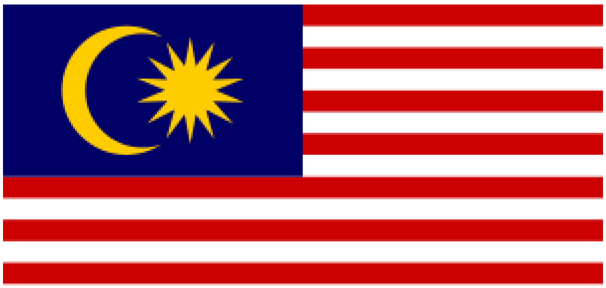
GUIDE TO DOING BUSINESS IN ASEAN

MALAYSIA



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LEGAL GUIDE FOR DOING BUSINESS IN MALAYSIA

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INTRODUCTION TO MALAYSIA

Malaysia is divided into two distinct areas: Peninsular Malaysia and East Malaysia. The former shares a border with Thailand to the north, with Singapore lying at its southern tip. Halfway up Peninsular Malaysia on its western side is Kuala Lumpur, the nation's capital. Contingency planning and controlled development have made Kuala Lumpur one of the most pleasant and attractive cities in Asia. It is also home to the tallest twin structure in the world, the Petronas Twin Towers.

East Malaysia comprises the states of Sabah and Sarawak, located on the island of Borneo across the South China Sea. The two States border Kalimantan, Indonesian portion of the Borneo Island. Vast stretches of uncharted rainforests give way to rugged mountain peaks, such as the imposing Mt. Kinabalu, towering 4,095 metres above sea level.

Malaysia is home to a mix of indigenous tribes, each with their own culture and language. The indigenous peoples are officially known as “Orang Asli” and “Orang Asal” respectively in Peninsular Malaysia and the East Malaysia. Malaysia hosts rich and unique variety of biological resources and has been identified as one of the 17 megadiverse countries in the world.

Economic growth and structure

The Malaysian Ringgit is the currency of Malaysia. The currency code for Ringgits is MYR, and the currency is RM.

Since independence in 1957, Malaysia has been transformed from a commodity-based economy focusing on rubber and tin to one of the world's largest producers of electronic and electrical products. Malaysia is a significant trading nation as measured by trade as a share of gross domestic product (GDP), with its goods and services exports amounting to nearly 85% of GDP. According to the Malaysian Government, manufactured goods made up 67% of Malaysia’s exports in 2012, with electronic and electrical products comprising 32.9% of the value of total merchandise exports for the year.

Malaysia is also the world's second-largest producer of palm oil but the world’s largest exporter of palm oil.

Population demographics and languages spoken

According to the Department of Statistics Malaysia, Malaysia's population was 29.8 million at the end of 2013. The country's ethnic groups include Malay and indigenous (62.4%), ethnic Chinese (22%), ethnic Indians (6.6%) and others (0.8%). The official language is Bahasa Malaysia (Malay), but English is widely used, as are Chinese and Tamil dialects within those communities. English is also the language of the business community.

Business hours/Time Zone

Normal business hours are from 9am until 5pm during the week for five or six days a week. The Time Zone is (UTC+08:00).

In certain states namely, Kedah, Kelantan, Terengganu and Johor, the working days are from Sundays to Thursdays.

CULTURE AND RELIGION IN MALAYSIA

History

Encyclopedia of Malaysia shows that the Negritos (Indigenous tribes) who number approximately 2,000 are regarded as the earliest inhabitants of the Malay Peninsular, somewhere around 500,000 years ago. The Proto-Malay originating from Yunnan later migrated to South East Asia including Malaya. They brought with them knowledge of agriculture, fishing skills and metalwork, as well as beliefs in a spirit world – attitudes that are still practiced by many groups in contemporary times. In the first millennium CE, Malays became the dominant race on the peninsular. After the fall of the other Kingdoms (Fu Nan, Sri Vijaya and Javanese), Malay kingdoms started to spring up. The Kingdom of Malacca was one of the first established in the Malay Peninsular (1300 A.D.). The prosperity of Malay Peninsular and the Malacca Sultanate brought along many other waves of migration of other Malays from the region.

Malacca's wealth and prosperity soon attracted European interest and it was the Portuguese who first took over in 1511, followed by the Dutch in 1641, who had the aim of expanding their mercantile power in the region.

The British role on the Peninsular began in 1786 when Francis Light of the British East India Company, searching for a site for trade and a naval base, obtained the island of Penang from the Sultan of Kedah. For years, the British were only interested in Malaya for its seaports and to protect their trade routes, but the discovery of tin prompted them to move inland and eventually govern the entire Peninsular. Dutch-ruled Malacca was then swapped for British-ruled Bencoolen in Sumatra. During the British dominance, many other races such as the Arabs (of Yemeni descent), the Indian traders (except for the Tamils), as well as the Chinese (Cheng Ho etc) joins the fray. At the same time, Singapore and Penang gradually took over Malacca as the trading centres and eventually attracted all sorts of races and nationalities. The prosperity of Malaya rest largely on these amalgamations of other races into it (Arabs, Indians, and Chinese, Europeans), as well as migrations of many other Malays into Malaya (the Champas, the Bugis, the Javanese and so on).

In 1826, the British East India Company formed the Straits Settlements, uniting Penang, Malacca (Melaka), and Singapore under Penang's control. In 1867, power over the Straits Settlements shifted from the British East India Company to British colonial rule in London. By the start of the Second World War, Malaya's economy was flourishing with the output of tin and rubber, giving it great strategic importance. Malaya fell under the threat of a Japanese invasion when the US and British governments froze essential raw materials and oil supplies to Japan.

Japan was then forced to look to South East Asia for shipments. While Britain was preoccupied with defending itself against the threat of German invasion at home, the Japanese wasted no time in pursuing their occupation of Malaya, commencing with the bombing of the beaches of Kota Bharu in Kelantan and Singapore on 8 December 1941.

Malaya was occupied for the next three and-a-half-years by the Japanese. The occupation ended only with the United States' bombings of Hiroshima and Nagasaki in August 1945 and the end of the war. British forces then landed in Malaya and re-established their authority.

