Global Corporate Real Estate Guide - Malaysia

Planning and Environmental Issues

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# Who has authority over land development and environmental regulation?

The relevant local authority having jurisdiction over the property has the authority over land development.

The Ministry of Natural Resources, Environment and Climate Change has the overall responsibility and authority to ensure a balance between the management of natural resources and the environment in achieving sustainable development. The Department of Environment (an enforcement arm of the Ministry of Natural Resources, Environment and Climate Change) has authority over environmental regulation.

# What environmental laws affect the use and occupation of real estate?

The primary legislation that is related to the prevention, abatement, control of pollution and enhancement of the environment in Malaysia is the Environmental Quality Act 1974 (the “EQA”) and all subsidiary legislations.

# What main permits or licenses are required for building or occupying real estate?

The primary legislations governing the construction of a building are the Street, Drainage and Building Act 1974, the Town and Country Planning Act 1976 and all subsidiary legislations. For the purpose of the Federal Territory of Kuala Lumpur, the primary legislations are the Federal Territory (Planning) Act 1982 and the subsidiary legislation made thereunder.

Planning Permission (in the case of the Federal Territory of Kuala Lumpur, a development order) and approval for building plans must be obtained from the local authorities prior to the commencement of any construction of a building on land. Upon completion of the construction and prior to occupation of the building, the owner or developer will have to obtain a Certificate of Completion and Compliance (a “CCC”).

Where the proposed activity on the property falls under the category of “prescribed activity” within the meaning of the EQA, an environmental impact assessment must be conducted and approved by the Director General of Environmental Quality.

Additionally, where manufacturing activities are to be undertaken on the property, the owner or occupier must obtain prior approval from the Ministry of International Trade and Industry of Malaysia before the commencement of operations.

# Can an environmental cleanup be required?

Under the EQA, the director general may issue a notice to the owner/occupier of land to take steps to reduce, mitigate, disperse, remove, eliminate, destroy or dispose of pollution within the time specified in the notice.

# Are there minimum energy performance requirements for buildings?

No. However, there is a voluntary rating system known as the Green Building Index (“GBI”) which was initially established by the Malaysian Institute of Architects, with four categories of green certifications including Certified, Silver, Gold and Platinum. GBI rates green and sustainable buildings designed based on six criteria:

Energy efficiency - improve energy consumption, minimize solar heat gain, harvest natural light, use renewable energy and ensure proper maintenance

Indoor environment quality - good indoor air quality performance with low volatile organic compound materials, quality air filtration, proper control of temperature

Materials & Resources - use environment-friendly materials and implement property construction waste management

Sustainable site planning & management - appropriate sites with planned access to public transportation, open spaces, and landscaping. Environmental conservation in sensitive areas. Implement proper construction management. Reduce strain on existing infrastructure capacity

Water efficiency - rainwater harvesting, water recycling, and water-saving fittings

Innovation - innovative design and initiatives meeting the green building index objective

# Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

In Malaysia, construction practices are regulated by the Uniform Building By-Laws 1984 (the “UBBL”), which are subsidiary legislation made under the Street, Drainage and Building Act 1974. The UBBL entails the provision for energy efficiency in buildings, specifically clause 38A which states that:

New or renovated non-residential buildings with air-conditioned space exceeding 4,000 square meters shall be:

designed to meet the requirements of MS 1525 with regards to the Overall Thermal Transfer Value and the Roof Thermal Transfer Value; and

provided with an Energy Management System.

The roof of all buildings (residential and non-residential) shall not have a thermal transmittance (U-value) greater than: (a) 0.4 W/m2.K for a lightweight roof (below 50 kg/m2); and (b) 0.6 W/m2.K for a heavyweight roof (above 50 kg/m2); unless provided with other shading or cooling means.

However, not all States in Malaysia adopt the UBBL. Some States have their own Uniform Building By-Laws, which may entail different energy efficiency requirements.

In granting any planning permission, local authorities may impose certain conditions requiring the construction of the buildings to comply with energy efficiency requirements under the UBBL. It is incumbent upon the architect to ensure that these conditions are complied with before a CCC is issued for the building.

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