Global Corporate Real Estate Guide - Malaysia

Real Estate Law

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# What is included in the term “real estate”?

The term “real estate” is not defined in the National Land Code (Revised - 2020) (“NLC”). Under the NLC, the term “land” includes the following:

The land (including anything on or forming the surface of the earth and below the surface)

All things attached or permanently fastened to the earth, including any buildings or structures constructed on the land

All vegetation and other natural products on or below the surface

Land covered by water

# What laws govern real estate transactions?

The principal legislation governing all land matters in Malaysia is:

NLC, which is the principal land law governing all land matters in Peninsular Malaysia (including the Federal Territories of Labuan);

National Land Code (Penang & Malacca Titles) 1963;

Sarawak Land Code (Cap 81); and

Sabah Land Ordinance (Cap 68).

Pursuant to the Federal Constitution of Malaysia, land matters generally lie within the jurisdiction of the State Authority of each State in Malaysia (“State”). Each State has enacted its own subsidiary land legislations, such as various land rules, enactments, and ordinances to supplement the operation of the principal legislation mentioned above.

Other than the States, land matters relating to the three federal territories of Kuala Lumpur, Putrajaya, and Labuan fall under the purview of the Federal Government.

In addition to the above statutes, there are other legislations that govern specific land matters such as:-

Strata Titles Act 1985 (which governs and facilitates the subdivision or stratification of buildings or land into parcels); and

Strata Management Act 2003 (which regulates the maintenance and management of strata buildings and common property).

# What is the land registration system?

Land laws in Malaysia are premised on the Torrens system. A system of registration of land title and interest, where the register at the relevant land registry/office reflects legal title and interest in land.

# Which authority manages the registration of titles?

Title registration is managed by the land registrar or the land administrator of the relevant States, depending on the locality, size and category of use of the land. Where the land falls under the jurisdiction of the land registry, the registration of title is managed by the land registrar. Where the land falls under the jurisdiction of the land office, the registration of title is managed by the land administrator.

# What rights over real property are required to be registered?

Generally, all dealings must be in the prescribed form and registered at the relevant land registry/office. Upon registration of the prescribed forms, the title or interest shall be reflected in the register at the relevant land registry/office as well as the title documents of the land. The following are the dealings which are recognized under the NLC:

Transfers

Leases (i.e., leases with fixed tenure in excess of 3 years)

Charges

Easements

Under the NLC, there are certain dealings which are not capable of registration such as tenancies with a fixed tenure of not more than 3 years, and statutory liens which are protected by endorsement and entry of a lienholders’ caveat.

# What documents can landowners use to prove ownership over real property?

Under the Torrens System, registration of a person’s name on the title document is conclusive evidence as to such person’s legal title or interest in the relevant lands. A title document issued by the relevant land registry is sufficient to prove ownership.

Where a document of title is not available (for example due to a subdivision or other application at the relevant land registry / land office), then ownership can be established by producing the original sale and purchase agreement entered into with the legal owner of the master title.

Where a property without an available document of title has been subsequently sold, the current owner can provide the original sale and purchase agreement together with an original signed deed of assignment evidencing the assignment (by way of transfer) of the title, rights and interests in the property by the legal owner of the primary title, previous beneficial owners or assignees.

# Can a title search be conducted online?

Yes, for a fee.

However, certain land registries / land offices do not provide online title searches. Manual searches can be conducted in person for a fee.

# Can foreigners own real property? Are there nationality restrictions on land ownership?

1. Generally, alienated land in Peninsular Malaysia may be transferred freely (to non-foreigners) unless expressly restricted by a restriction-in-interest on the issued document of title.

2. For foreigners acquiring property, the NLC provides that prior approval of the relevant State Authority must be obtained before acquiring the title or interest in any real property in Peninsular Malaysia.

3. Pursuant to the Guideline on the Acquisition of Properties (“EPU Guideline”) issued by the Economic Planning Unit (“EPU”), the EPU’s approval is required for real property transactions resulting in the dilution of Bumiputera interest or government agency in real property as follows:

(a) Indirect acquisition of real property through acquisition of shares where:

(i) the transaction results in a change in control of the company owned by Bumiputera interest and/or government agency;

(ii) real property makes up more than 50% of the said company’s assets; and

(iii) the real property is valued at more than MYR 20 million.

(b) Direct acquisition of real property where:

(i) there is a dilution of Bumiputera or government interests in real property; and

(ii) the property is valued above MYR 20 million.