After the Allied victory and when the British sought to reclaim their colonial sovereignty over Malaya, they found resentment to foreign rule. An intense jungle war between the Malayan Communist Party and British began and lasted 12 years from 1948 to 1960. The British won the war eventually.

However, in August 1957, Malaya was granted (merdeka) independence from British colonial rule and with independence, the country became a centralised federation with a constitutional monarchy, with Kuala Lumpur named as the capital. In 1963, the north Borneo states of Sabah and Sarawak, together with Singapore, joined Malaya to create Malaysia. Political differences had surfaced between Malaysia and Singapore and on 9 August 1965, Singapore left the federation and became an independent nation.

Religion

Malaysia is a multiracial and multicultural society with Islam as the dominant religion, whose followers make up 61% of the population, but Malaysia's constitution guarantees religious freedom for many other faiths. The country has a secular constitution. However, debate continues about whether Malaysia should be a secular or Islamic state, with politics often becoming entwined with religion. Despite such debates, the interpretation of Islam in Malaysia is relatively liberal compared to most Muslim countries in the middle east.

According to the 2010 Population and Housing Census, the country's religious make up is as follows: Muslim 61.3%; Buddhist 19.8%; Christian 9.2%; Hindu 6.3%; Confucianism, Taoism and other traditional Chinese religions 1.3%; Atheist 0.7%; and other or unknown religions 1.4%.

Names in Malaysia

A Malay person's name consists of a personal name, which is used to address him or her in all circumstances, followed by a patronym. Most Malays do not use family names or surnames. For men, the patronym consists of the title bin (from Arabic بن, meaning 'son of') followed by his father's personal name. Thus, if Osman has a son called Musa, Musa will be known as Musa bin Osman. For women, the patronym consists of the title binti (from Arabic بنت, meaning 'daughter of') followed by her father's name. Thus, if Musa has a daughter called Aisyah, Aisyah will be known as Aisyah binti Musa. Upon marriage, a woman does not change her name, as is done in many cultures. Another feature in Malay names, which is very common, is the existence of second personal names or double names. This seems to have been developed in response to the use of very popular Muslim names, like Muhammad and Ahmad for men, and Nur and Siti for women. Bearers of these first names, and their variants, often add a more distinctive second name, like Mohammed Osman or Nor Mawar. The patronym is then added after these names. Traditional Malay names were taken from Malay, Khmer, Siamese, Cham, Javanese and Sanskrit.

The Malaysian Chinese, second major ethnic group in Malaysia, continue their names using Chinese characters, while romanized their names according to their respective Chinese dialects (Hokkien, Hakka, Cantonese, Teochew, Hainanese, Min Bei or Foo Chow) or Mandarin. Traditional Chinese names which usually represented as three words are used by Malaysian Chinese. Some examples are "Pua Khein Seng 潘建成" and "Lim Goh Tong 林梧桐". The first name is the family name, which is passed down for generations and held the family history in perpetuity. The two other parts of the name form an indivisible given name. Some Malaysian Chinese who mostly practice Christianity as a religion also adopt an English given name. English given names are normally written before the Chinese name (For example, “Angelica Lee Sin Je 李心洁”). Some use an English name in place of a Chinese given name (For example, “Amber Chia 谢丽萍”).

Malaysian Indians use a patronymic naming system combining their traditional Indian names with some Malay words, while others use Tamil, Malayalam, Telugu or Sanskrit names. A man's name would consist of his given name followed by the Malay phrase *anak lelaki*, meaning 'son of', and then his father's name. A woman's name would consist of her given name followed by the Malay phrase *anak perempuan*, meaning 'daughter of', and then her father's name. In some occasions, the intervening Malay phrase is omitted. The father's name is sometimes abbreviated to an initial and placed before the given name. Thus, a man called Balakrishna whose father is called Pisupati may be called Balakrishna anak lelaki Pisupati or Balakrishna a/l Pisupati (normally on his Malaysian identification card), Balakrishna Pisupati or P. Balakrishna.

The Indigenous group in Malaysia uses the Malay word *anak* ('child of') to form their patronymics regardless of an individual's sex, for example, *Aziz anak Ramlan*. However, most of the new generation indigenous people in Sabah and Sarawak who live in town areas and who practice Christianity as a religion, tend to have a Christian first name, for example Melissa Melanie Raweng (Raweng being the father's name). Some Indigenous peoples in Sabah have patronymics in the same fashion as Malays, using *bin* or *binti*, while others have surnames which are handed down from generation to generation.

Customs and Practices

Greetings

"First Impression is the last impression", follow the phrase while meeting Malaysians. Smiling and nodding the head, is the simplest way to greet anyone, moreover there is no chance of getting into trouble with such gesture. While greeting any Muslim, you can do Salam that requires fingers of your right hand to gently touch the heart. Fold your hands at mid-chest level, saying Namaste to greet any Hindu. To greet any Malay-Chinese, standard hands shake will do and actually, this is another simple way to meet anyone.

Remove your shoes

If you've to go to someone's private home in Malaysia, remember to remove your shoes outside. Here, shoes are not permitted inside homes and considered really disrespectful in case you do so.

Customs for Mosque, Buddhist Temple and other places of worship

While going to Mosques, Buddhist Temple or any other places of worship in Malaysia, consider in mind that you're going to a place of worship in any other parts of the world. A few simple rules of etiquette must be observed, for example, to remove hat and shoes before entering the main worship area, remove headphones, lower your voice, avoid inappropriate conversation and no smoking or chewing gum. In mosques in particular, wear clothes that ensure your whole body is covered, including head. Exposed clothing is not bearable in Islamic faith. In Buddhist Temple, pointing at things or people around the temple is considered extremely rude. If you happen to be sitting in the worship area when monks or nuns enter, stand to show respect and wait until they have finished their prostrations before sitting again.

Use Right Hand

In Malaysia, always use your right hand to eat food. Even if you're handling food with knife and fork, use right hand for eating. For taking or giving anything too, try to use your right hand.

Gift Etiquettes

Apart from using right hand, always give properly wrapped gifts. You must also ensure that gifts are wrapped in cheerful colors like pink, red etc, never wrap gifts in black, white or blue.

Group Meetings

If you've come in a group, the eldest or the most senior person should come forward to greet first and afterwards, the next level person should make a move. Don't shy or hesitate to start a conversation with a stranger, Malaysians like talking and meeting people from other countries.

