THE MALAY RESERVATION LAND

PRESENTED BY: HONG ONN
MALAY RESERVATION LAND (MRL)

• The “red-ink grants”
• Special category of land
• To control disposal
• It could only be owned or held by Malays
• It could only be transacted amongst Malays
WHY IS IT IMPORTANT?

• Any attempt by non-Malays in dealing with MRL will be held **null** and **void**.
WHAT CONSTITUTE A “MALAY”?

There are 4 characteristics (under Art 160 of FC):

1. the person must be a Muslim
2. speaks Bahasa Malaysia
3. complies with the Malay customs
4. domiciled in Malaysia or Singapore
• For the purpose of MRL, the definition of “Malay” will depend on the State legislation.

• Most States have their own definition and interpretation of the term “Malay”.
• For example: In Kedah and Perlis, the term “Malay” includes descendants of Arabs.

• In Kedah, Ruler in Council was given a wide discretion to declare any person of any race or nationality as Malay. [S19 Kedah MRE].

• For Kelantan, the status of “Malay” does not even consider as the final determining factor.

• The law uses the term “native of Kelantan”, which has the effect of excluding the Malays from other states from owning MRL in Kelantan.
• The National Land Code ("NLC") is a uniform law by Parliament for all 11 states in Peninsular Malaysia.

• There are total 6 Enactments for the MRL.

• It should be remembered that NLC is a law for general application while Malay Reservation Enactment ("MRE") is a specific law applicable only to the specific category of land.
One Enactment for 4 former Federated Malay States:

<table>
<thead>
<tr>
<th>Federated Malay States</th>
<th>Malay Reservation Enactment</th>
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<tbody>
<tr>
<td>Perak</td>
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<tr>
<td>Selangor</td>
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<tr>
<td>Negeri Sembilan</td>
<td><strong>Federated Malay States MRE 1933</strong></td>
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<td>Pahang</td>
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- **5 state Enactments for the former Unfederated Malay States:**

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<thead>
<tr>
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<tr>
<td>Johor</td>
<td>The Johor MRE 1936</td>
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<tr>
<td>Perlis</td>
<td>The Perlis MRE 1353</td>
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<tr>
<td>Kedah</td>
<td>The MRE of Kedah 1931</td>
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<td>Kelantan</td>
<td>The Kelantan MRE 1930</td>
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<tr>
<td>Terengganu</td>
<td>The MRE of Terengganu 1941</td>
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No such enactment for Penang and Melaka.
• MRL is also protected by the **Federal Constitution** (Art 89, 90).

• It control and oversee the implementation of the MRE.
REVOCATION & REPLACEMENT

• **Art 89(3) of FC** - If any MRL is revoked, the State Authority has to replace with another state land.

• There are 3 conditions that need to be complied for the replacement:

  1. It has to be **similar in character**;
  2. An area not exceeding the area revoked; and
  3. It shall be done immediately.
• The phrase “land of similar character” is neither defined in the FC nor MRE.

• Some of the guidelines are:-

1. Same **economic value**
2. **Location**
3. **Potential development**
4. Same type of **soil**
5. Same **category** of land use

• Without replacement, revocation is not valid.
- The respective State MREs have provisions for revocation of MRL

<table>
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<tr>
<td>Perak</td>
<td>Chief Minister of the State</td>
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<td>+ Approval of the Ruler of the State in Council</td>
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<td>State Director of Land and Mine</td>
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<td>Perlis</td>
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<td>Kedah</td>
<td>Ruler of the State in Council</td>
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Tan Hong Chit v Lim Kin Wan

- Two ways non-Malays can acquire a MRL:
  1. Through the approval of the Ruler in Council
  2. The non-Malay has occupied the land prior to its declaration as MRL
- approved by James Foong J in Syarikat Macey Bhd. v Nightingale Allied Services
• If the MRL is registered in the name of non-Malay prior to the declaration as MRL, then the registered proprietor is free to deal with his land in any manner without complying to the provisions of the MRL.
FORFEITURE

• Kedah was the 1st state to include the provision of forfeiture, followed by Perlis.

• **Kedah**
  Upon forfeiture, land shall vest with the **Sultan** absolutely.

• **Perlis**
  It shall vest absolutely with the **State**.

❖ It seems that Kedah’s provision need to be revised as land is a State matter.

❖ Therefore, it should be revert to the State and not the Sultan.
SECTION 5 NLC 1965

• The State Authority could forfeit or deprive a person from the said property if that person failed to comply with the restriction-in-interest or conditions.

• If a person ceases to be a Malay under the respective MRE, then he is disqualified to hold the MRL.

• (The same applies to companies)
ACQUISITION

• Acquisition of MRL is not provided by any of the states MRE.

• It is very interesting to note that only the Perlis MRE has such a provision that allows the Ruler in Council to acquire the MRL for public purposes.
LET’S DISCUSS

• Do you think there is sufficient legal protection for Malay interest with all the prohibitions to bar the non-Malays from claiming any interest in MRL?

• Many MRL has been undeveloped and lower in market value as compared to non-reservation land. How to overcome the barriers to develop MRL?
Thank you for listening. Any questions?
THE END!

Thank you