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Acquisition Of Malaysian Properties By Foreign Interest – Approval Of The Economic Planning Unit, Prime Minister's Department

Contact Persons:**Annabel Kok Keng Yen**
Partner+603 6209 5400
annabel@rdslawpartners.com**Chia Loong Thye**
Partner+04 370 1122
ltchia@rdslawpartners.com**Mohd Farizal Farhan**
Partner+603 6209 5400
farizal@rdslawpartners.com**Ong Eu Jin**
Partner+603 6209 5488
eujin@rdslawpartners.com**Ooi Bee Hong**
Partner+603 6209 5401
beehong@rdslawpartners.com**Tan Gek Im**
Partner+04 370 1122
gekim@rdslawpartners.com

Under Malaysian laws, acquisition of properties by foreigners or foreign companies requires approval of the relevant state authority pursuant to the National Land Code (Act 828) and guidelines issued by the state authority.

However, in addition to approval from the state authority, acquisition by foreign interest may also require approval from the Economic Planning Unit, Prime Minister's Department (EPU). Such approval may often be overlooked by foreigners/foreign companies who are unfamiliar or new to the Malaysian property market. If the EPU approval is required but not obtained, the relevant land office will be unable to process the application.

This alert will discuss the applicability of the Guidelines on the Acquisition of Properties¹ (Guidelines) issued by the EPU in relation to acquisition of properties by foreign interest. Foreign interest is defined under the Guidelines as any interest, associated group of interests or parties acting in concert which comprises:

- i. An individual who is not a Malaysian citizen.
- ii. An individual who is Permanent Resident.
- iii. A foreign company or institution.
- iv. A local company or local institution whereby the parties as stated in item (a) and/or (b) and/or (c) hold more than 50% of the voting rights in that local company or local institution.

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¹ https://www.epu.gov.my/sites/default/files/2020-03/GP_EPUJPM.pdf

Acquisitions That Require Approval Of EPU

Pursuant to the Guidelines, approval of the EPU is required for all property acquisition (except for residential units) where there is:

- i. Direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputera interest and/or government agency.
- ii. Indirect acquisition of property by other than Bumiputera interest through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, having property more than 50 percent of its total assets, and the said property is valued more than RM20 million.

It has to be noted that the Guidelines cover not only direct acquisition but also indirect acquisition through acquisition of shares. However, the Guidelines do not cover the acquisition of a property which is not held by any Bumiputera interest or government agency. There are also limited exceptions to the requirement to obtain approval which are set out in Appendix 1 of the Guidelines.

Conditions For Acquisition

The acquisitions that require the EPU approval are also subject to the following equity and paid-up capital conditions (Conditions):

- i. The property must be registered under a locally incorporated company.
- ii. The company must have at least 30 percent Bumiputera interest shareholding.
- iii. For a local company owned by local interest, the paid-up capital has to be at least RM100,000.
- iv. For a local company owned by foreign interest, the paid-up capital has to be at least RM250,000.

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Contact Persons:

Annabel Kok Keng Yen
Partner

+603 6209 5400
annabel@rdslawpartners.com

Chia Loong Thye
Partner

+04 370 1122
ltchia@rdslawpartners.com

Mohd Farizal Farhan
Partner

+603 6209 5400
farizal@rdslawpartners.com

Ong Eu Jin
Partner

+603 6209 5488
eujin@rdslawpartners.com

Ooi Bee Hong
Partner

+603 6209 5401
beehong@rdslawpartners.com

Tan Gek Im
Partner

+04 370 1122
gekim@rdslawpartners.com

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For a direct acquisition of property, the Conditions must be complied with before the transfer of the property's ownership. Meanwhile, for an indirect acquisition of property, the Conditions must be complied with within one year after the issuance of written approval.

Bumiputera interest is defined under the Guidelines to mean any interest, associated group of interests or parties acting in concert, which comprises:

- Bumiputera individual.
- Bumiputera institution and trust agency.
- Local company or local institution whereby the parties as stated in item (a) and/or (b) hold more than 50% of the voting rights in that local company or local institution.

Restrictions

It has to be noted that pursuant to the Guidelines, foreign interest is not allowed to acquire:

- Properties valued less than RM1,000,000 per unit.
- Residential units under the category of low and low-medium cost as determined by the State Authority.
- Properties built on Malay reserved land.
- Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

Procedure For Submission Of Application

The detailed procedure and documents required for submitting an application for EPU approval are laid out in the Guidelines.

Authored by Lim Khey Ken, Associate with the firm's Corporate practice.