



Doing business in Malaysia 2013

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Foreword

Malaysia has emerged as an attractive regional hub for services.

Malaysia has over the last 50 years developed from a primary commodities exporter to be a strong industrial base for foreign electrical and electronics multinational corporations. As an oil and gas exporter, Malaysia has profited from higher world energy prices but the government recognizes the need to reduce the dependence on petroleum as the main source of revenue. In the last decade, as it moved up the industry value chain, Malaysia has emerged as an attractive regional hub for services. More recently, the collective impact of bold and significant market liberalisation measures is positioning Malaysia to receive an inflow of foreign investment capital in the various services subsectors, including financial services, information and communications technology

(ICT) and logistics sectors. Malaysia is increasingly being recognised as an innovative international Islamic financial centre. It is also emerging as a springboard or centre for regional expansion into Association of Southeast Asian Nations (ASEAN) in view of its strategic, central location and multi-lingual “Truly Asia” mix of Malay, Chinese and Indian populace.

This Guide has been prepared for the assistance of those interested in doing business in Malaysia. The coverage of the subjects is not exhaustive but is intended to deal with some of the more important and/or broad questions that may arise.

The material contained in this Guide is based on legislation as at 15 January 2013, **unless otherwise indicated.**

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Location and climate

History and political background

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Pintu Gate B →

← Pintu Gate C

Dilarang Merokok 

← Ruang Marokok 

↑ Commercial Area Executive Lounge

Marokok
LOUNGE

Location and climate

Malaysia is situated in Southeast Asia, in the square bordered by longitudes 100 degrees and 120 degrees east and latitudes formed by the equator and 7 degrees north. The landmass of Malaysia comprises Peninsular Malaysia, at the southern tip of the Asian mainland, and East Malaysia, on the island of Borneo. About four fifths of Malaysia (including Sabah and Sarawak) is covered by tropical rain forests.

The entire country has a tropical climate, which is warm and sunny throughout the year with temperatures from about 33 degrees Celsius in the afternoon to about 22 degrees Celsius during the night. The average annual rainfall is 2,712 millimeters (about 107 inches). The wettest months, particularly on the east coast of Peninsular Malaysia and in East Malaysia, are during the monsoon, which blows from October to March.

The capital of Malaysia, the Federal Territory of Kuala Lumpur, is located on the west coast of the peninsula, about 48 kilometers (30 miles) from the country's main port, Port Klang. However, the seat of the Malaysian government is now sited in Putrajaya, which was developed to be the new administrative capital of Malaysia where all the main offices of the various departments of the federal government are located. Putrajaya is situated 25 km from Kuala Lumpur and 20 km from the Kuala Lumpur International Airport.

The bulk of commercial activity in Malaysia is concentrated in the Klang Valley, which links Kuala Lumpur and Port Klang. The other principal business centres in Peninsular Malaysia are Penang, which has the second largest port in the country; Johor Bahru, which has a free port (Johor Port) and is linked to Singapore by a causeway as well as a bridge known as the 'Tuas Second Link'; Kota Kinabalu and Kuching in East Malaysia are centres for the country's timber industry.

History and political background

The early development of Malaysia was linked to the strategic position of Peninsular Malaysia (then called Malaya) alongside the Straits of Malacca, one of the world's major trade routes. Referred to in Greek literature as the "Golden Chersonese," it was the centre of the spice trade that flourished in the 15th century, attracting traders from as far as Portugal and England in the west and China in the east, many of whom settled in the peninsula and were the forebears of the country's multiracial population. Malaya, as it was known at that time consisted of a number of territories, each governed by a Malay ruler. From the 1500s, parts of the peninsula fell at various periods under the domination of the Portuguese, Dutch and British. By 1914 the British had extended their influence over the whole of Malaya, and the peninsula came under British protection. After World War II an independence movement arose, culminating in independence for the 11 states comprising the Federation of Malaya on August 31, 1957. The Federation of Malaysia was established in 1963. It consisted of the

11 states of Malaya, Sabah (formerly British North Borneo), Sarawak, and Singapore. In 1965, Singapore left the Federation to become an independent republic. Malaysia now comprises 13 states and the federal territories of Kuala Lumpur, Putrajaya and Labuan. Nine of these states are headed by hereditary rulers, the Sultans, who serve as constitutional heads of state. The remaining four states are headed by Yang di Pertua Negeri (governors), who are appointed for fixed terms of office to serve as constitutional heads of state.

Each state has its own written constitution and an elected legislative assembly. Each state government is led by a Menteri Besar (Chief Minister), who is appointed from among the members of the legislative assembly. The division of powers between the various state governments on the one hand and the federal government on the other is defined in the Federal Constitution, which provides for a parliamentary system of government, with a central federal government and a measure of autonomy for the 13 constituent states. The Head of State is the Yang di Pertuan Agong (Paramount Ruler or King), who is elected by the nine Malay hereditary

rulers from among their number to serve for a term of five years. The Paramount Ruler serves as constitutional monarch, acting on the advice of a cabinet of ministers led by the Prime Minister. The federal legislature comprises the Dewan Rakyat (House of Representatives), which is a fully elected body of 222 members, and the Dewan Negara (Senate), which comprises 44 members appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. A member of the Dewan Rakyat who commands the confidence of the majority of the members may be appointed Prime Minister and may select cabinet ministers from among the members of the Dewan Rakyat and the Dewan Negara. In practice, the overwhelming majority of cabinet ministers are drawn from the Dewan Rakyat.

