

BUYING PROPERTY IN MALAYSIA BY FOREIGNERS

外国人在马来西亚购买产业

I. Foreign Ownership 外国人拥有权

There are no restrictions on the number of properties that a foreign national may purchase provided that: 外国公民可以不受产业数量的限制只要:

1. each of the properties are valued at RM1,000,000.00 or more and are of the following type¹: 每个产业值 RM1,000,000.00 或以上并是以下的类型:
 - a. residential; 住宅;
 - b. commercial; 商业;
 - c. industrial; 工业;
 - d. agriculture land of at least 5 acres intended for commercial purpose² 至少 5 英亩的农业土地用于工业用途
2. the property is not located on Malay Reserve Land/Native Land; 产业并不是处于马来储备工地;
3. approval/consent from the State Authority where the property is located is obtained under Section 433B of the National Land Code, 1965 and the necessary levy paid.³ 根据 1965 年国家土地法典, 只要产业得到州委的批准/同意以及支付税收。

II. Titles 地契

There are two categories of land titles in Malaysia. 在马来西亚地契分为两大类

Leasehold- these are normally 99 year leases which are renewable upon expiry or before the expiry of the 99 year leases for a further period based on market value and payment of premium to the relevant State Authority. 租用业权-租期一般是 99 年; 可在逾期前根据市价缴费于州委以更新租赁权

Freehold- gives enduring ownership of the property to the buyer.

永久产权-给予购买产业者持久的拥有权

III. Purchase from Developer – new development launches 向发展商购买产业-推行新的发展计划

1. Sale and Purchase Agreement 销售与购买协议

The format of the sale and purchase agreement is strictly regulated and prescribed under the *Housing Developers (Control and Licensing) Regulations 1989* and the format of the Sale and Purchase Agreement is normally known as Schedule G – for landed properties and Schedule H – for high rise properties. 销售与购买协议是根据 1989 年房地产发展商(控制和许可规定)的

¹ Some States require the property to be of certain type ie 3 storey shophouse etc. 有些国家要求只能购买指定类型的产业如 3 层式办公室

² Economic Planning Unit of the Prime Minister's Dept Guidelines on acquisition of properties wef 2009 首相的部门指导方针的经济策划单位在收购属性自 2009 年生效

³ For eg, an application fee of RM500.00 and approval levy of RM10,000.00 is payable in Johor. 例如, 在柔佛州要支付 RM500 的申请费和 RM10,000.00 的批准征收。 The fee and levy may be revised upwards in the future. 此收费和批准征收可能在往后上调。

法定形式规定编写. 销售与购买协议一般被称为G览表-对于有地房产和H览表-对于高层建筑
 建筑物.

If the developer is not the landowner of the land where the property is being developed, then by law, the landowner must be a contracting party to the Sale and Purchase Agreement prescribed in the *Housing Developers (Control and Licensing) Regulations 1989* to prevent the landowner from not honouring the subsequent obligation to transfer the individual Title/Strata Title to the buyer. 如果发展商并不是地主, 那么在法律的要求下, 地主必须按照1989年房地产发展商(控制和许可规定)的法定形式规定成为销售与购买协议的缔约人以防止地主没有兑现义务将个人分层地契转移购屋者.

The buyer does not normally engage its own solicitors to act on its behalf as the format of the Sale and Purchase Agreement is strictly regulated and prescribed under the *Housing Developers (Control and Licensing) Regulations 1989* and no changes thereto can be made without the prior approval of the Ministry of Housing. 购屋者一般不会雇用律师代表其行事, 这是因为销售与购买协议是根据1989年房地产发展商(控制和许可规定)的法定形式规定编写以及在得到房屋部的批准下, 不可作出其中任何的更改.

2. Legal Fees 律师费

Based on the amount of the Purchase Price, legal fees are calculated by a fixed fee schedule regulated by the Bar Council, Malaysia under the Solicitors Remuneration Order 2006 as follows: 律师费是根据售价, 按照以下由马来西亚律师工会(2006年律师报酬秩序)固定的费收表来计算.

