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Investment into real estate (Legal Considerations) – China

Alex Gong – Shanghai, China

5 February 2018





Investment into real estate – China

- 1 Legal landscape

- 2 Foreign investment

- 3 Common foreign investment structure

- 4 Recent de-regulation of real estate FIEs

- 5 Other recent developments

- 6 Our observations on market

Legal landscape

- § No freehold land
- § “Land use right” is the Chinese “equivalent” of land title
 - § Essentially a long-term transferrable leasehold interest in state-owned land
 - § Term varies by land use: 40 years for hotel/commercial use, 50 years for industrial use or 70 years for residential use
 - § Land Grant Contract + Land Grant Fee + Land Use Right Certificate
 - § Marketability: sale, lease or mortgage
 - § Regime for renewal at expiry of term: evolving, existing user’s priority right to renew, automatic renewal for residential land
 - § Regime for government resumption: evolving, generally reason of public interest is required and compensation will be provided
- § Grant of land use right to commercial, residential or industrial land must be conducted through a public bidding process

Legal landscape

- § Owner of land use right obtains ownership of building or structure on the land
- § Torrens system
 - § Mandatory registration for all lands and buildings except for state-owned land
 - § One single title registry in each county/district for all land, buildings, forestry, etc. (excluding mining rights)
 - § Title certificate will be issued as documentary evidence
 - § Title search is limited to owners and interested parties only

Foreign investment

- § Foreign investor owning 100% interest in PRC real estate is feasible and common
- § Direct foreign ownership is permitted only under very limited circumstances
 - § For self-use purpose
 - § Buyer of residential property must have worked or studies in China for at least 1 year
- § In most cases, foreign investor must form a local PRC entity to hold and operate China property.
- § Local partner is not mandatorily required, except for construction and operation of cinema

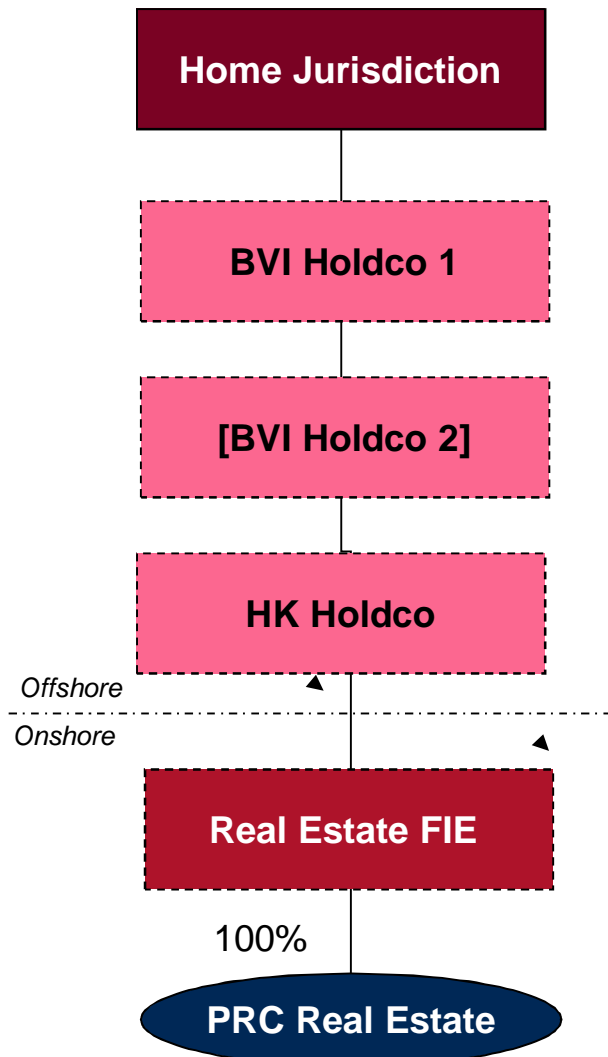
***Note:** State Authority Approval is required in most circumstances for foreign parties to acquire real estate

Foreign investment

- § The PRC holding entity is recognized as a type of foreign invested enterprise (“FIE”) under Chinese law.
- § All major corporate events of an FIE (e.g. establishment, share transfers and dissolution, etc.) are subject to government filing or approval.
- § Real estate FIEs used to be subject to a rather restrictive regime, but most restrictions have been lifted.
- § The only remaining restriction is no “cross-border loans”: that is a real estate FIE is not allowed to borrow from any overseas entities, including its foreign shareholder.

***Note:** State Authority Approval is required in most circumstances for foreign parties to acquire real estate

Common foreign investment structure







- § Foreign investor must hold PRC property via a “Real Estate FIE”
- § Real Estate FIE requires approval/recordal
- § Potential tax benefit under HK-China tax arrangement
- § Double BVI for ease of offshore investment exit. Offshore share sale:
 - § No PRC regulatory approval/recordable
 - § No HK taxation
 - § But still subject to PRC tax (Circular 7)

Recent de-regulation of real estate FIEs

§ Government approval has been replaced with a recordal/filing for most real estate projects since Oct. 2016:

§ Higher deal certainty

§ More efficient

No.	Transaction Involved	Method of Regulation
1	New FIEs developing / owning / operating / residential or commercial real estate	Recordal 
2	New FIEs owning / operating cinemas (restricted sector)	Approval 
3	Corporate changes / transactions to FIEs not requiring foreign investment approval	Recordal 
4	Acquisition of domestic companies by foreign investors	Approval 

Other recent developments

- § Land authorities started to add holding requirements for commercial and office land granted after Feb. 2016:
 - § for commercial property, generally developer is required to hold not less than 80% for 10 years or longer
 - § for office property, generally developer is required to hold not less than 40% for 10 years or longer
- § In response to high property price, government issued multiple initiatives to encourage leasing of residential properties
 - § Encourage development/holding of residential properties for leasing purpose
 - § Grant residential land with a special “for leasing only” covenant
 - § streamline the procedures for converting residential properties to residential purpose
- § The unusual tight scrutiny over outward payments during late 2016 to early 2017 is “almost” over

