 1 million
- 4% for anything over MYR 1 million

Stamp duty on the loan agreement is charged at a flat rate of 0.5% of the loan amount. Online tools such as the Stamp Duty Calculator or the Stamp Duty Order are available to help estimate the stamp duty payable when buying a property in Malaysia.

c. Ongoing costs of ownership

The running costs of maintaining land and property in Malaysia can vary depending on the type of property, location and ownership status. Some common costs include:

- Quit rent: State governments levy this tax on landowners, based on the size and category of the land and the type and size of the property built on the land. Rates vary from state to state, but are generally a nominal annual fee. For example, Selangor charges MYR 0.025 per square metre for residential land.
- Assessment tax: Local authorities levy this tax on property owners for the upkeep of the locality based on the estimated rental value of the property. Rates vary from authority to authority, but typically range from 4% to 6% of the annual rental value. This tax is payable bi-annually in January and July.
- Income tax on profits derived from the rental of the land or property.

With all these costs in mind, it is important for buyers to consider how they will finance their purchase. Malaysian banks and financial institutions offer financing options for property purchases, but they may require higher down payments for non-residents or foreign companies.

4. Negotiation and conclusion of the Land Purchase Agreement

The terms of a Land Sale and Purchase Agreement are usually the subject of intensive negotiations between the parties. It is common practice for the seller to prepare the first draft of the sale and purchase agreement, which will inevitably be heavily weighted in their favour. The buyer, through their legal representatives, will challenge and mitigate as many adverse terms as possible in an attempt to minimise risks, liabilities and costs.

The final Land Purchase Agreement must be in writing and signed by both parties. It must be stamped by the Stamp Office and registered with the Land Office or Registry within the prescribed period. The agreement must also comply with the relevant laws and regulations governing land transactions in Malaysia.

II. Phase 2: Post-contract

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

Obtaining government approvals and meeting other regulatory requirements is an important part of this phase. In particular,

prior to completion of preparations for the registration of the purchaser's title to the land, the following will 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, if necessary, for the type of land and purchase in question.
- payment of stamp duty.

1. Grant of State Consent

State Consent must be granted by the relevant authority for the acquisition of land by a foreign company. The National Land Code requires foreign companies or individuals to submit a written application to the relevant state authority for approval of a proposed land acquisition. Such approval may be subject to conditions imposed by the authority.

2. Approval from the Economic Planning Unit

Since March 2014, foreign companies or individuals are required to obtain prior written approval from the Economic Planning Unit ("EPU") in two cases.

First, in the case of a direct acquisition of property valued at MYR 20 million and above, resulting in the dilution of ownership of property held by Bumiputera interests and/or government agencies.

Secondly, in the case of an indirect acquisition of property by non-Bumiputera interests, by other means, such as the acquisition of shares, which results in a change of control of a company (i) owned by Bumiputera interests and/or government agencies and (ii) holding property amounting to more than 50 per cent of its total assets in value, where such property is valued at more than MYR 20 million.

3. Payment of stamp duty

The Land Purchase Agreement must be stamped by the Inland Revenue Board of Malaysia ("IRBM") and the stamp duty must be paid by the purchaser as detailed in [Part B.I.3.b](#) above .

4. Registration of the purchaser's title

The stamped Land Purchase Agreement and the State Consent (if any) must be presented to the Land Office or Registry for registration. The Land Office or Registry will then issue a transfer form to be signed by both parties and witnessed by a solicitor. The transfer form will also be stamped by the IRBM. The parties then submit the stamped transfer form and other supporting documents (such as the original land title, identity documents of both parties, etc.) to the Land Office or Registry for registration. The Land Office or Registry will then update their records and issue a new title deed in the purchaser's name. This can take up to several months, depending on the Land Office or Registry involved.

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

III. Phase 3: Post-completion

At this point, the purchaser has become the owner of the land. The particulars of this post-completion phase will then depend largely on the intended use of the land by the purchaser. Most purchasers should now consider the various insurance options available to protect themselves against unforeseen events and prevent financial loss. The purchaser may also be interested in understanding any conditions or restrictions that could apply should they wish to later resell the land.