Legal system

The Malaysian legal system is substantially based on the British legal system and the principles of common law. Matters brought before the High Court may be appealed to the Court of Appeal and later to the Federal Court, which is the final court of appeal in the country. Offences against Islamic law are tried by Syariah courts, which are set up by the respective state governments.

People, languages and social patterns

Population

Malaysia has a total population of 28.6 million in 2011. The Malaysian population has a multi-ethnic, multi-cultural composition, the dominant racial group being the Malays, who with other Bumiputra¹ groups, make up 65% of the population. The rest of the population is made up of Chinese (26%), Indians (8%) and other unlisted ethnic groups (1%).

Language, religion and education

Bahasa Malaysia, which is romanised Malay, is the official language. It is the language of administration for the federal and state governments. Correspondence from the government is in Bahasa Malaysia, although certain government departments may accept correspondence in English. English, taught as a second language in schools, is widely used in business.

All of the world's major religions have substantial representation in Malaysia. The official religion is Islam, and persons of the Islamic faith constitute more than half the total population.

Free education is provided to pupils between the ages of 7 and 15, and it extends to 19 for those who attain the required academic standards. After completion of their primary school education (which requires 6 years to complete) the majority of students continue their education in secondary schools. They make up a pool of young, educated and highly productive workers. Apart from government run educational institutions ranging from kindergartens to vocational schools and universities which are under the care of the Ministry of Education, there is an expanding system of private schools and institutions of higher learning that cater to the educational needs of the population at every level, including professional and vocational training.

1. "Bumiputra" includes Malaysians with cultural affinities indigenous to the region, mainly the Malays in West Malaysia, and various other indigenous natives of Sabah and Sarawak.



Economic structure

Malaysia has a mixed economy, with active participation in business by both the private and public sectors. Although the economy has traditionally been commodity based, services has become the single largest component of economic activity. Rapid economic growth in the 1970s and early 1980s (assisted by the boom in commodity prices, particularly for petroleum) was followed by a recession in the mid 1980s. Another period of strong growth rates between 1987 to 1997 was halted by the world financial crisis in 1998. The Malaysian economy then rebounded strongly in 2000 and achieved positive growth rates of between 4.1 % and 7.1 % between 2002 and 2008. The economy however contracted 1.7% in 2009 amid the global financial crisis in 2008, but recovered subsequently, growing between 5.0% and 7.0% over 2010 to 2012.

Economic sectors

In terms of the magnitude of the various economic activities, the service sector is the largest contributor to GDP, accounting for 58.6 % of GDP in 2011. Major sub-sectors within services include: finance, real estate and business services; wholesale and retail trade; and transport and communications.

The manufacturing sector is placed second only to services, accounting for about 27.5 % of GDP. Other major economic activities in Malaysia include the agriculture and mining sectors, which account for about 7.3 % and 6.3 % respectively of GDP in 2011.

Framework of the industry

Industry falls into three broad categories:

1. Indigenous small businesses, which were once largely concentrated in light industry as well as in wholesale and retail distribution and trading, have now successfully moved toward small- and medium-scale industries (SMIs) through the government's umbrella strategy.
2. Large Malaysian corporations, many of which are listed on Bursa Malaysia, previously known as the Kuala Lumpur Stock Exchange. The shareholdings in these companies are largely institutional, with significant proportions held by government trust agencies.
3. Local operations of multinationals, most of which are majority-owned by their foreign parent corporations.

Economic outlook

Malaysia's economic growth is expected to remain resilient in 2013 and 2014 despite challenges in the global economy. It is forecast to grow between 4.5% and 5.5% in 2013 and 2014, underpinned by government stimulus measures and programmes to boost domestic demand and investments.

Domestic demand is expected to expand by around 7% to 8% over 2013 and 2014, driven by robust private investment and continued private consumption. Private investment is expected to post double-digit growth of 13% to 15% over the two years, catalysed by the government's Economic Transformation Programme (ETP). Among the ETP initiatives is to drive business and investment opportunities in 12 key sectors² - referred to as the National Key Economic Area (NKEA) - together with the private sector.

Private consumption is expected to remain buoyant, growing by 6% to 7% over the period, underpinned by stable labour market, strong employment, low interest rate and government stimulus measures to boost consumption. In addition, investments under ETP will help support higher employment and income levels and sustain private consumption expansion.

Going into 2013 and 2014, inflation will remain moderate around 2% to 3% given the soft commodity prices and weak global economic climate.

2. The 12 key sectors/NKEAs are: Oil, gas and energy; palm oil; financial services; tourism; business services; electronics and electrical; wholesale and retail; education; healthcare; communications content and infrastructure; agriculture; and the Greater Kuala Lumpur/Klang Valley.

New Economic Model

The New Economic Model (NEM) is the government's response to the need to "shift (the economy) to a higher level of value added and productivity" that is based on innovation, creativity and high value add activities, in order to lift the country into the ranks of a high income nation by 2020.

The NEM was unveiled by the Prime Minister on 30 March 2010. Its formulation incorporates 3 basic principles, namely, high income, sustainability, and inclusiveness that undergirds the following key goals:

Based on these principles, a holistic approach is adopted to foster competition in all sectors of the economy through the implementation of market-friendly policies and regulations with the aim of creating new sources of growth and promoting higher value added sectors (e.g. private education, health tourism, Islamic finance, ICT, creative industries and biotechnology).