Our observations on market

- § Sophisticated / long-term foreign investors still selectively doing deals, mainly in T-1 and T-2+ cities
- § MNC users and “the new money” still taking up wide range of real estate space (less so for retail space)
- § PRC developers / “the old money” still highly leveraged, and at risk
- § Informal price control on first-hand residential properties in T-1 and T-2+ cities
- § True China REIT may finally have a shot

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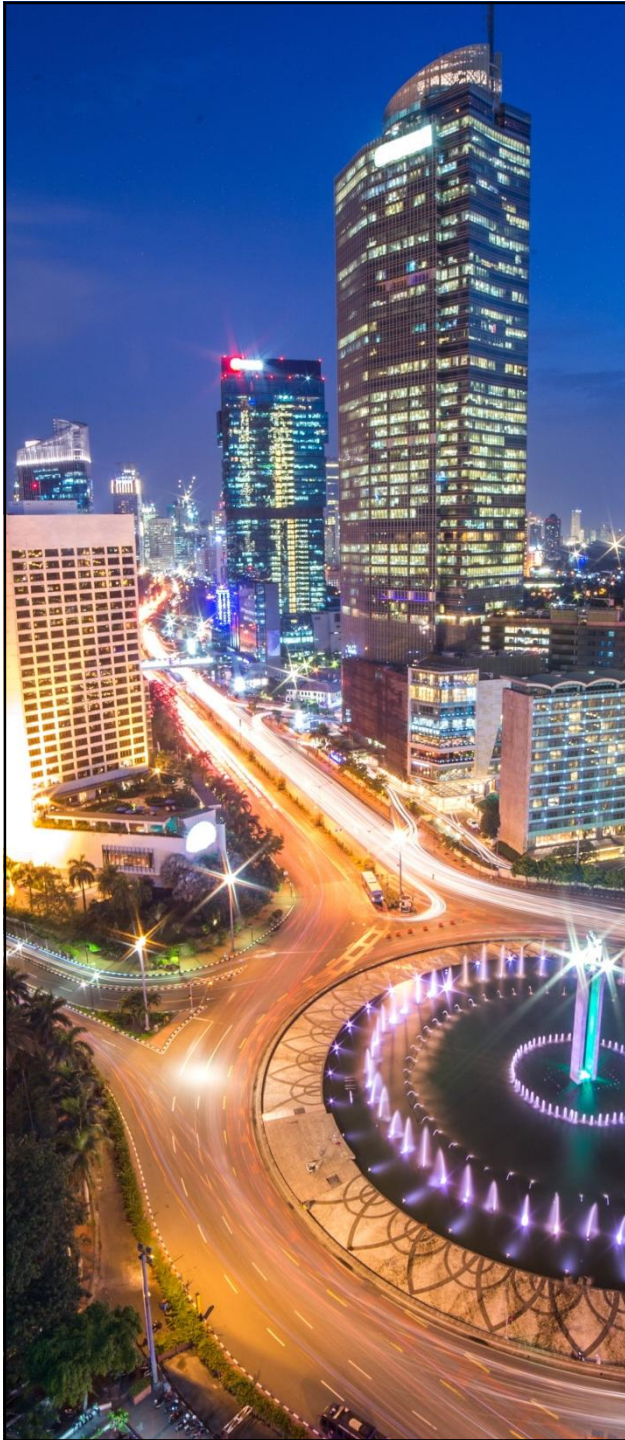
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Investment into Real Estate (Legal Considerations) - Indonesia

Bima Sarumpaet – HHP Law Firm, Jakarta

Tokyo – 5 February 2018





Investment into Real Estate – Indonesia

- 1 Land Titles

- 2 Ease of investment

- 3 Land Acquisition

- 4 Specific Requirements

- 5 Residential Ownership by Foreigners

- 6 Land Mortgage

1

Land Titles

Land Titles

- Freehold / Right of Ownership (Hak Milik - HM)
 - Indonesian individuals
 - Specific legal entities (social or religious)
- Right to Build (HGB)
 - Leasehold
 - Indonesian individuals
 - Companies (including wholly-owned Indonesian companies)
 - Terms vary depending on location but typically 30 years, and extendable for 20, with a right of further renewal

Other Land Titles

- Right to Cultivate (HGU)
 - Plantation
 - Terms vary depending on location but typically 35 years, and extendable for 25, with a right of further renewal
- Right to Use (HP)
 - General use, embassy and properties owned by foreigners
 - Terms vary depending on location but typically 25 years, and extendable for 20, with a right of further renewal
 - For residential properties owned by foreigners, the term mirrors a HGB
- Right to Manage (HPL)
 - State owned properties

Ownership and Term

- Land titles can be secured by mortgage, and is bankable
- Leases are not registrable
- Extension or renewal of land title terms:
 - Subject to approval
 - There is an expectation of extension or renewal – although there are some grounds not to renew (improper use, zoning change, public need)
 - Generally cannot renew earlier than 2 years before expiry given renewal fees based on land value
- If not certificated (Girik), need to be relinquished to State for a new land title application - more complex

2

Ease of Investment

Foreign Investment

- Negative List:
 - Extensive list – specific fields
 - Certain business activities are closed or have foreign shareholding limitation
- KBLI (Indonesian Business Field Standard Classification)
 - KBLI 68110 (real estate which is owned or leased) – includes “the activity of selling, leasing and operating real estate whether owned or leased, such as apartments, residential and nonresidential buildings. (It) includes the activity of selling land
- Minimum “capital” investment – IDR 10 billion equivalent – loan and equity ratios changing – realization of investment - operating license issue
- Request for progressive expansions can be made

Foreign Investment

- Generally, all foreign direct investment has to use PT PMA (foreign investment company), which can be (i) newly established or (ii) converted from an ordinary PT (PT Biasa)
- BKPM (Capital Investment Coordinating Board) is required before acquiring shares or setting up a company
- Changes in investment plan (eg, location, shareholders, investment, loan and equity capital etc.) need approval
- Residential developments more sensitive
- Commercial property less sensitive - strata title, titles are sold off, and management is done by the owners' association