Festivities

Chinese New Year

Fireworks, along with lion and dragon dances, are performed as part of the 15-day period (in January or February, depending on the Lunar calendar) of Chinese New Year festivities in shopping malls, on the streets, and on other business establishments.

Deepavali

Celebrated in October or November, Deepavali is a day of prayers in Hindu homes and temples; on this day, the Hindus wake up at dawn to bathe their bodies with oil, before proceeding to say their prayers.

Hari Raya Puasa

Marking the end of the Ramadan (the month of fasting), Hari Raya Puasa is considered as the most important Muslim festival in Malaysia. The day is celebrated with prayers, and open houses allow Muslims to share food with their family members and the rest of the community.

Thaipusam
This Hindu festival celebrated mostly by the Tamil community starts with a procession from the Sri Mahamariamman Temple in Kuala Lumpur, and proceeds for 15 kilometers to the Batu Caves. The eight-hour journey culminates in climbing the 272 steps to the top of the caves. This event attracts more than one million devotees, and tens of thousands of tourists from other countries. The devotees carry elaborate sacrificial burdens (called “kavadis”) to implore help and blessings from the God Murugan.

Vesak
Vesak or Vesak day is a Buddhist celebration commemorating the three most important days (birthday, enlightenment, and the achievement of Nirvana) in the life of Buddha. Buddhists in Malaysia begin the festivities at dawn, as they gather in Buddhist temples throughout the country to meditate; giving food and donations to the needy offerings of joss sticks and incense, and prayers are also part of Vesak day celebrations. One of the highlights of Vesak is the breathtaking float procession, usually of a statue of Buddha.

ECONOMY OF MALAYSIA

Malaysia has emerged as a multi-sector and mixed economy in the 21st century with active participation in business by both private and public sectors. From being a producer of raw materials, services have become the single largest component of economic activity. According to the statistic by the Ministry of Finance (2013, preliminary), the service sector is the largest contributor to GDP, accounting for 55.2% of GDP in 2013, followed by the manufacturing sector (24.5%) and the mining sector (8.1%). Major sub-sectors within service sector include wholesale and retail trade, finance and insurance, real estate and businesses services, transport and storage and communications. Major industries in Malaysia today are electronics, electrical products, chemicals, food and beverages, metal and machine products and apparel. Malaysian exports played primary role in the country’s economic growth. Efforts are being made by the government to promote value-added production by luring foreign investment in pharmaceuticals, technology industries and medical technology.

In the last two decades of the 20th century, Malaysia experienced an annual GDP growth of 7% along with low inflation. The International Monetary Fund estimated Malaysia’s nominal per capita GDP in 2014 stands at US$12,243 and the nominal GDP at US$367.712 billion. Domestic demand drove the economy to 4.7% growth in 2013. Malaysia Central Bank estimates economic growth of 4.5% to 5.5% in 2014 due to stronger exports.

- Tax Incentives

The standard corporate tax rate is capped at 25%. There are various tax incentives/reliefs available for investment in various industries in Malaysia. The main tax incentives available for the manufacturing sector are Pioneer Status (PS), Investment Tax Allowance (ITA) and Reinvestment Allowance (RA).

- Pioneer status (PS)

PS is actually a partial exemption on payment of tax for a period of up five years. Up to 70% of the statutory income of the company is exempt from taxes, with the effective tax rate payable being 7.5%. In fact, some PS companies enjoy tax incentives up to 100% for a period of 10 years. The 5-years exemption period commences from the days its production level reaches 30% of its capacity.

Eligibility activities and products for PS are termed as “promoted activities” or “promoted products” which are determined by the Malaysian Investment Development Authority (MIDA).

- Investment Tax Allowance (ITA)

This is an alternate incentive to PS available to companies that are eligible and engaged in the production of promoted products or activities.

ITA is specifically suitable for companies with large capital investment outlays, but not capable of generating returns on their investment within a short period. ITA is in addition to the capital allowance claimed by the companies. It is provided for plant and equipment acquired by the company during the tax relief period, usually from 5 to 10 years. The normal rate of allowance is 60% on the qualifying capital expenditure. ITA can be offset against 70% of companies' statutory income. Unutilised ITA and capital allowances can be carried forward for an indefinite period of time until fully utilised. However, companies cannot claim both the PS and ITA at the same time.

- Reinvestment Allowance (RA)

RA is given to existing companies engaged in manufacturing, and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification of its existing business into any related products within the same industry on condition that it has been in operation for at least 36 months. The RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made.

RA is given at the rate of 60% on the qualifying capital expenditure and can be offset against 70% of the company’s statutory income. Any unutilized allowance can be carried forward to subsequent years until fully utilised.

A company can also offset the RA against 100% of its statutory income if it attains a productivity level exceeding the limit determined by the Ministry of Finance.

- Incentives for Small and Medium-Scale companies (SMEs)

Effective from the year of assessment 2009, small and medium scale companies with a paid-up capital of RM2.5 million and below are eligible for a reduced corporate tax of 20% on the chargeable income of up to RM500,000. The tax rate on the remaining chargeable income is maintained at 25%.

Small scale manufacturing companies incorporated in Malaysia with shareholders' funds not exceeding RM500,000 and having at least 60% Malaysian equity are eligible for the following incentives:

(i) Pioneer Status with an income tax exemption of 100% of the statutory income for a period of 5 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies can be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

(ii) Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within 5 years. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilized allowance can be carried forward to subsequent years until the whole amount has been fully utilized.

Other tax incentives/reliefs are also available to sectors such as manufacturing, agriculture, aerospace, tourism, environmental management, research and development, training, information and communication technology, approved service projects and manufacturing related services. Please refer to MIDA’s website for further details.

THE MALAYSIA GOVERNMENT

The Government of Malaysia comprises the federal, state and local government. Malaysia is a federation of 13 states operating within a constitutional monarchy using the Westminster parliamentary system and is categorized as a representative democracy.

The federal government adopts the principle of separation of powers and has three branches: executive, legislature and judiciary. The state governments in Malaysia also have their respective executive and legislative bodies.

The federal government of Malaysia adheres to and is created by the Federal Constitution of Malaysia, the supreme law of the land.