Principle	Goal
High income	USD 15,000 – 20,000 per capita by 2020 (compared to USD 7,000 currently)
Sustainability	Meets present needs without compromising future generations.
Inclusiveness	All communities to fully benefit from the wealth of the country

Economic Transformation Programme (ETP)

The ETP is a comprehensive effort to transform Malaysia into a high income nation by 2020, by boosting both investments and private consumption. Through collaborations between the public and private sector, the ETP aims to create a vibrant and competitive business environment for investments, focusing on two broad areas:

- 12 NKEAs; and
- Six Strategic Reform Initiatives³ (SRIs)

The 12 NKEAs represent economic sectors that will drive the highest possible growth and will receive prioritized government support. As of November 2012, 152 entry point projects have been recorded. Of these, 149 projects have been announced, with total committed investments of RM212 billion (US\$69 billion), meeting 27% of its RM794.5 billion (US\$260 billion) target in 2020.

The six SRIs, complement the 12 NKEAs, aim to boost the country's competitiveness and investment climate in areas such as ease of doing business, talent development and improving public service delivery. Malaysia is turning into a competitive place to do business, it ranked 12th in ease of doing business in World Bank Doing Business 2013 report, up from 21st position in 2009. It is also among the top 3 global services location in A.T Kearney's Global Services Location Index 2011.

3. The six SRIs are: Competition, standards and liberalisation; public finance reform; public service delivery; government's facilitative role in business; human capital development; and narrowing disparities.

International trade

Trade policy is basically in favour of free trade, with some protection for selected industries. The government is seeking the progressive removal of many of the existing trade barriers. As a member of ASEAN, Malaysia has worked towards greater trade liberalisation among the ASEAN member countries in realising the ASEAN Free Trade Area (AFTA) in the year 2003.

Another key trade initiative is the ASEAN Economic Community (AEC). It aims for regional economic and trade integration by 2015, supporting free flow of goods, services, investment and capital among the ASEAN member countries.

World Trade Organisation research estimates that the gains from trade facilitation reform have a significant impact on ASEAN. For instance, improving port facilities and competitiveness in the internet services sector would boost trade by 7.5% (US\$22 billion) and 5.7% (US\$17 billion) respectively, in the region.



Free Trade Agreements

Malaysia has concluded several regional and bilateral free trade agreements and several more are still at the negotiation stage. One of the key features of free trade agreements is the preferential tariff treatment accorded to member countries. As to date Malaysia has signed the following free trade agreements:

- ASEAN Free Trade Agreement
- ASEAN China Free Trade Agreement
- ASEAN Korea Free Trade Agreement
- Malaysia Pakistan Closer Economic Partnership
- Malaysia Japan Economic Partnering Agreement
- ASEAN-Australia-New Zealand Free Trade Agreement
- ASEAN-Japan comprehensive Economic Partnership
- ASEAN-India Trade in Goods Agreement
- Malaysia-Chile Free Trade Agreement

Free trade agreements under negotiation are as follow:

- Malaysia-Turkey

- Malaysia-European Union
- Trans-Pacific Partnership Agreement (TPP), including with the US
- Trade Preferential System-Organisation of Islamic Conference (TPS-OIC)
- Developing Eight (D-8) Preferential Tariff Agreement (PTA)

The preferential tariff treatment and the rules of origin may vary from one free trade agreement to another.

Imports and exports

Malaysia's import and export policy is to encourage free trade, and generally most imports and exports do not require import / export licences. However for economic, social and political reasons certain goods may be prohibited from import or export. An import/export licence has to be obtained for the importation/exportation of prohibited goods. There is a tariff of varying rates covering most imports. Raw materials, machinery, essential foodstuffs and pharmaceutical products are generally non-dutiable or subject to duties

at lower rates. For machinery and equipment and raw materials that are dutiable, application for duty exemption may be considered if they are not available locally and are used directly in the manufacturing process.

Export duty is generally imposed on the country's main commodities such as crude petroleum and palm oil.

Licences are required for the export of primary products, such as palm oil and timber. These primary products are also subject to export duties at rates that vary with the price of the product. The export from Malaysia of crude petroleum and liquefied natural gas is controlled by Petroliam Nasional Berhad (Petronas), the government owned national oil corporation.

A resident is freely permitted to make payment in Ringgit for international trade in goods and services provided payments are made or receipts are received through the non-resident's external account. Prior permission of the Controller of Foreign Exchange is required if such settlement is not through the non-resident's external account.

Foreign investment

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. There is a well developed infrastructure of support services and facilities, and a labour force that is priced relatively lower than in developed countries, young and capable of being trained to high levels of productivity.

Malaysia has significant natural resources. Government policy encourages development and processing in the manufacturing sector through a number of incentives available for resource-based manufacturing. Special incentives are also given to promote manufacturing related, regional operations and services-based industries, industries that are knowledge based, technology-intensive and involve high technology, and industries in the biotechnology sector. (see Appendix A(1.1)).

In line with the government's plan for the implementation of the NEM, the Prime Minister has recently announced a slew of measures aimed at liberalizing major sectors of the economy, namely, the services sector, the financial services sector as well as the capital market. One significant step taken is the deregulation of the Foreign Investment Committee's investment guidelines. It is hoped that these measures will encourage the entry of foreign players, including those with intentions to set-up a regional base in view of Malaysia's strong international linkages (including Islamic finance). However, with a challenging global economic environment, only strategic investors with a long-term view of Malaysia are expected to consider capitalising on this platform of liberal market-friendly policies. The new measures would better place Malaysia with regional peers in attracting foreign investments and providing a business friendly environment for high technology, creative and value add sectors.