PMA Company Establishment

- Application (investment plan), powers of attorney, articles of association
- BKPM approval
 - 3 hours approval for IDR 100 billion investment
- Signing deed of establishment
- Initial licensing – domicile letter, tax registration, bank account
- Pay in capital
- Ministry of Law and Human Rights incorporation approval – limited liability status
- Process 3-4 months
- Other licensing

Acquisition and Conversion of Company

- Application (investment plan), powers of attorney, articles of association
- BKPM approval
- Company Law acquisition process
 - Newspaper announcement – creditors have 14 days to object
 - Employee announcement – employees have rights to be terminated and paid out
- Closing of transaction (30 days after announcements)
- Process 2-3 months
- Ministry of Law and Human Rights registrations/approval (if subscription of shares)

3

Land Acquisition

Land Acquisition Process

- Due diligence (including searches and zoning checks)
- Typically a land sale and purchase agreement (PPJB), with conditions
- Once conditions satisfied, land transfer deed
- Land transfer deed, fixed form, including all land price paid
- Land transfer deed, absolute document
- Structuring other obligations (eg, permitting) in an advisory document
- Unlike Torrens title system, the government does not guarantee land title
- Registration of certificated land can take 2 months after transfer

Acquisition Types

- Uncertificated Land
 - Land relinquishment
 - Submission of documents to the Land Office
 - Land measurement
 - Public announcements
 - Issuance of new land certificate
- Certificated Land
 - Land transfer deed
 - Manual land certificate updating

4

Specific Requirements

Low Cost Housing

- Housing development must implement a balanced housing environment (ie, low cost, medium and luxury housing)
- Ratio of low cost, medium and luxury housing must be 3:2:1 respectively
- Low cost housing must be at least 25% of the total housing area
- Apartment development must develop public apartments with an area of at least 20% of the total area
- Historically poor compliance despite sanctions but now there is increased enforcement in Jakarta (eg, by way of refusal of license renewal)

Apartments

Strata Title (HMSRS)

- Recognized and used (increasingly in commercial blocks)
- Process occurs after occupation certificate / SLF
- Owners' association takes over management of building after formed (initially the obligation of the developer)

Marketing Documents - Pre Construction Sale Restriction

- Sale and purchase agreement (PPJB) with customers only after 20% construction
- Reservation form 30 days before the PPJB signing
- Market practice generally different

5

Residential Ownership by Foreigners

Foreign National

- ~~The regulation defines “foreign national” as a non-citizen of Indonesia~~ whose presence provides benefit to Indonesia or who conducts business, works, or invests in Indonesia
- Only foreign nationals holding a stay permit in Indonesia may be entitled to land title (“Resident Foreigner”)
- Diplomatic stay permit, temporary stay permit, limited stay permit, or permanent stay permit
- More restrictive than prior HP regulations, under which a foreign national who does not reside but only occasionally stays in Indonesia could be entitled to Hak Pakai land title

Resident Foreigner

Resident foreigners may own:

- A landed house:
 - with HP title
 - with HP title over a HM title (based on a land use agreement with an Indonesian citizen)
 - with HM or HGB title but automatically converted to HP title post transaction
- An apartment:
 - with strata title over HP land (HPSRS)
 - with strata title over HGB land (HMSRS) but automatically converted to HPSRS

Type	Rights	Term	Transfer
Houses	A HP which is derived from conversion of a HM	Valid for 30 years, and can be extended for 20 years + renewed for 30 years	If transferred back to an Indonesian, the HP can be converted to HM
	A HP which is derived from conversion of a HGB	Valid for the remaining term of the HGB, and can be extended for 20 years + renewed for 30 years	If transferred back to an Indonesian, the HP can be converted to a HGB, and the term of the HGB is the remaining term of the HP
Apartments	New condition/1st sale - A HPSRS which is derived from conversion of a HMSRS	Valid for 30 years, and can be extended for 20 years + renewed for 30 years	If transferred back to an Indonesian, the HPSRS can be converted to a HMSRS, and the term of the HMSRS is the remaining term of the HPSRS
	Not new condition/2nd sale - A HPSRS which is derived from conversion of a HMSRS	Valid for the remaining term of the HPSRS, and can be extended for 20 years + renewed for 30 years	

Limitations

- One plot of land per person or per family
- Maximum land area is 2,000 m²
- Different minimum price requirements for each province:
 - Jakarta: IDR 10 billion or more (houses) and IDR 3 billion or more (apartment units)
 - Banten and Bali: IDR 5 billion or more (houses) and IDR 2 billion or more (apartment units)
- Can be inherited only if the heir is an Indonesian citizen or a Resident Foreigner (otherwise auctioned by the State)

6

Hak Tanggungan (Land Mortgage)

Types of Security Rights Under Indonesian Law

1. Security over Immovable Property:
 - (i) **Hak Tanggungan (for Land)** (Law No. 4 of 1996); and
 - (ii) **Hypothec (for Vessels)** (Article 1162 of ICC and Law No. 7 of 2008)
2. Security over Movable Property:
 - (i) **Pledge (for tangible or intangible movable goods)** (Article 1150 of ICC)
 - (ii) **Fiducia Security (for tangible or intangible movable goods and certain immovable goods)** (Law No. 42 of 1999); and
 - (iii) **Security Over Warehouse Receipt** (Law No 9 of 2006). (not common)

Types of Security Rights Under Indonesian Law

3. General (over all assets):
 - (i) **Corporate Guarantee** and
 - (ii) **Personal Guarantee**
4. **Assignment of Rights for Security Purposes**

No 1 and No 2 confer a preferential position to a creditor

Hak Tanggungan (Land Mortgage)

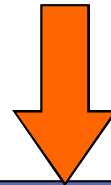
- The granting of Hak Tanggungan must be made in a Notarial Deed and in Bahasa Indonesia
- Hak Tanggungan objects: land and building / fixtures attached to the land
- Must be registered with the land office
- Priority security rights upon registration
- Have a ranking system
- Usually it may take around 30 days for the land office to issue the Hak Tanggungan certificate