The federal or central government is based in Putrajaya. It is headed by the Prime Minister of Malaysia who is also known as the head of government.

JUDICIARY

The jurisdiction of Malaysian courts is determined by the Courts of Judicature Act and the Subordinate Courts Act 1948. All courts in Malaysia fall under 3 categories:

(i) Superior Courts, comprising the Federal Court, the Court of Appeal, and High Courts (the High Court in Malaya and the High Court in Sabah and Sarawak);

(ii) Subordinate Courts, comprising the Sessions Court, the Magistrates' Court and in Peninsular Malaysia, also the Penghulu's Court; and

(iii) Adjudicatory bodies and Tribunals: Established under relevant statutes, they include the Industrial Courts, the Native Court (in Sabah and Sarawak), and the disciplinary tribunals, amongst others. The status of these tribunals are almost the same as the subordinate courts in the sense that if one is not satisfied with its decision, one can refer the matter to the High Courts. However, instead of calling them "appeal", they are called "judicial review".

There are generally 2 types of trials: criminal and civil. The hierarchy of courts of Malaysia starts with the Magistrates Court as the first level followed by the Sessions Court, High Court, Court of Appeal and the Federal Court of Malaysia. The Federal Court is the apex court in Malaysia.

The Malaysian Judiciary is headed by the Chief Justice. The President heads the Court of Appeal whilst two Chief Judges head the High Courts in Malaya and Sabah and Sarawak. The appointment of the Chief Justice the President of Court of Appeal, the Chief Judges, judges of the Superior Courts are made by His Majesty The Yang di-Pertuan Agong on the advice of the Prime Minister after consulting the Conference of Rulers. His Majesty The Yang di- Pertuan Agong may on the recommendation of the Prime Minister and after consulting the Chief Justice, suspend a judge of the Federal Court from the exercise of his functions.

There is a parallel system of state Syariah Courts which has limited jurisdiction over matters of state Islamic (syariah) law. The Syariah Courts have jurisdiction only over matters involving Muslims, and can generally pass sentences of not more than 3 years imprisonment, a fine of up to RM5,000 and/or up to 6 strokes of the cane.

LEGAL SYSTEM

The law of Malaysia is mainly based on the common law legal system. This was a direct result of the colonisation of Malaya, Sarawak, and North Borneo by Britain. The Federal Constitution of Malaysia sets out the legal framework and rights of Malaysian citizens. The Federal Constitution also provides for a unique dual justice system — the secular laws (criminal and civil) and syariah laws. The laws of Malaysia can be divided into two types of laws—written law and unwritten law. Written laws are laws which have been enacted in the constitution or in legislations. Unwritten laws are laws which are not contained in any statutes and can be found in case decisions.

The main sources of law in Malaysia are:-

(i) the Federal Constitution
(ii) the 13 Constitution of the States
(iii) Federal laws made by Parliament
(iv) State laws made by State Assemblies
(v) Federal and State Subsidiary Legislation
(vi) Judicial Decision
(vii) Islamic Law

➢ Federal Constitution

The Federal Constitution is the supreme law of the land. Any law which is inconsistent with the Federal Constitution is invalid. The Malaysian Parliament functions under a written constitution and is governed by it. Its law making power is limited by the Federal Constitution. However the Parliament as a legislative body has the capacity to amend, repeal and make new constitution by way of two third majority votes of the both houses of Parliament. The Federal Constitution also establishes a constitutional Monarchy and a Federal System of Government.

➢ State Constitutions

The 13 States of Malaysia have individual constitutions which provide for a single chamber Legislative Assembly in each state. The government is headed by a Menteri Besar or a Chief Minister. In Sabah & Sarawak, members of the Executive Council are known as State Ministers.

➢ Legislation

In Malaysia, Parliament and Legislative Assemblies have powers to enact laws in their respective areas. Laws made by Parliament may extend to the whole country, but limited to matters fall under the federal's jurisdiction. State laws enacted by a State Assembly regulate matters fall under state's jurisdiction and apply to that particular state only.

- ### Subsidiary Legislation

Statutes usually confer power on an authority to enact rules and regulations. These rules and regulations are important tools to implement the mother Act.

- ### Common Law

Common law, also known as case law, refers to law made by judges through case decisions. This system was inherited from England. In situations where there is no law governing a particular circumstance, Malaysian case law may apply. If there is no Malaysian case law, English case law can be applied. There are instances where Australian, Indian, and Singaporean cases are used as persuasive authorities. Judges are required to follow the doctrine of judicial precedent which provides for consistency and certainty in decision.

- ### Islamic Law

Applicable to Muslims only and administered in the Syariah Courts. The courts possess civil jurisdiction over offences by Muslim against the religion.

REGULATORY FRAMEWORK

Various aspects of business are regulated by various government departments/agencies in Malaysia. These include registration of business, issue of licences and permits, enforcement of health and safety requirements, and ensuring compliance with various government policies and guidelines. The government has introduced 6 Strategic Reform Initiatives (SRIs) in 2011 with the aim of improving the country's competitiveness. One of the 6 SRIs includes reforms in competition, standards and liberalization. The government in the recent years has adopted a policy of allowing greater flexibility on foreign equity participation in local companies.

Generally Malaysia welcomes and actively invites foreign investments. It offers a combination of incentives for foreign investors without restrictions on the repatriation of capital and profits from investment in Malaysia. There is a fairly well-developed infrastructure of support services and facilities. The labour force is relatively cheaper compared to developed countries.

The government in line with the policy to encourage foreign investment, has taken steps to liberalise Malaysia's capital markets. The government has, among others, deregularise the Foreign Investment Committee (FIC) guidelines which include the removal of the 30%

Bumiputera equity stake for companies seeking listing; allowing 100% foreign ownership of fund management companies, and up to 70% foreign ownership of unit trust management companies and stockbrokers.

The government has also liberalized various services subsectors in the country with no equity condition imposed. These subsectors include the area of health and social services, tourism services, transport services, business services, computer and related services, private hospital services, medical and dental specialist services, accounting and taxation, courier services, education and training services, as well as telecommunication services.