Malaysian equity policy

The Foreign Investment Committee (FIC) was established in 1974. Until 2009, it functioned as the regulator of acquisitions, mergers and takeovers involving foreign and Malaysian interests other than financial services companies (e.g. banks and insurance companies) manufacturing companies and those engaged in the wholesale and retail trade. Under FIC guidelines on the acquisition of a local company/business, a basic condition that must be complied with (except in specific exempted transactions) is the maintenance of at least 30% "Bumiputra" equity in the acquired company. However, the government has in recent years aligned itself to a policy trend of relaxing equity conditions to encourage foreign direct investments into Malaysia. For example, since 2003, acquisitions of interest in manufacturing companies licensed by MITI are exempted from compliance with FIC guidelines.

The most recent steps in this direction are the following announcements by the Prime Minister on the stated dates:

- 22 April 2009 - Immediate liberalization of 27 services sub-sectors, with no equity condition imposed. These sub-sectors are in the area of health and social services, tourism services, transport services, business services and computer and related services.
- 29 April, 2009 –Further measures to liberalize the financial services sector, including the raising the limit on foreign equity ownership of investment banks, Islamic banks, insurance companies and takaful operators from 49% to 70%.
- 30 June 2009 – Deregularization of the FIC guidelines which include the removal of the 30% Bumiputra equity stake for companies seeking listing. Also announced were other measures to further liberalize Malaysia’s capital market, including allowing 100% foreign ownership of fund management companies,

and up to 70% foreign ownership of unit trust management companies and stockbrokers.

- With the deregularization of the FIC guidelines, FIC approval would be required only for buying property above RM20 million from Bumiputra and the government
- 07 Oct 2011 – The 2012 Budget had announced further liberalization (in phases) in 2012 of 17 services subsectors including private hospital services; medical and dental specialist services, accounting and taxation, legal services, courier services; education and training services; as well as telecommunication services. As of 16 November 2012, the abovementioned have been liberalized. Liberalisation of architectural, engineering and quantity surveying services will be announced once the relevant amended legislation permitting greater liberalisation has been passed.

Repatriation of profits and investment guarantee

Profits are freely remittable.

Investment guarantee agreements (IGA) have been concluded with a number of countries. IGAs serve to:

- Protect against nationalisation and expropriation
- Ensure prompt and adequate compensation in the event of nationalisation or expropriation
- Provide free transfer of profits, capital and other fees
- Ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966

See Appendix A(1.2) for list of countries with which Malaysia has signed IGAs.

Taxation policy

In recent years, the government has adopted a trend of lowering income tax rates, particularly the rate of corporate tax, which has been reduced from 28% in YA 2006, (a rate that had prevailed since YA1998) to 25% from YA 2009 onwards. There were expectations that income tax rates (both corporate and personal) would be reduced further when it was announced in the 2006 Budget Speech that a goods and services tax (GST) would be implemented from 1 January 2007 to replace the existing sales tax and service tax. However, the implementation of GST was subsequently postponed and to date, no definite implementation date for GST has been announced. As such, income tax remains the principal source of tax revenue for the government. Despite the delay in the introduction of GST, it is unlikely that there will be any increase in income tax rates in the near future, in view of the need to keep them competitive (as compared to Malaysia's neighbouring countries) in attracting foreign direct investments.

Tax holidays (for companies granted "pioneer status"), investment tax allowance and a multiplicity of other forms of incentives are available for qualifying projects. The various tax incentives can be complex, and some are mutually exclusive. Professional advice should be sought in order to maximize the benefits from these incentives.

Labour attitude towards foreign investment

The Malaysian labour force welcomes foreign investment as a source of employment. The industrial relations climate has traditionally been cordial and is likely to continue to be so. The Malaysian Government encourages the employment structure to reflect the multi-racial composition of the Malaysian population.

Work permits can be obtained for skilled foreign personnel, but it is expected that the foreign investor will make a sincere effort to train Malaysians to fill these positions over time.

Investment incentives

The underlying strategic thrusts of the macroeconomic management are premised on a more dynamic and vibrant private sector supported by the enabling and conducive environment put in place through various measures over the years. In cognisance of the importance of the role of private sector investment in ensuring sustainable growth in the medium and long term, the Government has instituted measures to enhance investment activity in Malaysia. One of the measures is through tax incentives. Tax incentives are generally applicable to investors who establish tax resident companies in Malaysia. The policy is to encourage foreign companies wishing to engage in continuing operations in Malaysia to incorporate local subsidiaries.

Principal government agencies

As part of the Government's efforts to attract high quality investments, specially "pre-packaged" incentives are available to companies resident in Malaysia and carrying on an "approved business". "Approved business" is defined to mean any business approved by the Minister of Finance ("the Minister") under the special incentive scheme. Under this scheme, a company is entitled to claim either:

- Tax exemption of 70% (or any other rate as prescribed by the Minister) of the company's statutory income; or
- Tax exemption of 70% (or any other rate as prescribed by the Minister) of statutory income granted based on a percentage (as determined by the Minister) of qualifying capital expenditure incurred.

See Appendix A(1.1) for details of investment incentives available.

See Appendix A(1.3)* for a list of government agencies (with brief descriptions of the function of each agency.)

Chapter 2

Business

formation

and the

regulatory

environment

Business formation: types of business entities

General regulatory environment

Raising capital

Securities market

Competition policy

Monopolies and antitrusts

Mergers and acquisitions

Court system

Intellectual property rights





Business formation: types of business entities

Types of entity

The following are the forms of business organisation available in Malaysia.

Company

Companies are governed by the Companies Act 1965, which provides for three types of companies:

- Company limited by shares;
- Company limited by guarantee;
- Unlimited company.

