

Acquisition of Properties in Selangor by Foreign Interests



*By Nurul Faizah A Razak
Associate
June 2009*

In 2003, the Government of Malaysia formulated a policy that foreigners and permanent residents are allowed to acquire property in Malaysia with a condition that such property is valued at more than RM150,000.00 per unit and RM100,000.00 per unit respectively. However, this acquisition required the approval of the Foreign Investment Committee of the Economic Planning Unit of the Prime Minister's Department ("FIC") which was tasked with the duty of scrutinizing and providing approval for foreigners or *foreign interests to acquire properties and other assets in Malaysia.

However, in December 2006, the Malaysian Government abolished the requirement for FIC approval for any acquisition by a foreign interest of residential units valued at more than RM250,000.00, with no limit on the number of properties acquired and the usage of the same. Nonetheless, a foreign interest who is acquiring a residential property is still required to apply for and obtain the State Authority's consent for such an acquisition. Each State Authority will have the discretion to consider the acquisition by a foreigner/permanent resident based on the area or location of property, types of property and percentage of total units in a particular project.

Recently, the Selangor State Authority had issued the "Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 1/2009 Dasar Perolehan Hartanah kepada Warganegara Asing bagi Tujuan Bangunan Kediaman" dated 1 June 2009, which was approved by the Majlis Mesyuarat Kerajaan Negeri Selangor on 1 April 2009 to amend the threshold value of residential property that may be acquired by a foreigner/permanent resident. The new ruling sets out the following conditions :

- 1) For foreigners: the minimum value of the residential property to be acquired is raised from RM150,000.00 to RM500,000.00 per unit; and
- 2) For permanent residents who are married to Malaysian citizens: the minimum value of the residential property to be acquired is raised from RM60,000.00 to RM250,000.00 per unit.

In other words, if the property sought to be acquired by a foreigner is valued above RM500,000.00 per unit, the said foreigner shall be allowed to acquire the property, subject to the State Authority's consent being obtained. This therefore rules out the possibility for foreigners to acquire any property in Selangor below the value of RM500,000.00 per unit. The same would apply to permanent residents married to Malaysian citizens at the corresponding value.

Nonetheless, this new ruling will not apply retrospectively to the foreigners and permanent residents who have previously purchased residential property valued less than the abovementioned thresholds prior to the effective date of the said ruling.

The Malaysian Government has also introduced the Malaysia My Second Home ("MM2H"), a long term stay visa programme, which is open to most nationalities, except for those from Israel, Montenegro and Serbia, and the same rulings from FIC and the State Authority as mentioned above would continue to be applicable.

This means that each participant under the MM2H programme is allowed to acquire residential property valued at more than RM250,000.00, without having to obtain the approval from FIC, but is nevertheless required to obtain consent from the State Authority. In addition, the participants are also subject to the conditions laid down by the Ministry of Tourism.

The relaxation on the FIC approval however does not apply to the acquisition of a non-residential property, i.e., a foreign interest is required to apply for the FIC approval for the following types of property:-

- 1) commercial property valued at less than RM10 million and subjected to the Purchaser's own use;
- 2) agricultural land valued more than RM250,000.00 or at least five (5) acres and subjected to the following purposes:-
 - a) to carry out agricultural activities on a commercial scale using modern or high technology; or
 - b) to carry out agro-tourism project;
 - c) to carry out agricultural or agro-based industrial activities for the production of goods for export.
- 3) Industrial land, without any price limit, but the foreign interest must be registered under a locally incorporated company;
- 4) Property valued more than RM60,000.00 per unit, to be acquired by a local company owned by foreign interest, to be occupied as a hostel for the company's employee;
- 5) Property acquired through public auction valued more than RM150,000.00 per unit other than residential unit;
- 6) Two (2) or more contiguous properties with a total value of RM10 million and above;
- 7) An entire building or an entire property development project, valued at RM10 million and above and must be registered under a locally incorporated company;
- 8) Land or land with building for redevelopment on a commercial basis. If the acquisition is not meant for own use, it has to be registered under a locally incorporated company.

A foreign interest is however not allowed to acquire these types of property:-

- 1) Residential unit under the category of low and medium low cost as determined by the State Authority;
- 2) Properties built on Malay reserve land;

- 3) Properties allocated to Bumiputera (Bumiputera quota) in any property development project as determined by the State Authority;
- 4) Stall and service workshop;
- 5) Agricultural land developed on the basis of the homestead concept; and
- 6) Properties gazetted under National Heritage Act 2005.

* Foreign interest includes the following:-

- a) an individual who is not a Malaysian citizen (including permanent residents);
- b) a foreign company or institution (unless the effective shareholding is stated); or
- c) a local company or local institution whereby the parties as stated in (a) and/or (b) above hold more than fifty per cent (50%) of the voting rights in that company or institution.

The law is stated as at 1 June 2009.