➢ Investment guarantee

Malaysia has concluded with the Association of South-East Asian Nations (ASEAN), the Organisation of Islamic Countries (OIC) and more than 70 countries the investment guarantee agreements. The agreements serve among others, to protect against nationalization and expropriation, provide free transfer of profits, capital and other fees and to ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes.

➢ Foreign Exchange

Since 1998 crisis, Malaysia has put in place a system of exchange control measures aimed at monitoring the settlement of foreign currency payments and receipts as well as encouraging the use of the country's financial resources. The Central Bank of Malaysia, Bank Negara Malaysia, issues from time to time the Exchange Control Notices informing the general permissions and directions of the Controller of Foreign Exchange. In recent years, the foreign exchange administration rules have been liberalised to attract more foreign investors to invest in Malaysia. In general, non-residents are allowed to obtain ringgit financing from relevant licensed financial institution to finance its investment in Malaysia.

➢ Repatriation of profits

Non-resident are free to invest in any form of ringgit assets in Malaysia either as direct or portfolio investment. They are free to remit out the divestment proceeds, profits, dividends or any income arising from the investment in Malaysia. Repatriation of funds, however, must be made in foreign currency.

FINANCE

The banking sector of Malaysia is controlled and regulated by the Central Bank of Malaysia also known as Bank Negara Malaysia (BNM). There are 3 types of bank in Malaysia. Firstly, the commercial banks, which is governed by the Financial Services Act 2013 (repealing Banking and Financial Institutions Act 1989).

Islamic banks are financial institutions that operate within the framework of Islamic principles and laws and are governed by the Islamic Financial Services Act 2013 (repealing Islamic Banking Act 1983) to promote financial stability and compliance with Shariah and for related, consequential or incidental matters.

Investment banks play a role in the short-term money market and capital raising activities including financing, specialising in syndication, corporate finance and management advisory services, arranging for the issue and listing of shares, as well as investment portfolio management. There are currently 10 merchant banks in Malaysia. There are 32 foreign banks that have establishing representative offices in Malaysia, all concentrated in Kuala Lumpur. Most of the banks originate from Europe and Japan. Representative office is merely a liaison office and does not offer banking products directly to the Malaysian market.

There are also other financial institutions offering pension and provident funds, insurance companies and development financial institutions. Non-bank financial intermediaries (NBFIs) can be broadly classified into four groups of institutions, namely:

(i) provident and pension funds,
(ii) insurance companies (including takaful),
(iii) development financial intermediaries (DFI) set up by the government with specific mandate to develop and promote key sectors that are considered of strategic importance to the overall socio-economic development objectives of the country, and
(iv) other financial intermediaries, such as unit trusts, cooperative societies, leasing and factoring companies, and housing credit institutions.

BNM has also encouraged greater foreign participation in the sector. There have been efforts since 2009 to encourage foreign equity participation in Malaysia's financial services sector. Currently, foreign equity participation in the Malaysia’s banking and financial institutions is up to 70% in investment banks, insurance companies and Islamic banks and up to 30% in conventional commercial banks. However, BNM might consider granting foreign ownership or new licences as well as the exemptions of the 30% requirement on a case-by-case basis.

CAPITAL MARKETS

In Malaysia, public trading/exchange of shares is done through Bursa Malaysia Securities Berhad, the stock exchange unit of Bursa Malaysia Berhad commonly known as Bursa Malaysia. Before 2009, the capital markets consist of a Main Board, a Second Board and MESDAQ. Effective 3 August 2009, the Main and Second Boards merged into a single board of established corporations known as the Main Market, and the MESDAQ was replaced with ACE Market. The Main Market is for established corporations whereas the ACE Market (an alternative market) is opened to companies of all sizes and from all economic sectors.

Islamic capital markets (ICM) is a subset of the convention capital market. It consists of transactions that are carried out in ways that do not conflict with the conscience of Muslims and the religion of Islam. The ICM functions as a parallel market to the conventional capital market. Various capital market products are available for Muslims who only seek to invest and transact in the ICM.

Capital markets in Malaysia are regulated primarily by the Securities Commission (SC), a statutory regulatory body with investigative and enforcement power. It is supported by Bursa Malaysia which acts as the front line regulator and regulates the affairs of listed companies. The SC and Bursa Malaysia in 2009 launched the new framework for listings and equity fund-raisings. The framework seeks to enhance efficiency and competitiveness and to position Bursa Malaysia as one of the attractive listing platform for both Malaysian and foreign companies. The listing requirements in Main Market have seen increased flexibility since where no minimum paid-up capital and mandatory underwriting is required. The profit track record requirement lies between an aggregate after-tax profit of RM20 million over 3-5 financial years with at least RM6 million after-tax profit for the latest financial year.

LABOUR

- Employment Laws

- Employment Act 1955

Malaysian employment is governed by the Employment Act 1955 which regulates the minimum terms and conditions for any person who works under a contract of service with an employer earning wages of RM2,000 per month and below (before 1 April 2012 was RM1,500), and specific categories of employees. Employees in Peninsular Malaysia earning more than RM2,000 but not exceeding RM5,000 may use the enforcement provisions of the Employment Act to enforce monetary claims pursuant to their employment contracts. In the states of Sabah and Sarawak, their respective Labour Ordinances apply to certain types of employees and foreign workers of specific occupations. As in other areas, common law relating to employment applies when there is a lacuna in the laws.

- The Industrial Relations Act 1967

The Industrial Relations Act 1967 and the Industrial Relations Regulations 1980 govern the industrial relations system in Malaysia. The Act is applicable throughout Malaysia and provides for the regulation of relations between employers and workmen or employee and their trade union. This Act stresses on direct negotiation between employers and workmen or employees and their trade unions to settle their differences and to regulate their collective relationship and to settle any dispute arising therefrom through their own effort and through mutually agreed procedures with minimal government intervention. Where direct negotiation between employers, workmen or employees and their trade unions fails, this Act provides for speedy and just settlement of trade disputes by conciliation or arbitration. It also provides the power to the Ministry of Human Resources to intervene and to refer at any stage any trade dispute to the Industrial Court for arbitration. Awards made by the Industrial Court are final and legally binding.