Cost

- Registration cost is calculated based on the Hak Tanggungan security value, a maximum of IDR 50 million for a Hak Tanggungan with a security value of more than IDR 1 billion)
- PPAT cost is calculated based on percentage basis (a maximum of 1%)

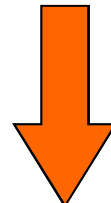
Establishment Of Hak Tanggungan

Deed of Granting of Hak Tanggungan



7 business days (maximum)

Submission at Land Office



7th day (after submission of complete documents)

- Record of the Hak Tanggungan at Land Book
- Annotation of the Hak Tanggungan at the relevant Land Certificate
- Certificate of Hak Tanggungan Issued

Enforcement Options

Hak Tanggungan:

- Public auction without court involvement
- Public auction with court involvement
- Private sale

Enforcement of Hak Tanggungan

- **Public auction without court involvement:**
 - Based on the power given under the Hak Tanggungan law (Article 6 of Hak Tanggungan Law)
 - No need to obtain auction order from the court
 - The auction is conducted by an auction house
 - The floor price should be set based on an independent appraiser's valuation
 - Best scenario for the process: around 44 days

Enforcement of Hak Tanggungan

- **Public auction with court involvement:**

- Based on the Executorial Title **“In the Name of Justice based on God Almighty (Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa)”**
- Obtaining an auction order from the court
- The lender submit application for enforcement to the District Court having jurisdiction over the Hak Tanggungan object
- The court will instruct the borrower to pay the loan within 8 days
- This process may take 3 to 6 months assuming there is no delay or objection from the grantor

Enforcement of Hak Tanggungan

- **Private Sale**
 - Must be agreed with the Hak Tanggungan grantor
 - One month's prior notification
 - Announced in at least two local newspapers or other mass media
 - Must obtain the highest price which is profitable to both parties

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Investment into real estate (Legal Considerations) – Malaysia

Hsian Siong Yong - Wong & Partners, Kuala Lumpur

5 February 2018





Investment into real estate - Malaysia

- 1 Legal landscape

- 2 Ease of investments and exit

- 3 Common structures

- 4 Transaction costs

- 5 Related considerations

- 6 Malaysian real estate climate

Legal landscape

§ Torrens System in Malaysia

§ Indefeasibility of Title

§ Save in certain circumstances (e.g. fraud), registration of individual/body corporate on the land title as proof of ownership

§ Ability to do searches to discover ownership rights and encumbrances

§ Types of title

§ Freehold

§ Leasehold

§ Strata

§ Malay Reserve Land

§ Land Use

§ agriculture

§ building

§ industrial

***Note:** State Authority Approval is required in most circumstances for foreign parties to acquire real estate

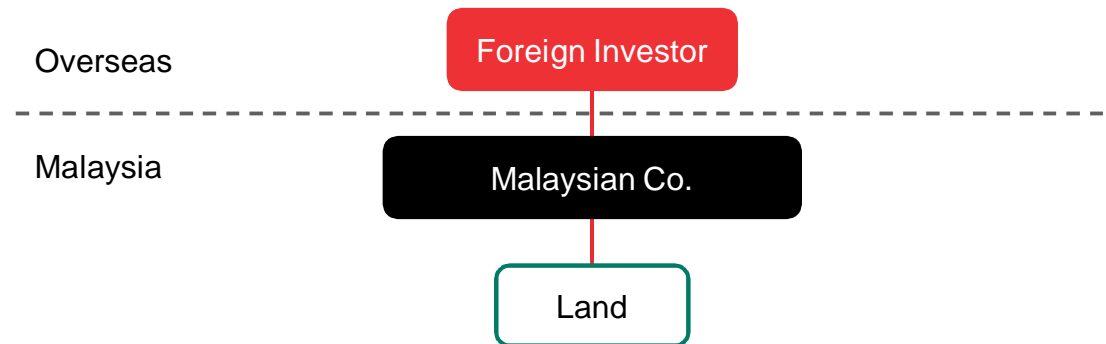
Ease of investments and exit

§ Foreign Ownership

- § Liberalised in 2009 when the Foreign Investment Committee Guidelines were repealed
- § The approval of the Economic Planning Unit is required where the acquisition involves a dilution of Bumiputera or government interests for properties valued at RM20million and above (whether acquired directly or indirectly via the acquisition of shares in a company holding the property).
- § Foreign interest is **not allowed** to acquire:
 - § Properties valued less than RM1million per unit or other minimum purchase prices prescribed by the State Authority in Malaysia
 - § Residential units under the category of low and low-medium cost as determined by the State Authority
 - § Properties built on Malay reserved land

Ease of investments and exit

- § Foreign interest is **not allowed** to acquire:
 - § Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.
 - § Limitations on acquiring "agriculture" land (differs from State to State)
- § No Restrictions on repatriation of funds & No Withholding tax on dividends
- § Incorporate Malaysian entity to hold Property
 - § Foreign interest to acquire property using a Malaysian incorporated entity