<u>Purchase Price 售价</u>	<u>Scale Fees 收费标准</u>
First RM150,000.00 首 RM150,000.00	1%
Next RM850,000.00 接着 RM850,000.00	0.7%
Next RM2,000,000.00 接着 RM2,000,000.00	0.6%
Next RM2,000,000.00 接着 RM2,000,000.00	0.5%
Next RM2,500,000.00 接着 RM2,500,000.00	0.4%
Excess of RM7,500,000.00 超过 RM7,500,000.00	Negotiable on the excess (but shall not exceed 0.4% of such excess) 可协商 (但不可超越 RM7,500,000.00 的 0.4%)

3. Payment of Purchase Price 支付售价

The purchase price payable to the developer is spread over 24 months to 36 months from the date of the Sale and Purchase Agreement and any extension thereof requires the prior approval of the Ministry of Housing. It is common for high rise developments to be extended beyond the 36 months period with the approval of the Ministry of Housing. 支付售价予发展商是从签署销售与购买协议的日期算起24个月至36个月分期支付以及任何的延期需得到房屋部的批准. 对于高层建筑在36个月后延期并得到房屋部的批准是普遍的.

Other than the 1st deposit payment of 10% payable on signing of the Sale and Purchase Agreement, the remainder installments of the purchase price is spread over 24 months to 36 months from the date of the Sale and Purchase Agreement, depending on the progressive completion of actual works to the property and each billing will need to be supported with an Architect's/engineer's certificate. 除了在签署销售与购买协议时所支付的第一付款10%, 剩余的售价将会从签署销售与购买协议的日期算起24个月至36个月分期支付, 取决于有关建设实际完成的进度以及每个计算将受到建筑师或工程师的证书证明.

All funds received by the developer shall be placed in a regulated account called the HDA account for that particular development only. The use of funds in this account is monitored by the Ministry of Housing. 所有发展商收到的存款应该放置在一个监管账户被称为HDA账户适用于特定的发展计划而已. 账户里的存款的用途是被房屋部监督管理的.

A sum of 5% of the purchase price will be held by a stakeholder legal firm at the time vacant possession is delivered to the buyer to cover any claims for defects liability from the

developer. The defects liability period can run up to 24 months from the date of delivery of keys to the property. 当房屋已交给购屋者, 律师可以保留售价的5%, 这些钱可以用来付给买主向发展商所提出的索赔如房屋缺陷或损耗. 房屋缺陷/损耗的索赔有效期限是从交付钥匙后的24个月内.

On completion and delivery of keys to properties under high rise developments, the developer will apply for sub-division of the Master Title to individual Strata titles and this process normally takes 12-24 months. Thereafter the individual Strata titles will be transferred to the buyers. 对于高层建筑物在完成后, 发展商会为购屋者从总地契中申请分层地契. 这个程序将耗费12至24个月. 其后, 分层地契将会转移给购屋者.

4. Stamp Duty印花税

Stamp Duty (based on the purchase price stated in the Sale and Purchase Agreement)⁴印花税是根据销售与购买协议里的售价计算的

Up to RM100, 000	RM100,000以下	1%
RM100, 000 – RM500, 000		2%
RM500, 001 upwards	RM500,001以上	3%

5. Financing融资

If buying from a developer, there may be financing packages available with end-financing banks which offer mortgages to both local and foreign purchasers. The margin of financing will normally be about 10-20% lower than the margin made available to locals . Normally can be up to 60-70% financing margin from the end-financing banks. 要是向发展商购买产业, 银行会提供贷款予当地和外国购屋者. 保证金融资一般会比当地居民低于10-20%. 一般的保证金融资会是60-70%.

(a) Stamp Duty印花税

Stamp Duty (based on the amount of loan facility)印花税(根据贷款的数额)

RM5.00 for every RM1,000 of loan amount or part thereof (0.5%) 每贷款RM1,000将征收RM5印花税

(b) Legal Fees律师费

Based on the amount of the loan facility, legal fees are calculated by a fixed fee schedule regulated by the Bar Council, Malaysia under the Solicitors Remuneration Order 2006 as follows:-根据贷款的数额, 律师费将按照以下由马来西亚律师工会(2006年律师报酬秩序)固定的费收表来计算.