In practical terms, almost all companies will be companies limited by shares, i.e., companies with limited liability, the maximum liability of a member being limited to the value of share capital. Companies may be formed as either private companies or public companies.

A private company is one which is prohibited by its articles of association to issue any invitation to the public to subscribe for shares or debentures of the company or to deposit money with

the company. Shareholders/ members of a private company shall not be more than fifty and are also restricted in their right to transfer their shares in the company. A public company is employed where it is intended to invite the public to subscribe for shares or debentures in the company or to deposit money with the company.

Limited Liability Partnership (LLP)

Limited Liability Partnership is a new business vehicle introduced by the Companies Commission of Malaysia (CCM) recently. It provides the public with more options to choose their business vehicle.

LLP is a hybrid between a company and a conventional partnership and LLP is governed by the Limited Liability Partnerships Act 2012.

LLP is a separate legal entity from its partners. The liabilities of the partners of a LLP are limited while the LLP has unlimited capability in conducting business and holding property.

Two or more individuals or bodies corporate may form a LLP for any lawful business in accordance with the terms of the LLP Agreement. A LLP may also be formed for the purposes of carrying on professional services of which the partners must be natural persons of same professional practice and have in force, professional indemnity insurance approved by the Registrar.

A LLP has perpetual succession and any change in the partners will not affect the existence, rights or liabilities of a LLP.

Partnership or sole proprietorship

All sole proprietorships and partnerships (excluding LLPs) are unincorporated and must be registered with the Registrar of Businesses also under the auspices of the CCM. As unincorporated entities, sole proprietorships and partnerships have unlimited liability. In the case of partnerships, partners are both jointly and severally liable for the debts and obligations of the partnerships.

Representative/Regional office

Joint venture

Joint ventures are structured either as partnerships or as incorporated companies; the term “joint venture” does not denote a separate and distinct business entity.

Branch of foreign company

A foreign company is a company incorporated outside Malaysia. A foreign company that desires to establish a place of business or to carry on business within Malaysia, may establish a branch by filing the required returns to CCM. The establishment of a branch is not encouraged for a foreign company engaged in wholesale or retail trade.

A foreign company or organization does not have the intention to undertake commercial activities in Malaysia and only represents its head office / principal to undertake designated functions may apply to the appropriate Government Authority for Representative / Regional Office.

The representative office/ regional office does not undertake any commercial activities and only represents its head office/principal to undertake designated functions. The representative office’s/regional office’s operation is completely funded from sources outside Malaysia.

The representative office/ regional office is not required to be incorporated under the Companies Act. The set-up of a representative/ regional office requires the approval of the Malaysian Government.

- Representative office: An office of a foreign company/ organisation approved to collect relevant information on investment opportunities in the country, especially in the manufacturing and services sector, enhance bilateral trade relations, promote the export of Malaysian goods and services and carry out research and development (R&D).
- Regional office: An office of a foreign company/organisation that serves as the coordination centre for the company/organisation’s

affiliates, subsidiaries and agents in Southeast Asia and the Asia Pacific. The regional office established is responsible for the designated activities of the company/ organisation within the region it operates.

Foreign enterprise entities

Most foreign investors incorporate one or more companies in Malaysia through which all operations in Malaysia are carried out.

Foreign companies that come to Malaysia solely to undertake a construction project or some similar form of infrastructure development occasionally form unincorporated joint ventures with a local company. The choice of such structures is usually necessitated by the tax environment in the home country of the foreign company.

For a comparison of the relative advantages of a corporation, branch and sole proprietorship or partnership structure, see Appendix B(2.1).

General regulatory environment

Various government agencies are responsible for implementation and enforcement of regulations governing various aspects of doing business in Malaysia, such as registration of businesses, issue of licences, enforcement of health and safety requirements, as well as ensuring compliance with various government policies (for example, policies relating to employment of workers or to equity structures of companies).

In a move to become a developed and high income nation, the government has introduced six Strategic Reform Initiatives¹ (SRIs) in 2011 to provide the enablers for Malaysia to be competitive. One of the six SRIs includes reforms in competition, standards and liberalization. It includes three main components, they are:

- The implementation of Competition Act 2010, which aims to boost economic growth by promoting and protecting the process of competition;

- Adoption of international standards and best practices to improve the quality of Malaysian goods and services as well as access to international markets; and
- Liberalisation of the services sector which opens markets to foreign investment while encouraging competition.

In recent years, the government has also adopted a policy of allowing greater flexibility on foreign equity participation in local companies. Recent measures taken in this direction are summarized in Chapter 1 (refer to section on “Foreign Investments”).

The main regulatory agencies are listed in Appendix B(2.2).

1. The six SRIs are: Competition, standards and liberalisation; public finance reform; public service delivery; government’s facilitative role in business; human capital development; and narrowing disparities.

Raising Capital

Securities Commission (SC)

The SC is the single regulator for all fund raising activities and is established by law to regulate and oversee the orderly development of the securities and futures contracts markets. SC's many regulatory functions include:

- Supervising exchanges, clearing houses and central depositories;
- Registering authority for prospectuses of corporations other than unlisted recreational clubs;
- Regulating authority for corporate bond issues;
- Regulating all matters relating to securities and futures contracts;
- Regulating the take-over and mergers of companies;
- Regulating all matters relating to unit trust schemes;
- Licensing and supervising all licensed persons;
- Encouraging self-regulation; and
- Ensuring proper conduct of market institutions and licensed persons.