- Employment (Part-Time Employees) Regulations 2010

The Regulations came into force on 1 October 2010 and apply to employees who are covered by the Employment Act 1955 and who work part-time. The Regulations provides protection for part-time employees by rendering legal entitlements such as payments for overtime, paid holidays, paid annual leave and sick leave, and contributions to the national Employment Provident Fund (EPF) and Social Security Organisation (SOCSO).

- Employees Social Security Act 1969

The Social Security Organization (SOCSO) is an organization set up to administer, enforce and implement the Employees' Social Security Act 1969 and the Employees' Social Security (General) Regulations 1971. SOCSO provides social security protection by social insurance including medical and cash benefits, provision of artificial aids and rehabilitation to employees to reduce the sufferings and to provide financial guarantees and protection to the family.

- Employees’ Provident Fund Act 1991

The Act requires employers and employees to make monthly contributions to the Employees’ Provident Fund. It is a compulsory savings plan for private sector workers of Malaysian citizens or permanent residents in Malaysia, and voluntary for non-Malaysian citizens.

- Trade Unions Act 1959

The same industry may establish unions representing themselves and may apply to form a federation or trade unions. All trade unions are required to be registered with the Registrar of

Trade Unions under the Trade Unions Act. The Act sets out rules for the conduct of union business. Malaysian Trades Unions Congress was established since 1949. It is the oldest federation of trade unions representing Malaysian workers.

➢ Employment of Foreign Expatriate

Companies are allowed to bring in expatriate personnel i.e. 'key post' or 'time post'. Key posts are posts that are permanently filled by foreigners whereby time post are position filled on specified time.

(i) Key Post: These are high level managerial posts in foreign-owned private companies and firms operating in Malaysia. Key posts are posts essential for companies to safeguard their interest and investments. The expatriates are responsible in determining the company's policies in achieving its goal and objectives.

(ii) Time Post: Executive Post and Non-Executive Post.

The Malaysian Government has issued the following guidelines on the employment of expatriate personnel:

(i) For manufacturing companies with a foreign paid-up capital of USD 2 million and above:
- Automatic approval will be given for up to ten expatriate posts, including five key posts
- Expatriates can be employed for up to a maximum of 10 years for executive posts and 5 years for non-executive posts

(ii) For manufacturing companies with a foreign paid-up capital of more than USD 200,000 but less than USD 2 million:
- Automatic approval will be given for up to five expatriate posts, including at least one key post
- Expatriates can be employed for up to a maximum of 10 years for executive posts, and 5 years for non-executive posts

(iii) Manufacturing companies with a foreign paid-up capital of less than USD 200,000 will be considered for allowing expatriates to hold both key posts and time posts based on the following guidelines:
- Key posts will be considered where the foreign paid-up capital is at least RM500,000. This amount, however, is only a guideline and the number of key posts allowed depends on the merits of each case
- Time posts will be considered for up to ten years for executive posts which require professional qualifications and practical experience, and five years for

non-executive posts which require technical skills and experience. For these posts, Malaysians must be trained to take over the posts eventually

- The number of key posts and time posts allowed depends on the merits of each case

(iv) For Malaysian-owned manufacturing companies, automatic approval for the employment of expatriates for technical posts, including R&D posts, will be given as requested.

All employment passes are valid for a period approved for the posts. However, key post holder employment passes will be issued on a 5-years renewable basis. Holders of employment passes are issued with multiple entry visas valid for the duration of the employment pass. All applications for expatriate posts from new and existing companies must be submitted to Malaysian Investment Development Authority (MIDA).

➢ Employment of Foreign Workers

Foreign workers can be employed in the manufacturing, construction, plantation, agricultural, services and domestic help sector. Services sector consists of eleven sub sectors: restaurant, cleaning services, cargo handling, launderette, caddy in golf club, barber, wholesale/retail, textile, metal/scraps/recycle activities, welfare homes and hotel/resort island.

Only nationals from the specified countries below are allowed to work in the selected sectors:

Approved Sectors	**Nationals of:**
• Manufacturing • Plantation • Agriculture • Construction • Services sector	• Indonesia • Cambodia • Nepal • Myanmar • Laos • Vietnam • Philippines (male only) • Pakistan • Sri Lanka • Thailand • Turkmenistan • Uzbekistan

	• Kazakhstan
• Services (cooks, wholesale/retail, barber, metal/scraps/ recycle, textile) • Construction (fixing of high voltage cable only) • Agriculture • Plantation	• India

Approval is based on the merits of each case and subject to conditions that will be determined from time to time. Applications to employ foreign workers will only be considered when efforts to find qualified local citizens and permanent residents have failed.

➢ Minimum wages

The implementation of minimum wage of RM900 a month in the Peninsular and RM800 in Sabah, Sarawak and Labuan is fully enforced on 1 January 2014. This was made under the Minimum Wage Order 2012. The requirement covers both the local and foreign workforce, except for domestic workers such as domestic helpers, personal drivers and gardeners. With this in place, it is estimated that around 27% of the workers nationally would be benefited. The affected workers in Peninsular Malaysia are expected to receive a one-third increase in wage while those in East Malaysia would be given a 38% increment.

TAXES

Malaysian taxation is imposed on income accruing in or derived from Malaysia. Malaysia's taxes are assessed on a current year basis and are regulated by a self-assessment system for all corporate and individual taxpayers. The Malaysian taxation system consists of two types of taxes – direct and indirect.

➢ Corporate Income Tax

Companies with a paid-up ordinary share capital which exceeds RM2.5 million (whether resident or non-resident) are currently taxed at a rate of 25% on all income (except those incomes which are exempted under the Malaysian law). All resident SMEs are taxed at a preferential rate of 20% on their first RM500,000. In the Malaysia Budget 2014, the government has announced further reduced income tax rates. This policy takes effect for corporates in 2016 (filing in 2017). For assessment year in 2016, corporate tax rates will be reduced by 1%, that is from 25% to 24% for taxable income above RM500,000. The income tax rate for small and medium companies will be cut from 20% to 19% for taxable income between RM0 and RM500,000.

The government has offered a couple of tax incentives namely tax holidays (for companies granted "PS") and other forms of incentives for qualifying projects. The various tax incentives can be complex and some are mutually exclusive. Professional advice should be sought to maximize the benefits and to ensure compliance. Tax incentives are generally applicable to investors who establish tax resident companies in Malaysia.