Ease of investments and exit

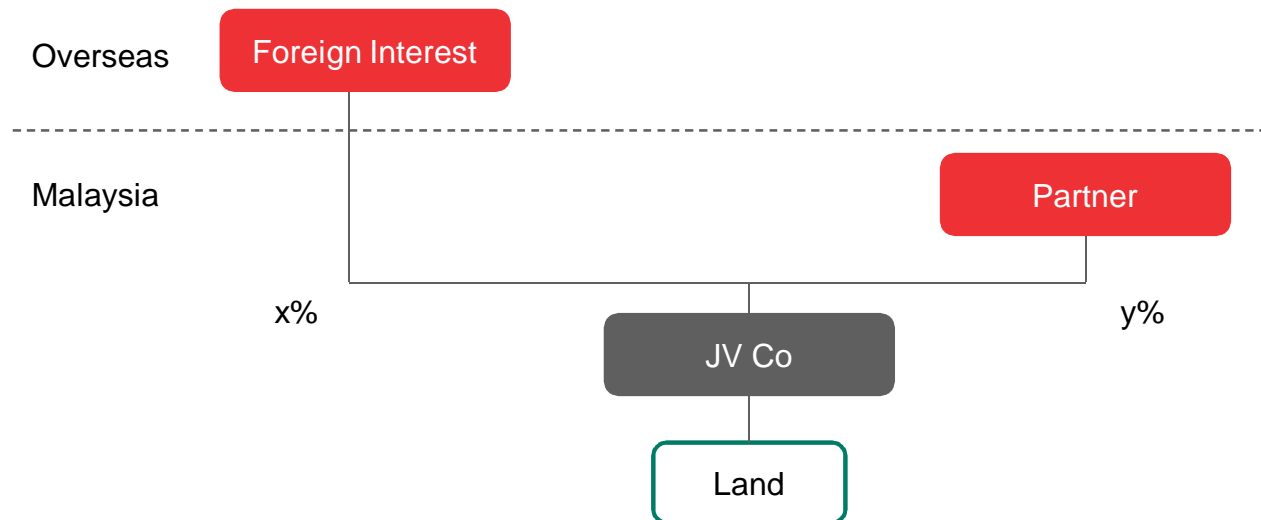
§ Property Development

- § No prohibition on foreign interest to obtain Housing Developers' licence
- § Minimal requirements for Housing Developers' licence
- § Revenue for sales for residential developments will need to be paid into a Housing Development Account
- § No licensing required for Commercial / Industrial developments
 - § May need other ancillary approvals / licences – e.g. Customs (LMW)
- § Common for foreign interest to joint venture with local developer

Common structures

§ Incorporated Joint Ventures

- § Foreign interest and joint venture partner acquire shares in a Malaysian incorporated entity (JV Co.)
- § JV Co. develops land
- § Foreign interest and Joint venture partner's rights regulated by Shareholder Agreement



Common structures

§ Unincorporated Joint Ventures

§ Developer enters contractual arrangement with Land owner for rights to develop Land

§ Agreement will dictate rights and obligations of the parties



Transaction costs

- GST
 - With effect from 1 April 2015, GST at a rate of 6% will be imposed on goods and services at all levels starting from production, manufacture, wholesale and retail
 - GST will not be imposed on the sale, purchase or rental of residential properties but applies to sale, purchase and rental of commercial and industrial properties
- Real Property Gains Tax
 - No form of capital gains tax but real property gains tax applies to disposal of real property and shares in real property companies

Time of Disposal of the Property / Shares of RPC	Where disposer is a company (% of tax on gains accruing from disposal)	Where disposer is a foreign individual (% of tax on gains accruing from disposal)
Within 3 years of acquisition	30	30
In the 4 th year of acquisition	20	20
In the 5 th year of acquisition	15	15
In the 6 th year of acquisition and after	5	5

Transaction costs

§ Stamp Duty

- § Stamp duty payable on shares of a company are 0.3% of the consideration paid or the market value of the shares, whichever is higher
- § Stamp duty is payable for the transfer of land

Consideration sum or market value of the property (whichever is higher)	Stamp duty payable
Up to RM100,000	1% on the amount or value of the consideration
RM 100,001 – RM500,000	RM1,000 plus 2% on any amount or value of the consideration exceeding RM100,000
RM 500,001 and above	RM9,000 plus 3% on any amount or value of the consideration exceeding RM500,000

Related considerations

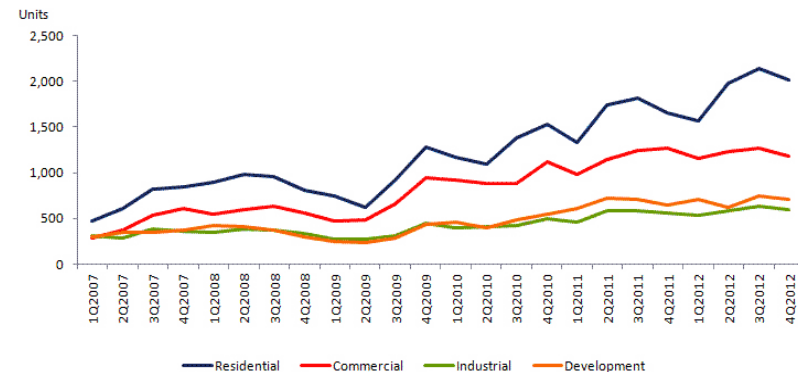
- § Property Management, Valuation & Estate Agency Services
 - § Only registered persons may carry out property management, valuation and estate agency services
 - § Operators of Hotels and Serviced Residences will need to consider services to be provided (there are exemptions for operators of Hotels)
- § Strata Properties
 - § To take note of potential issues around Common Properties and restrictions on long term agreements to be entered into by the Joint Management Body / Management Corporation
 - § Restriction on title to be granted as security

Malaysian real estate climate

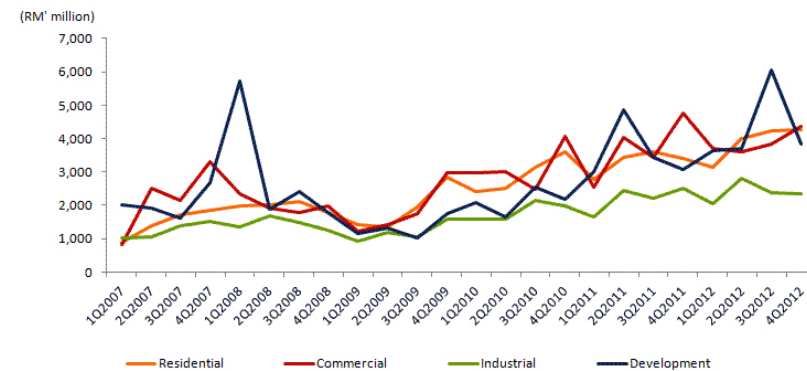
- § Prices of real estate in Malaysia is comparatively lower than other countries (e.g. HK and Singapore)
- § Growing workforce population and entry of foreign investors into Malaysia gives rise to increasing demand for residential and commercial property