The Malaysian capital market moved from a merit-based (MBR) to a disclosure-based regulatory (DBR) framework for fund raising in 2003. Under DBR, the onus of assessing the merit of any securities rests with the investors whose money is being put at risk. The investors assess and determine the investment merits of the offering while the SC regulates the disclosure of material information. Essentially, in moving from MBR to DBR, the capital market progresses to an environment largely governed by self-regulation, high standards of disclosure and due diligence as well as corporate governance practices.

Securities market

Bursa Malaysia

Public trading/exchange of shares in Malaysia is conducted through, Bursa Malaysia Securities Berhad (BMSB), the stock exchange unit of Bursa Malaysia Berhad (Bursa Malaysia). Bursa Malaysia was previously known as the Kuala Lumpur Stock Exchange Berhad (KLSE), pursuant to its demutualization in January 2004. From 3 August 2009, listing of shares is done through Bursa Malaysia's 2 Markets – the Main Market for established corporations, and the ACE Market which is an alternative market open to companies of all sizes and from all economic sectors.

The exchange also acts as the front line regulator for the Malaysian stock market and is in turn supervised by the SC.

Under a new fund-raising framework launched by the SC and Bursa Malaysia on 8 May 2009, "rules and processes for equity fund-raising have been streamlined in order to provide

greater certainty, shorter time-to-market and lower regulatory costs. Under the new framework, the SC's review of corporate proposals will focus on the following:

- Compliance with minimum requirements;
- Standards of corporate governance;
- Resolution of conflicts of interest;
- Preservation of public interest; and
- Adequacy of disclosures to enable investors to make informed investment decisions.

SC's approval (under relevant legislative provision) would only be required for the following substantive corporate proposals in the Main Market:

- Initial Public Offerings;
- Acquisitions resulting in a significant change in business direction or policy of a listed corporation (reverse take-overs and back-door listings);
- Secondary listings and cross listings; and
- Transfer of listings from the ACE Market to the Main Market.

All other equity-based corporate proposals such as acquisitions (other than reverse take-overs and back-door listings), disposals, placements of securities, rights offerings and issuance of warrants, would no longer require the SC's approval. The SC would continue to vet and register prospectuses to ensure adequate and meaningful disclosures to investors. Bursa Malaysia will take on a more active role as the frontline regulator for secondary equity fund raisings²."

Bursa Malaysia Derivatives Berhad

Exchange of financial and commodities futures in Malaysia is concluded through the Bursa Malaysia Derivatives Bhd. (formerly known as Malaysia Derivatives Exchange Berhad), a future and options exchange covering financial, equity and commodity-related instruments.

2. Quoted from Bursa Malaysia's Media Release on 8 May 2009.

Competition policy

In general, the government is not against competition. Given the active participation of the government in business and the need to nurture infant Malaysian industries, protection from competition is provided to specific industries through licensing and fiscal measures.

In 2010, the Competition Act 2010 (CA) and the Competition Commission Act 2010 (CCA) were passed by the Malaysian parliament and have come into force on 1 January 2012 and 1 January 2011 respectively. The purpose of the CA is to promote and protect the process of competition and interest of consumers with the ultimate objective of promoting economic development. The CCA governs the establishment of a Competition Commission and its powers and functions. Under the CA, enterprises are prohibited from participating in specified trade practices, namely, the making of horizontal or vertical agreements,

and engaging (individually or collectively) in conduct which amounts to abuse of dominant position in any market for goods or services. If an agreement is entered into which could be deemed to be preventing, distorting or restricting completion, liability will be imposed upon the enterprise involved. Certain activities are excluded from the CA (e.g. agreements made to comply with legislative requirements, or collective bargaining activities).

Monopolies and anti trusts

There is no specific anti-monopoly or anti-trust legislation in Malaysia. Monopolies per se are not deemed to be against the public interest and are found in various sectors of the economy.

Mergers and acquisitions

The Malaysian Code on Take-Overs and Mergers (Code) 1998 is the legislation governing take-overs and mergers in Malaysia; the legal framework for this Code was put in place by the Securities Commission (Amendment) Act 1995, with the SC being the sole authority for matters relating to takeovers and mergers.

The Code seeks to ensure that minority shareholders are given a fair opportunity to consider the merits and demerits of an offer and to enable them to decide whether they should retain or dispose of their shares. The 1998 Code also requires offer documents, board of directors, circulars and independent advice circulars to include all relevant information required by shareholders and their professional advisers to make informed assessments of the merits and risks of accepting or rejecting a take-over offer.

The Securities Commission has introduced a new Code in 2010 (2010 Code) to replace the 1998 Code, which came into force on 15 December 2010.

Among the notable changes to the 2010 Code are:

- Increased coverage of the Code to include foreign incorporated companies and real estate investment trusts (REITs) which are listed on Malaysian stock exchange. Previously, the scope covers public companies, whether or not it is listed on any stock exchange, and such private companies as the SC may determine from time to time.
- To preclude the creation of false markets in the securities of the offeree, the code requires a potential offerer to make an announcement on possible offers where there are unusual changes in the price of the potential offeree's share.
- The settlement period for acceptances under a takeover offer has been reduced³ to allow normal business to resume as quickly as possible, since mergers and acquisitions tend to be very disruptive for all the parties concerned

- The Code makes it clear that a scheme of arrangement, compromise, amalgamation and selective capital reductions⁴ will have the same effects as takeover offers governed by the Securities Commission to ensure there will be no grey areas or loopholes.

In light of the above changes, the New Code highlights the SC's continuous efforts to raise investors' protection and transparency as well as to establish higher standards of governance in take-over and merger activities within Malaysia.