1. Use of the land

Depending on the intended use, the purchaser may apply for permission to amalgamate several plots into one or to subdivide a single plot. The purchaser may also apply to change the category of land use, for example from agricultural to industrial.

Alternatively, if, for instance, the purchaser's ultimate objective is to have a manufacturing centre, they may have acquired land with an existing functional facility, land with a 'ready to use' but not operational facility, or just an empty site with a view to building a facility from scratch. Depending on the purchaser's industry, the facility may also be subject to specific regulatory requirements.

Such circumstances will determine the buyer's next steps, touching on areas ranging from planning and environmental law to engineering and construction. Given the wide range of

expertise required, coordinated teams of legal and technical advisers are essential for the post-completion phase.

2. Insurance

When purchasing land, it is imperative to investigate the various insurance options available to safeguard your investment. Property insurance offers protection against damage or loss to the property itself, providing financial security in the face of unforeseeable events. Similarly, where the land will be developed, liability insurance is essential to protect you from potential legal claims or accidents occurring on your property. Careful consideration of the appropriate insurance options can provide peace of mind and financial security for your land purchase.

3. Reselling

If the purchaser intends to resell the land, whether from the outset of the purchase or as a result of circumstances that have arisen, they will need to take into account a number of considerations.

The first is the minimum holding period. Some states in Malaysia impose a minimum holding period on foreigners or foreign companies who buy land or property in Malaysia. This means that they cannot resell their land or property for a certain period of time after the purchase. For example, in Johor the minimum holding period is five years, while in Penang it is three years.

Second is state consent. As discussed in [Part B.II.1.](#) above, some pieces of land in Malaysia require the consent of the state authority before they can be sold or transferred to another party. This applies to both the seller and the purchaser of the land. Therefore, the foreign owner of the land may need to obtain state consent again for the new transaction. This can take time and incur additional costs.

In addition, if the purchaser plans to sell the leasehold property before the end of the lease, it is important to ensure that there is sufficient time left on the lease for the new purchaser to occupy the property. Otherwise it may be difficult to find a buyer or the asking price may have to be reduced.

Finally, Real Property Gains Tax (“**RPGT**”) is a tax levied on

the profit or gain realised from the sale of land or property. The applicable rate depends on the length of ownership and the status of the owner, as follows:

Years of ownership before sale	Citizens / permanent residents	Foreigners	Companies
One year	30%	30%	30%
Two years	30%	30%	30%
Three years	20%	30%	20%
Four years	15%	30%	15%
Five years	15%	30%	15%
Six years and more	0%	10%	10%