➢ Personal Income Tax

Resident individuals are subjected to tax at graduated tax rates after the deduction of personal reliefs. In the Malaysia Budget 2014, the government has announced a reduction on income tax rates which takes effect on income tax earners in 2015 (filing in 2016). Currently for any chargeable personal income above RM100,000 is a maximum of 26%. Two more tax bands were added to the list, with 2 top earners now at RM100,001 – RM250,000 and RM250,001- RM400,000. This group of income earners are chargeable with tax of 24% and 24.5% respectively. The maximum 25% tax will be levied for chargeable personal income of more than RM400,000. This reduction is likely a step to assuage the tension caused by the introduction of the Goods and Services Tax (GST) at 6%, which will be effective on 1 April 2015.

➢ Withholding Tax

Non-resident individuals are subject to a withholding tax on the sources of income earned and/or derived by him in Malaysia to the Inland Revenue Board within one month after paying or crediting such payments. Below are some of the withholding tax rates for the following payment types:

- 10% on special classes of income such as use of rental of movable property, technical or management service fees rendered in Malaysia,
- 10% on royalties;
- 15% on interest.
- 25% on franked dividends (single tier dividends are exempted.

The above rates apply except where the double taxation agreement between the Malaysia and the country in which the recipient is resident, provides for a lower rate, in which case the rates prescribed by the agreement would apply.

➢ Real Property Gains Tax (RPGT)

Capital gains are generally not subject to tax in Malaysia. However, any capital gain arising from the disposal of real properties and/or shares in the Real Property Company (RPC) will be subject to RPGT. Under the recent Budget 2014 announcement, the government has proposed a significant increase to the current RPGT rates to curb speculative activities in the local real property market. With effect from 1 January 2014, the revised RPGT rates is as follows:

Disposal	Companies	Individual (Citizen / PR)	Individual (Non-citizen)
within 3 years	30%	30%	30%
in the 4th year	20%	20%	30%
in the 5th year	15%	15%	30%
in the 6th and subsequent years	5%	0%	5%

The RPGT exemptions which were implemented under the previous regime continue to apply.

On a side note, the latest Guideline on the Acquisition of Properties issued by the Economic Planning Unit provides that, with effect from 1 March 2014, foreign interest who acquires properties that are value more than RM1,000,000 per unit does not require approval from the Foreign Investment Committee, but such acquisition falls under the purview of the relevant ministries and/or government departments.

➢ Good and Services Tax (GST)

In the announcement of Malaysia Budget 2014, the Malaysia Government has announced that Goods and Services Tax (GST) will be implemented effective from 1 April 2015 and GST rate is fixed at 6%. GST is a multi-stage consumption tax on goods and services whereby each point of supply in a production chain is potentially taxable up to the retail stage of distribution. At the same time suppliers are entitled to refunds of GST incurred on business inputs. The basic fundamental is its self-policing features which allow the businesses to claim their Input tax credit by way of automatic deduction in their accounting system. Further details on the GST implementation and policies in various industries have yet to be finalised.

- Import duties and export duties

Imports of goods are subject to import duties based on ad valorem basis or a specific basis. The ad valorem rates range from 2% to 60%. Raw materials, machinery, essential foodstuffs, and pharmaceutical products are generally non-dutiable or subject to duties at lower rates. Malaysia imposes tariff rate quota on selected agricultural products such as chicken and milk and the rate depends on the volume of imports. However manufacturers are allowed to apply for exemption from import duties subject to the fulfilment of certain requirements. Export duties are generally imposed on Malaysia's main commodities such as crude petroleum and palm oil.

- Excise duties

Excise duties are imposed on a selected range of goods manufactured in Malaysia or imported into Malaysia. Such goods include a large number of liquor, cigarettes, motor vehicles, motorcycles, playing cards and mah-jong tiles. No excise duty is payable on dutiable goods that are exported. A manufacturer of goods subject to excise duties must have a manufacturing license of such goods. In addition, a warehouse licence is also required for storage of such goods. The rates of excise duties vary from a composite rate of 10 sen per litre and 15% for certain types of spirituous beverages to as much as 105% for motorcars.

INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights (IPR) in Malaysia is administered by the Intellectual Property Corporation of Malaysia (MyIPO), a corporate body set up under the Intellectual Property Corporation of Malaysia Act 2002. MyIPO is an agency under Ministry of Domestic Trade, Co-operative and Consumerism (MDTCC). The objectives of MyIPO include establishing a strong and effective administration, strengthening intellectual property laws, providing comprehensive and user friendly information on intellectual property, promoting public awareness programmes on the importance of intellectual property and providing advisory services on intellectual property.

Malaysia is a member of the World Intellectual Property Organisation (WIPO) and a signatory to the Trade Related Aspects of Intellectual Property Rights (TRIPS) under the auspices of the World Trade Organisation (WTO). Malaysia is also a signatory to the Berne Convention and the Paris Convention which govern these intellectual property rights. Malaysia has also acceded to the Patents Cooperation Treaty (PCT) in 2006 and the Nice and Vienna Agreements on 28 June 2007. Nice Agreement is concerning the International Classification of Goods and Services for the purpose of the registration of trademarks whereas the Vienna Agreement establishes a classification for marks, which consist of or contain figurative elements.

DISPUTE RESOLUTIONS

Parties to an agreement are allowed to choose either Malaysian law or foreign law as the governing law of their contract. Similarly, parties are allowed to choose the form of dispute settlement. The most common form of dispute settlement in Malaysia today is through litigation in the court. This followed by a variety of alternative dispute resolution (ADR), principally mediation and arbitration. Adjudication is a new process for the resolution of construction disputes, recently introduced by the Construction Industry Payment and Adjudication Act 2012 (CIPAA). These methods of ADR are becoming increasingly popular mechanisms to resolve disputes. Many perceive litigation as time-consuming and believe that these methods of ADR would save time, resolve disputes in confidence and also that it may not create hostility as it sometimes does, in litigation.

➢ Dispute settlement by Court

Generally, a dispute may be resolved by commencing a civil action in the courts. A civil action is commenced by the plaintiff either by way of a writ or by an originating summons. The litigation process in Malaysia follows an adversarial system. Decisions made by the court are enforceable within Malaysia.