<u>Loan Amount</u> 贷款数额	<u>Scale Fees</u> 收费标准	
First RM150,000.00	首RM150,000.00	1%
Next RM850,000.00	接着RM850,000.00	0.7%
Next RM2,000,000.00	接着RM2,000,000.00	0.6%
Next RM2,000,000.00	接着RM2,000,000.00	0.5%
Next RM2,500,000.00	接着RM2,500,000.00	0.4%
Excess of RM7,500,000.00	超过RM7,500,000.00	Negotiable on the excess (but shall not exceed 0.4% of such excess) 可协商 (但不可超越 RM7,500,000.00的0.4%)

⁴ Not the market value of the property at the time of transfer 不是根据转移产权时产业的市价

6. GST消费税

With effect from 1/4/2015, GST at the rate of 6% will be imposed on sale, purchase and rental of **non-residential properties**. GST on sale, purchase and rental of **residential properties will be exempted**. 1/4/2015起实行，买卖和租赁非居住产业将征收6%的消费税。买卖和租赁居住产业，豁免征收消费税。

IV. Resale of Property转售产业

1. Real Property Gains Tax产业盈利税

If the buyer subsequently disposes the property, the buyer, depending on when such resale actually takes place, will be required to pay a tax **on the gains** he/she has made at the following rates:-要是购屋者随后卖掉产业，购屋者必须根据转售日期及产业盈利纳税。

<u>Re-sale Date转售日期</u> <u>利税的盈利</u>	<u>RPGT tax on the profit/gains产业盈</u> ⁵
In Years 1 to Year 5 from date of purchase from the developer/previous owner 向发展商/之前的屋主购买5年内转售	30%
After Year 6 from date of purchase from the developer/previous owner 向发展商/之前的屋主购买第6年及之后转售	5% ⁶

2. Stamp Duty印花税

Stamp Duty – None. To be paid by the new buyer不比缴付印花税。新的买主须支付。

3. Legal Fees律师费

Based on the resale price, legal fees are calculated by a fixed fee schedule regulated by the Bar Council, Malaysia under the Solicitors Remuneration Order 2006 as follows:-根据转售价格，律师费将按照以下由马来西亚律师工会(2006年律师报酬秩序)固定的费收表来计算。

<u>Resale Price转售价格</u>	<u>Scale Fees收费标准</u>
First RM150,000.00首RM150,000.00	1%
Next RM850,000.00接着RM850,000.00	0.7%
Next RM2,000,000.00接着RM2,000,000.00	0.6%
Next RM2,000,000.00接着RM2,000,000.00	0.5%
Next RM2,500,000.00接着RM2,500,000.00	0.4%
Excess of RM7,500,000.00超过RM7,500,000.00	Negotiable on the excess (but shall not exceed 0.4% of such excess) 可协商(但不可超越)

⁵ WEF from 1/1/2014 自 1/1/2014 起生效

⁶ For foreigners and company whereby the rate will only reduce to 5% tax on the profit/gains 对于外国人和以企业名誉购买的房产，只征收 5%的产业盈利税。

4. Sale and Purchase Agreement -direct purchase from existing owners销售与购买协议-直接向现有的业主购买产业

Unlike direct purchases from the Developer (viz new development launches) as described under Paragraph III above) there is no prescribed format for the sale and purchase agreement upon resale; hence, the seller and buyer are free to mutually agree upon the terms and conditions of such resale. We strongly recommend the engagement of a solicitor specializing in conveyancing matters to attend to the relevant documents.直接向现有的业主购买产业和向发展商购买产业是有区别的. 直接向现有的业主购买产业在产业转售时, 销售与购买协议并没有规定的格式. 因此, 卖方和买主双方可自由地在转售产业的协议达成共同认可. 我方强烈建议由专业的律师负责产权转让.

As of October 2013 直至10/2013

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