The conduct of acquisitions and mergers in Malaysia is governed by specific regulatory agencies and approvals from one or more of these agencies are required for acquisitions and mergers involving foreign or Malaysian interests.

For more information, visit www.sc.com.my

3. Cash consideration is reduced from 21 days to 10 days while consideration consisting of securities reduced from 21 days to 14 days.
4. In this regard, the Code imposes higher shareholders' approval than ordinarily required, under the Companies Act 1965, in which approval for the scheme or exercise now requires vote of at least 50% in number and 75% in value of votes attached to the disinterested shares and not more than 10% of votes cast against such resolution.

Court system

General

The Malaysian legal system is substantially based on the British legal system and the principles of common law. At the lowest level in the hierarchy of courts in Malaysia is the Magistrates' Court, the next being the Sessions Court, then the High Court, then the Court of Appeal. At the apex is the Federal Court. There are generally two types of trials, civil and criminal.

The Magistrates Courts and Sessions Courts have jurisdiction in both civil and criminal matters. The former hear all civil matters where the claim does not exceed RM25,000. The latter also hear all civil matters relating to claims in excess of RM25,000 but not more than RM250,000, except in matters relating to motor vehicle accidents, landlord and tenant and distress, where the Sessions Courts have unlimited jurisdiction.

There are two High Courts, the High Court in Malaya and the High Court in Sabah and Sarawak. The two High Courts in Malaysia have general supervisory and revisionary jurisdiction over all the Subordinate

Courts, and jurisdiction to hear appeals from the Subordinate Courts in civil and criminal matters. They have unlimited civil jurisdiction, and generally hear actions where the claim exceeds RM250,000, other than actions involving motor vehicle accidents, landlord and tenant disputes and distress.

The Court of Appeal generally hears all civil appeals against decisions of the High Courts except where against judgment or orders made by consent. It also hears appeals of criminal decisions of the High Court. It is the court of final jurisdiction for cases which began in any subordinate courts.

The highest court in Malaysia is the Federal Court. The Federal Court may hear appeals of civil decisions of the Court of Appeal where the Federal Court grants leave to do so. It also hears criminal appeals from the Court of Appeal, but only in respect of matters heard by the High Court in its original jurisdiction (i.e. where the case has not been appealed from the Subordinate Courts).

Syariah Courts

There is a parallel system of state Syariah Courts which has limited jurisdiction over matters of state Islamic law. The Syariah Courts have jurisdiction only over matters involving Muslims.

Income tax appeals

Income tax appeals are first heard by Special Commissioners of Income Tax who have all the powers of a subordinate court. Appeals against the decision of the Special Commissioners of Income Tax are made to the High Court, and then to the Court of Appeal, which is the final court for appeal for such cases.

Intellectual property rights

Intellectual Property Corporation of Malaysia

The administration of Intellectual Property Rights (IPR) is undertaken by the Intellectual Property Corporation of Malaysia (MyIPO) which is a corporate body established under the Intellectual Property Corporation of Malaysia Act 2002. MyIPO is an agency under the Ministry of Domestic Trade, Cooperative and Consumerism. Its' functions include the following:

- Establishment of a strong and effective administration of intellectual property;
- Strengthening of 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 on intellectual property.

Malaysia is a member of the World Intellectual Property Organization (WIPO), a signatory to the Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organization (WTO), a signatory to the Paris Convention and Berne Convention which govern these intellectual property rights. Malaysia has also acceded to the Patents Cooperation Treaty (PCT) in the year 2006 and effective from 16 August 2006, the PCT International Application can be made at the MyIPO.

Malaysia's intellectual property laws are in conformity with international standards and provide protection to local and foreign investors. The various legislations are listed below:

Legislation	Protection for
Patents Act 1983 Patents Regulations 1986	Patents
Trade Marks Act 1976 Trade Marks Regulations 1997	Trade marks
Industrial Designs Act 1996 Industrial Designs Regulations 1999	Industrial designs
Copyright Act 1987 Copyright Regulations 1987	Copyrights
Geographical Indications Act 2000 Geographical Indications Regulations 2001	(Upon registration) protection to goods following the name of the place where the goods are produced, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin.

Controls on foreign exchange

Malaysia has 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 for productive purposes in Malaysia. The Exchange Control Act, 1953 is the main legislation governing dealings and transactions in foreign currency whilst the Exchange Control Notices issued by the Central Bank of Malaysia, i.e. Bank Negara Malaysia ("BNM") embodies the general permissions and directions of the Controller of Foreign Exchange ("the Controller"). Some of the controls put into place include:

Remittances abroad

A resident is freely permitted:

- To pay in Ringgit (to be converted when remitting abroad) to a non-resident for any purpose other than for international trade of goods and services or for investments abroad. Payment in Ringgit is however permitted for international trade in goods and services provided payments are made or receipts are received through the non-resident's external account.
- To pay in foreign currency to a non-resident for any purpose and for settlement of import of goods and services.
- Investments abroad in foreign currency assets are subject to the following:
 - A resident, individual or company, without domestic Ringgit credit facilities is free to invest any amount abroad.
 - Ability to invest any amount abroad from conversion of Ringgit up to RM50 million per annum (on corporate group basis) for corporations with domestic credit facilities. However for resident companies that meet prudential requirements, direct investment abroad is permitted without limit. Written permission is required from BNM to undertake these investments. There is no limit if the resident is funded by its own foreign currency funds maintained onshore or offshore.
 - Ability to invest any amount abroad from conversion of Ringgit up to RM1 million per annum for individuals with domestic credit facilities. There is no limit if the resident is funded by own foreign currency funds maintained onshore or offshore.