- § Malaysia's home prices have been rising steadily since 2009 (*Source: Malaysian Property Incorporated*)
- § Efforts by the Government to stabilise property prices due to speculative buyers by imposing higher rates of RPGT (discussed below) and other measures

Malaysia: Transaction Volume of Properties Above RM1 million by Sub-sectors



Malaysia: Transaction Value of Properties Above RM1 million by Sub-sectors



Malaysian real estate climate

§ Preferred house size criteria & pricing

Criteria: Size		Criteria: Pricing	
>2000 sq ft	7%	>RM1mil	6%
>1500-2000 sq ft	10%	>RM750k-RM1mil	15%
>1000-1500 sq ft	34%	>RM500k-RM750k	32%
>800-1000	33%	>RM300k-RM500k	41%
Under 800 sq ft	16%	Under RM300k	6%

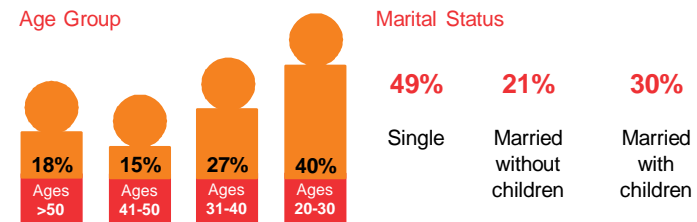
§ Preferred home features, facilities and accessibility

Preferences		
Features	Facilities	Accessibility
23 %Green Technology	18 %Commercial Centre	37 % Highway
26 %Security System	30 %Transport-action Hub	44 % LRT/ MRT
26 %Layout/ Finishes	19 %School/ College	19 % Taxi/ Public bus/
10 %Digital Connectivity	14 %Recreational Park	
15 %Smart Home	19 % Hospital	

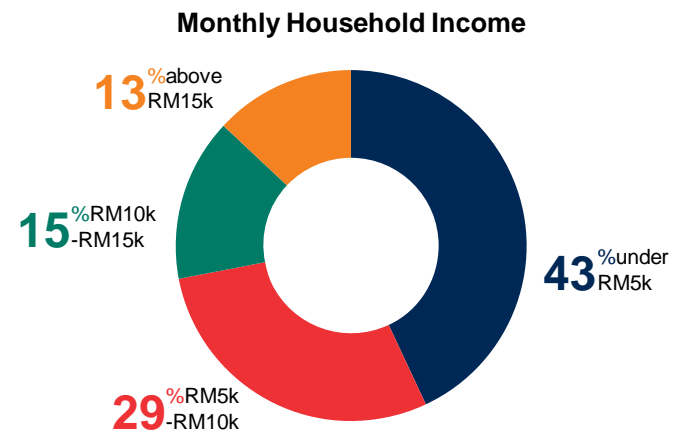
Source: The House Buyer's Survey 2017 issued by the RehDa conducted during the April 2017 MAPEX interviewed 1,600 people

§ Potential Buyers' demographic

Potential Buyers' Profile



§ Household Income



Malaysian real estate climate

§ Sales performance

§ Increased demand in landed properties, particularly 2 to 3 storey terrace and single storey terrace as well as serviced apartment and low cost house/flat

§ Launches

§ Number of launches for both residential and commercial have **reduced significantly**

§ Unsold units

§ Main reasons due to (i) end-financing (ii) loan rejection (iii) low demand/interest and (iv) unreleased Bumiputera quota

§ 41% of the unsold units are properties below RM500,000 located mainly in Johor, Kedah, Melaka, Pahang, Perak and Perlis

Source: REHDA Property Industry Survey 1H 2017

Malaysian real estate climate

§ Housing Loan Approval Rates:

- § The overall housing loan approval rate remains high at **74.2%** (average 2012 to 2016: 74.1%)
- § The maximum loan-to-value ratio (LTV) of 70% introduced in 2010 is imposed only on borrowers with three or more outstanding housing loans. **Therefore, this measure does not affect eligible first-time house buyers, who typically qualify for an LTV of up to 95% (including mortgage reducing/decreasing term assurance)**

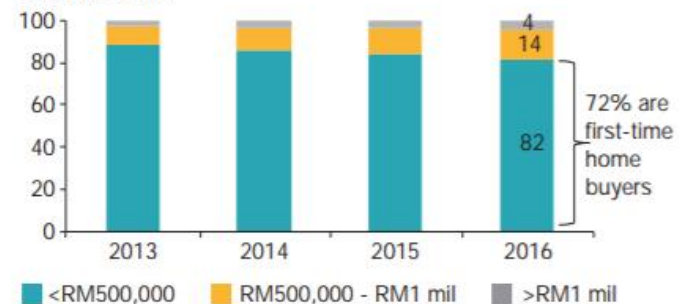
§ In 2016, about 72% of housing loan borrowers were first-time buyers of homes priced below RM500,000

§ Maximum housing loan tenure of 35 years

Chart 1: Housing Loan Borrowers by House Price Range

Eligible Borrowers Continue to Have Access to Financing for Affordable Houses

% share of total housing loan borrowers



Source: Bank Negara Malaysia and internal computation

Source: Debunking the Myth, BNM Quarterly Bulletin, 15 July 2017: REHDA Property Industry Survey 1H 2017

Malaysian real estate climate

- § Developments of public infrastructure to encourage further commercial and residential development in the Greater KL area:
 - § KL International Financial District in Kuala Lumpur
 - § MRT and LRT Expansion Line
 - § Real property prices along the lines will increase
 - § Developers buying up and developing those parcels of land located nearby
 - § Developers coming up with residential and commercial units integrated with station stops for 'seamless' connectivity
 - § River of Life
 - § Project to revitalise the Klang River and transform certain areas along the Klang River into high economic and high commercial value space