Certain foreign judgments are enforceable in Malaysia by virtue of the Reciprocal Enforcement of Judgments Act 1958 ("REJA"). However, before a foreign judgment can be enforceable, it has to be registered. The registration of foreign judgments is only possible if the judgment was given by a Superior Court from a country listed in the First Schedule of the REJA. REJA requires the registration of foreign judgment be made no later than 6 years from the date of the judgment. Those countries include mainly the Commonwealth countries. If the judgment is not from a country listed in the First Schedule to the REJA, the only method of enforcement at common law, is by securing a Malaysian judgment. This involves suing on the judgment in the local courts as an action in debt. Summary judgment procedures may be used to expedite the process.

➢ Dispute settlement by Mediation

The Mediation Act 2012 seeks to facilitate mediation process. Parties to the mediation are free to agree on the appointment of any person as their mediator. If parties cannot come to a consensus, they can request the Malaysian Mediation Centre of the Bar Council (“MMC”) to appoint a qualified mediator from its panel. Any agreement arising from a successful mediation is reduced to writing in a Settlement Agreement signed by the parties. In the event the mediation is not successful, parties may proceed to pursue their respective rights in litigation or arbitration. All disclosures, admissions and communications made in and during mediation sessions are on a without prejudice basis. The practice of mediation in its conceptualised form is still at its embryonic stages and mostly used for cases which do not involve complicated issues of law. So far, only Persatuan Insuran Am Malaysia (“PIAM”), the Banking Mediation Bureau (“BMB”), the Housing Buyers Tribunal (“HBT”) and the Tribunal for Consumer Claims (“CCM”) have facilitated statutory mediation.

➢ Dispute settlement by Arbitration

Parties to a contract may agree by way of an arbitration clause in a contract to refer any dispute that might arise in respect of that contract to arbitration. Parties may also agree to refer to arbitration when dispute arises even though there was no such prior agreement between them. The Arbitration Act 2005 is the law governing arbitration in Malaysia. The UNCITRAL Model Law on International Commercial Arbitrations has been adopted as part of the working provisions of the Act. The Act applies to both domestic and international arbitration. Parties are at liberty to decide, among others, on the number of arbitrators that will decide the matter, the appointing body in the event parties cannot mutually agree on the choice of arbitrators and the rules to be applied to the arbitration. Arbitrators do not have to be legally qualified but they must be independent and impartial and should have sufficient experience in arbitration as well as technical knowledge on the subject matter in dispute. Parties to arbitration proceedings can be represented by lay persons, local or foreign lawyers. The existence of an arbitration agreement or arbitration clause does not automatically oust the jurisdiction of the courts. However the other party may apply to court to stay the court proceedings pending reference to arbitration.

The arbitrator is generally required to give a reasoned award, that is, an award explaining the grounds for his decision. In the event a losing party refuses to comply with an award, the winning party may apply to the High Court to register the award, and thereafter pursue enforcement proceedings. There is no appeal against an award made other than an application to the High Court to set aside the award. Such an application has to be within 90 days of the receipt of the award. The grounds for setting aside such an award are limited to fraud, or breach of the rules of natural justice or where the award is contrary to public policy of Malaysia. Malaysia has established the Kuala Lumpur Regional Centre (KLRCA) for Arbitration to facilitate local, regional and international arbitrations. KLRCA has its own set of arbitration rules.

Malaysia is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the New York Convention”). The New York Convention has the force of law in Malaysia by virtue of the Convention on the Recognition and Enforcement of Foreign Awards Act 1985 (“the New York Convention Act”). The Convention is important because arbitral awards made in Malaysia can be enforced in the member countries and vice versa.

ABOUT DACHENG WONG ALLIANCE LLP (DCWA)

DCWA is a Singapore-China joint venture law firm that is based in Singapore; hence DCWA is well placed to serve clients in the ASEAN region. It is established as a limited liability partnership between Dacheng Law Offices from China and Wong Alliance LLP in Singapore. The two firms have been strategic partners providing a seamless delivery of quality, efficient legal service for clients in the Asia-Pacific region and China. To strengthen this relationship along with developing and expanding in the regional market, DCWA was formed in September 2011. DCWA has the support of more than 40 Dacheng Offices in China and across the globe, as well as the Wong Alliance network in Asia. DCWA serves its clients, particularly South-East Asian, Chinese and Indian, in the Asian region out of its Singapore base. With its strategic location, Singapore offers DCWA a location in close proximity to the fastest growing economies in the world that are at the crossroads of the East and West.

AREAS OF PRACTICE

- Cross border and Corporate Law
- Private Wealth, Tax and Trusts
- Private Equity, Funds and Corporate Finance
- International Real Estate and Investment Law
- Mergers and Acquisition, Foreign Direct Investment and Tax
- Intellectual Property and Media Law
- Cross border Dispute Resolution and Mediation
- South Asia Practice
- ASEAN practice

DCWA has a team of multi-jurisdictional lawyers qualified to practice China, India, Singapore, Indonesia and Timor-Leste Laws and is well placed to support clients in these regions. DCWA's ASEAN Practice has alliances in the ASEAN member countries and enables DCWA to provide premium services at a highly competitive cost. DCWA's familiarity with the varied languages, culture and business practices of the ASEAN countries allows DCWA to better serve clients.

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ABOUT YEOH MAZLINA AND PARTNERS

The Firm was founded by Mr. Matthew Yeoh Chin Chong in 1992. From a sole proprietorship we gradually grew to what we are today. We believe in growing organically, and evolving a culture and body of ethics that we hold dear and by which we endeavour to give value to our clients.

Today, we are proud to say that with the support and trust of our valued clients friends and associates, we have become a medium sized comprehensive practice, providing services to our clients ranging from traditional law services to corporate secretarial, business set-ups and support services to our clients. Our aim is to provide seamless solutions to anyone approaching us for assistance.

In this age of increasing globalization, we have formed alliances with law practices and other consultants from other countries in the region and further abroad.

AREAS OF PRACTICE

- Commercial and Corporate Matters
- Conveyancing
- Banking Securities
- Civil & Commercial Litigation
- Foreclosure proceedings
- International Trade and Investments
- Immigration matters
- Human resources and industrial court related matters
- Criminal cases

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