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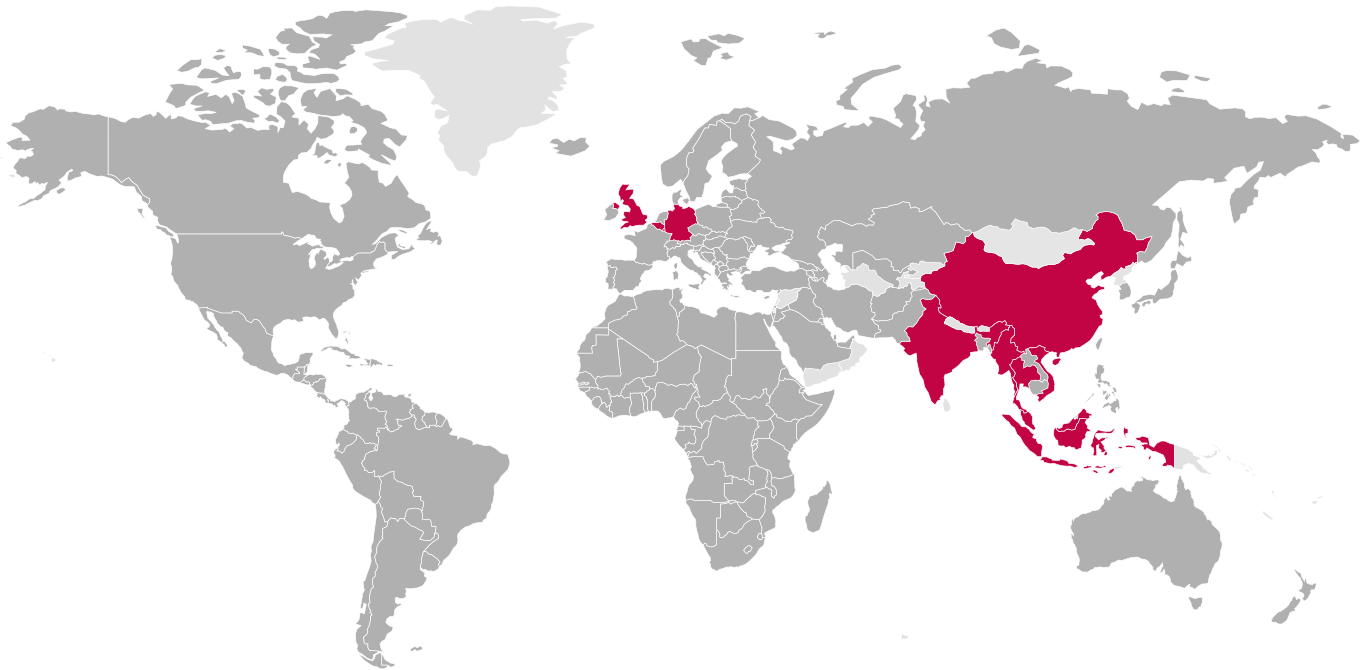
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Our locations

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Our awards



JUVE

In the 2022/2023 JUVE Guide to Commercial Law Firms, 52 lawyers from Luther were recommended, and 10 of these were also listed as “leading advisors”. The legal publisher JUVE ranked Luther in 31 areas of law. In 2022, Luther was nominated for the JUVE award “Employment Law” as well as “Real Estate” and was named “Law Firm of the Year” by JUVE in 2019. In the past, Luther already won the JUVE award “Law Firm of the Year 2017 for Environmental and Regulatory Law”.



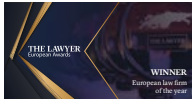
The Legal 500

The Legal 500 Germany 2023 recommends Luther in 30 areas of law, with “Top Tier” rankings in two of these areas. 72 lawyers are being recommended, 12 of whom have been specially recognised as “Leading Individual” or “Next Generation Partner”. Luther has also been included for Germany in the first edition of **The Legal 500 Green Guide EMEA 2022**. This guide provides an overview of law firms’ engagement with sustainability, including both work for clients as well as firms’ own best practices and initiatives.



Chambers

In 2023, Luther was recognised by Chambers Europe for 13 practice areas in Germany as well as in two practice areas in Luxembourg. Moreover, 15 partners were included in the Individual Ranking. Additionally, in 2023, Luther was recognised by Chambers Global in three advisory areas in Germany and Myanmar, while five partners were also included in the Individual Ranking.



The Lawyer European Awards

Luther has been named “Law Firm of the Year: Germany 2021” and also “European Law Firm of the Year 2021” by The Lawyer, one of the most well-known legal magazines worldwide.



Kanzleimonitor

Kanzleimonitor 2022/2023 recommends Luther in 25 areas of law and has also included 16 Luther lawyers among the recommended lawyers mentioned by name.

Best Lawyers

„Best Lawyers in Germany 2024“

For the year 2024, 99 lawyers have been recommended by Luther as “Best Lawyers in Germany 2024”, an award presented by the US publisher “Best Lawyers” in cooperation with the German Handelsblatt, including one partner as “Lawyer of the Year” for his area of law, and 19 colleagues who have received the recommendation “Best Lawyers - Ones to Watch”.



WHO'S WHO LEGAL

WHO'S WHO LEGAL listed 21 lawyers in December 2022, four of whom were recognised as Thought Leaders, which is the highest award, and three of whom were named Future Leaders.

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