The following are defined under the EPU Guidelines:

(i) “Foreign interest” means a person who is not a Malaysian citizen, or a foreign incorporated company or a local incorporated company with 50% or more of its equity interest held by a Malaysian citizen or a foreign incorporated company

(ii) “Bumiputera interest” means any interest, associated group of interests or parties acting in concert comprising:

(A) a Bumiputera individual (a Malay individual or aborigine as defined under the Federal Constitution);

(B) a Bumiputera institution and trust agency; or

(C) a local company or institution where the parties stated above hold more than 50% of the voting rights in that local company or institution.

(iii) “Government agency” means the statutory bodies, non-listed government linked companies, government linked investment companies including their subsidiaries

4. If the acquisition (whether direct or indirect) will result in the dilution of Bumiputera interest or government agency, the approval of EPU will be granted subject to:

(a) an equity condition requiring the foreign entity to have of at least 30% Bumiputera interest shareholding; and

(b) the paid-up capital of the foreign entity shall be at least MYR250,000.

5. That said, the EPU Guidelines contain certain exemptions whereby the approval of the EPU will not be required. Certain key exemptions include:

(a) Multimedia Super Corridor (MSC) status companies are allowed to acquire any property in the MSC area provided that the property is only used for their operational activities including as residence for their employees;

(b) Acquisition of properties in the approved area in any regional development corridor by companies that have been granted MSC status by the local authority as determined by government; and

(c) Acquisition of industrial land by a manufacturing company.

6. Additionally, as land matters fall within the purview of the relevant State Authority, each State also has specific policies restricting the acquisition of land by foreigners, which vary from State to State. Further, foreigners are generally restricted from directly acquiring agricultural lands in Peninsular Malaysia under the policies of the States.

# Can the government expropriate real property?

Yes. The State Authority having jurisdiction over the land can compulsorily acquire the whole or any part of a property in limited circumstances but adequate notice and appropriate compensation need to be given to the land owner.

# How can real estate be held?

Generally, in Peninsular Malaysia an interest over real property can be held by any of the following means:

In perpetuity (i.e., freehold)

For a term not exceeding 99 years (leasehold land and/or leases over the entire parcel of land)

For a term not exceeding 30 years (leases over a portion of a land)

Note: Ownership and interest derived from registration may also arise by way of contract (tenancy for fixed tenure not exceeding 3 years or license agreement).

# What are the usual structures used in investing in real estate?

Depending on the purpose and the type of investment that is taking place, investors are typically:

Individuals

Corporations (including statutory bodies, joint ventures, special purpose vehicles, joint venture companies)

trusts including real estate investment trusts

# How are real estate transactions usually funded?

The most common methods of financing real estate transactions are through the following:

Cash

Shareholders’ advance/loan

External financing through institutional lenders such as financial institutions

Issuance of securities (i.e., notes, bonds, shares, etc.)

Where financing is obtained from an external source (i.e., banks or financial institutions), the property will usually be placed as security or collateral (by way of charge or assignment) for the repayment of the loan. Depending on the situation and the credit history of the borrower, the lender may also require additional security such as personal guarantees from the directors of the borrower and/or corporate guarantees from the borrower, the borrower’s parent company or its associated company.

Typically, it is the borrower’s obligation to bear all costs in relation to the external financing or loan transaction, including the lender’s legal fees, processing fees, stamp duty payable on the loan documentation and such other incidental charges in relation to the transaction.

# Who usually produces the documentation in real estate transactions?

Based on the Conveyancing Practice Rulings issued by the Bar Council of Malaysia, the seller’s solicitors prepare and supply the sale and purchase agreements unless otherwise mutually agreed by the parties. However, it is common market practice that the buyer’s solicitors will prepare the initial draft letter of offer and the sale and purchase agreement.

# Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

Generally, an owner or occupier will not inherit liability for matters relating to the property before purchase or occupation unless otherwise agreed. Typically, the owner or occupier will only be liable for the matters relating to the property bought or occupied by them from and including the date they take vacant or exclusive possession.

However, an owner could inherit liability prior to their acquisition by operation of law in certain circumstances. For example, where there is a breach by the previous legal owner which continues after the property is bought over by a new owner, of any of:

Condition of title

Environmental requirements

By way of example, the land registry/land office may require the current owner to comply with specific conditions of title and the Malaysian Department of Environment may require the current owner to clean up contamination even if the owner had not caused the contamination.

# Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

Generally, a seller or occupier will not retain any liability. However, there are certain circumstances that certain liabilities will remain with the seller, including:

where the seller committed an offense while being the registered owner or occupier, then disposal of the land does not in itself automatically release the seller from such offense; and

where the seller defaulted in any contract or agreement relating to the property which it has signed with any third party such as a tenancy agreement with a tenant, before the real estate is disposed of. Such contractual liability is personal in nature and will remain with the seller, notwithstanding the sale or disposal of the property.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.