Malaysian real estate climate

- § To firstly, clean the water in the Klang river to recreational standards and thereafter, to beautify and improve economic viability of certain corridors along the Klang and Gombak River (e.g. Dataran Merdeka and Masjid Jamek)
- § Thirdly, for the land along these corridors to be developed with appropriate master planning to spur economic developments
- § Government programmes to encourage foreign investment:
 - § Malaysia My Second Home
 - § MM2H allows non-citizens (staying on a social visit pass with multiple entry visa) to purchase a number of residential units (except for low cost and medium cost units) subject to minimum rates established by the different states without the need for EPU approval
 - § Malaysia is attractive to Japanese who wish to purchase homes to live abroad
 - § Primarily because Malaysia lies in an earthquake free belt and is practically disaster free

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Investment in real estate (Legal Considerations) – Vietnam

Frederick Burke – Baker McKenzie, Vietnam

5 February 2018





Investment into real estate – Vietnam

- 1 Legal landscape

- 2 Ease of investments and exit

- 3 Common structures

- 4 Financing

- 5 Transaction costs

- 6 Related considerations

Legal landscape

- § No private ownership of land, only “land use rights” (**LUR**) is recognized
- § Private ownership of assets attached to land is legally recognized
- § Types of LUR*:
 - § Land allocated by the State with a definite term (applicable to non-residential land) or a long-and-stable-use term (applicable to residential land)
 - § Land leased by the State with rental paid upfront (or lump sum land rental)
 - § Land leased by the State with rental paid annually (or annual land rental)

** Rights of different types of land users vary depending on the types of LUR. Please refer to our “Vietnam Property Development” brochure for more details.*

Ease of investments and exit

A – INVESTMENT

§ General real estate business conditions:

§ Establish a presence in the form of an enterprise or a co-operative

§ Have a legal capital of at least VND 20 billion (approximately USD 900,000)

§ Thin capitalization requirement for real estate project development

Total land area of project	Minimum equity of developer
< 20 ha	20% of the project's total investment capital
≥ 20 ha	15% of the project's total investment capital

Ease of investments and exit

- § Escrow deposit requirement: From 1%-3% of the project's total investment capital. This is not reasonable for large scale projects.
- § Capital contribution schedule: Registered charter capital (i.e. equity) must be fully contributed within 90 days upon incorporation. This can also be a big challenge for large scale projects.

B – EXIT

- § All outstanding taxes and other obligations towards the State must be fulfilled before dividends can be repatriated out of Vietnam.

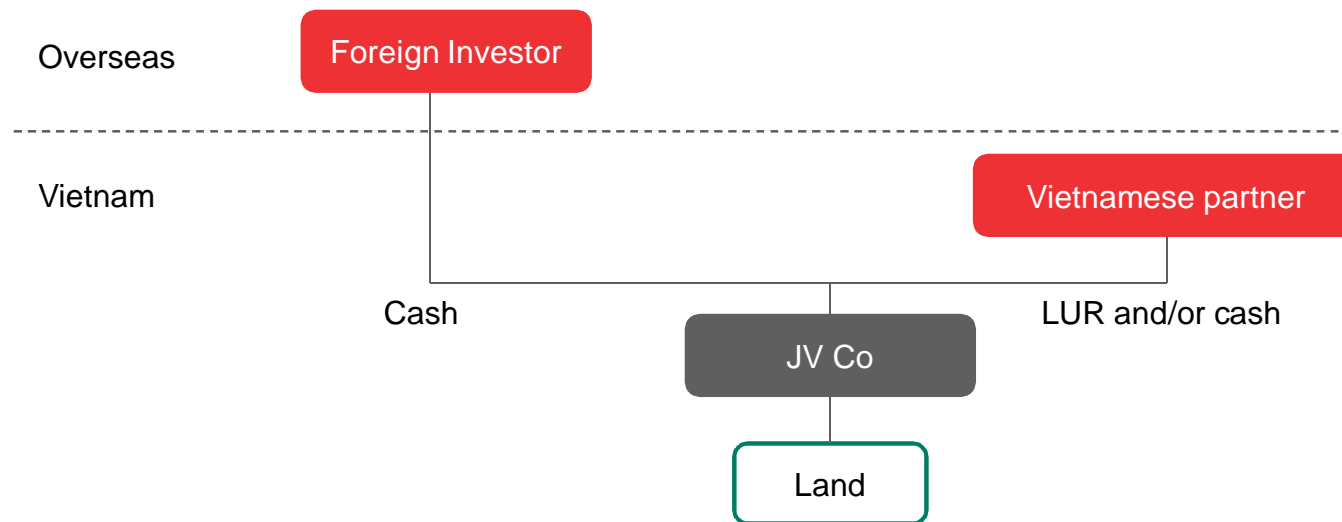
Ease of investments and exit

§ Scope of real estate business and real estate services available for foreign invested companies:

1. Rent houses, construction work for sublease;
2. Build houses on the land which is leased by the State for lease; build construction works other than houses on such land for sale, for lease, or for lease purchase;
3. Acquire all or part of a real estate project from investors to build houses, construction works for sale, for lease, or for lease purchase;
4. Build houses on land which is allocated by the State for sale, for lease, or for lease purchase;
5. Build houses, construction work on land which is leased in industrial parks, industrial complexes, export-processing zones, hi-tech zones, or economic zones for trading for the proper land use.

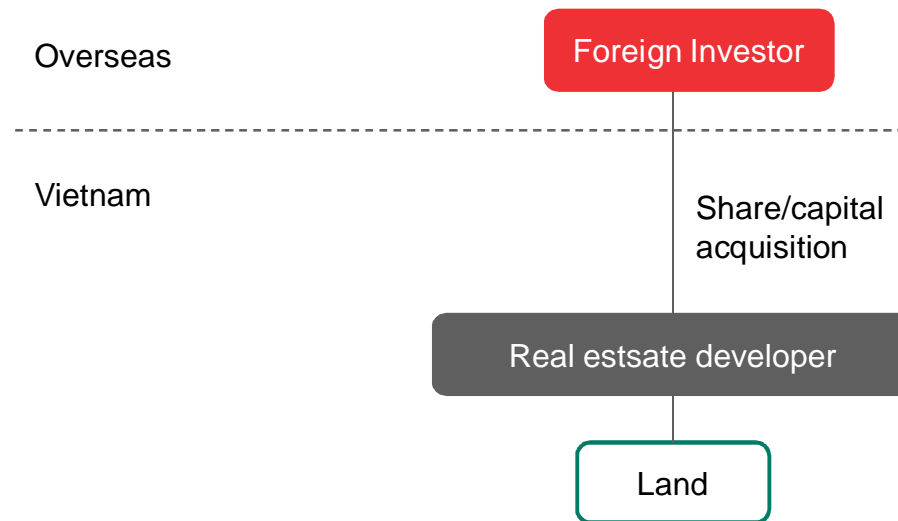
Common structures – Joint Venture

§ Set up joint venture company (JV Co) with Vietnamese partner who holds LUR and then have such LUR contributed as capital into JV Co



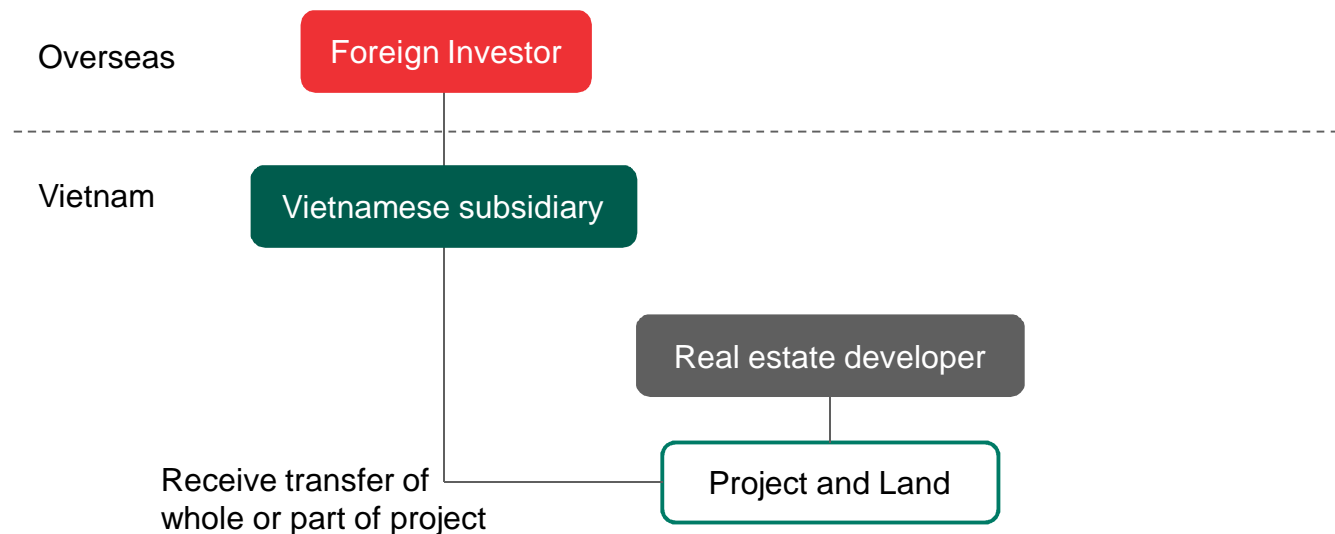
Common structures – Share Acquisition

§ Acquire shares/capital of real estate developer entity



Common structures – Project Transfer

§ Acquire whole or part of a licensed project real estate project via a Vietnamese subsidiary



Finance – Funding

- § Borrowing may not exceed investment capital minus charter capital.

- § Foreign currency loans from offshore banks with tenors greater than 12 months require registration with SBV within 30 days from the execution of the loan agreement and before drawdown.

- § Foreign loans are not allowed for residential developments (mixed-use developments with residential component(s) may be eligible for foreign loans).

Finance – Funding

- § Foreign Currency Loans from onshore banks and onshore branches of foreign banks can only be used for:
 - § payment for importation of goods and services
 - § refinancing foreign loans
 - § outbound investment
 - § investment project to produce goods and services for export.

- § 10% Withholding Tax on interest payments to offshore banks (limited exemptions under double tax treaties, e.g., France).

Finance – Security package

§ Assignment

- § Assignment of Contracts

- § Assignment of Insurances (but offshore insurance requires consent from MOF)

- § Assignment of bank accounts

- § Priority can be preserved by voluntary registration of the assignment documents (in Vietnamese version) with the National Office for Registration of Secured Transactions (NORST). The registration is valid for 5 years and then the registration must be extended.

§ Mortgages of:

- § LUR

- § Assets attached to Land

- § Machinery

- § Equity/Shares

- § Notarisation and mandatory registration of the mortgages of LUR With the Land Department.

- § Mortgage can only be granted to onshore lenders (including onshore branches of foreign lenders).

- § Possible solutions are: (i) the offshore banks enter into risk participations or (ii) the security over the sale proceeds is for the benefit of all lenders.

Transaction costs

- § VAT (value added tax)
 - § Only applicable to project transfer
 - § Currently at the rate of 10%

- § Real Property and Capital Gains Tax
 - § 20% of the gains

- § Further details can be found in:
 - § Global Real Estate Taxation Guide – Vietnam Chapter:
<https://realestate.bakermckenzie.com/tax/views/jurisdiction-view?id=634777850d974675b262ac2832cc460c>

 - § Corporate Real Estate Guide – Vietnam Chapter:
<https://realestate.bakermckenzie.com/guide/views/jurisdiction-view?id=ba1bcf206a234f8f84f26b107e7b6447>

Related considerations

- § Recent stricter scrutiny by tax authorities in respect of high profile real estate project transfer conducted by way of share transfer at the offshore level.

- § Presale proceeds to be collected by foreign invested residential developers is capped at 50% of total purchase price. The remainder can only be collected after handover.

- § Violations in illegal capital raising (e.g. collecting presale payments before the project's foundation has not been completed whether in the form of “booking” or “deposit”, the project has not been guaranteed by a qualified bank, etc.) will be heavily sanctioned and may result in suspension of real estate business operation for a period of up to 12 months.

**Baker
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Thank you

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