Borrowings in foreign currency

A resident company is free to:

- Borrow any amount in foreign currency from its non-resident non-bank related companies, resident related companies, licensed onshore banks and licensed International Islamic Banks. However, where the non-resident non-bank related company is set up solely to obtain foreign currency loans from a non-resident financial institution, the amount of borrowing from the non-resident non-bank related company continues to be subject to the prevailing aggregate limit of RM100 million equivalent from non-residents.
- Procure from non-resident suppliers, any amount of foreign currency supplier's credit for capital goods.

Purchase of immovable properties by non-residents using Ringgit credit facilities

- Non-residents are permitted to borrow any number or amount of Ringgit credit facilities from residents (e.g. licensed on-shore banks / non-banks) to finance activities in the real sector of Malaysia. Real sector is the sector where there is production of goods and services which includes all industries except for financial services. Non-residents are allowed to finance or purchase any residential or commercial property in Malaysia (excluding financing for purchase of land only).

Types of accounts

- Foreign currency accounts
In general, a resident (individual or company) is allowed to open foreign currency accounts with licensed onshore banks, licensed international Islamic banks and overseas banks for any purpose. For resident exporters, export proceeds must be credited into foreign currency accounts maintained with licensed onshore banks only. There is no restriction on the maintenance of a foreign currency account by a non-resident.
- Non-resident accounts (external accounts)
Non-residents may maintain any number of external accounts with any financial institution in Malaysia and there is no restriction on the amount of Ringgit funds to be retained in the external accounts. BNM has provided a list stating the allowed sources of ringgit funding and uses of fund for an external account.



Chapter 3 ***Labour relations and social security***

Employment regulations

Unions

Working conditions, wages/salaries and statutory contributions

Foreign personnel





Employment regulations

Employment Act 1955

The provisions of the Employment Act 1955 cover any person who works under a contract of service with an employer and who does not earn more than RM2,000 (wef 1 April 2012, previously RM1,500) a month on wages, or specific categories of employees. Employees earning more than RM2,000 but not exceeding RM5,000 may use the enforcement provisions of the Employment Act to enforce monetary claims under their contracts. This is applicable to West Malaysia only. The Sabah and Sarawak Labour Ordinances cover certain types of employees who have entered into or work under a contract of service with their employers. The ordinances include foreign workers of these specified occupations. Where the persons are not covered by the Employment Act and the ordinances, common law relating to employment will apply to them.

The Industrial Relations Act 1967

The Industrial Relations Act, 1967 and the Industrial Relations Regulations, 1980, forms the legal framework within which the industrial relations system in Malaysia operates. The objective of the first Act, as stated in its preamble, is “to provide for the regulation of the relations between employers and workmen and their trade unions, and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom”. The Act aims to provide safeguards for legitimate rights, prerogatives and interest of employees and employers and their trade unions, and to ensure that trade disputes are settled speedily and in a just manner, so as not to prejudice public and national interests.

The Department of Industrial Relations Malaysia continues to play an important role in maintaining a harmonious environment in the labour market, by helping to avert industrial action through active intervention, consultations as well as negotiations between parties. In the event of a dispute, the Industrial Relations Act provides for free negotiation between trade unions and employers on a voluntary basis. Disputes may be reported to the Ministry of Human Resources for conciliation and referred to the Industrial Court for settlement. Awards made by the Industrial Court are final and legally binding. The Act prohibits strikes or lockouts after a dispute has been referred to the Industrial Court.

The Employment (Part-Time Employees) Regulations 2010 (EPTER)

The EPTER came into effect on 1 October 2010 and provides protection for part-time employees (PTE) who are hitherto, not protected under any labour law. Some of the protection and benefits provided under the EPTER include payments for hours worked beyond normal hours, paid holidays, paid annual leave, sick leave and weekly rest days for PTE who fall within the regulations. This regulation will require employers to make contributions to the national Employment Provident Fund (EPF) and Social Security Organization (SOCSO) for most part-time workers who are eligible for such contributions.

Others

The following legislative enactments/code are relevant in providing for the health, safety and general well-being of employees:

- Factories and Machinery Act 1967 - law relating to the safety of employees in the use of machinery);
- The Occupational and Safety and Health Act 1994 - imposes general duties upon employers, self-employed persons and employees to secure workplace health and safety;
- Code Of Practice On The Prevention And Eradication Of Sexual Harassment In The Workplace -provides guidelines for employers on the establishment of in-house mechanism at the enterprise level to prevent and eradicate sexual harassment in the workplace. With effect from 1 April 2012, new Part XVA has been inserted into the Employment Act 1955 which deals with matters pertaining to sexual harassment.

Unions

Omnibus or general workers' unions are not permitted, but unions belonging to the same industry may apply to form a federation of trade unions or become affiliated with the Malaysian Trade Unions Congress or the Malaysian Labour Organisation.

All trade unions are required by law to be registered with the Registrar of Trade Unions and must comply with the requirements of the Trade Unions Act. The Act sets out rules for the conduct of union business, such as the election of officers, strike ballots and the use of union funds.

Working conditions, wages/salaries and statutory contributions

The **Malaysian Investment Development Authority (MIDA)** publishes on its website at www.mida.gov.my a guide on Cost of Doing Business in Malaysia which provides information on regulatory requirements relating to the following:

- Paid leave (annual leave; maternity leave; sick leave;) See Appendix C(3.1)
- Paid holiday;
- Normal working hours;
- Payment for overtime work;
- Salaries (maximum and minimum) for executives and non-executives in the manufacturing sector.
- Statutory contributions in respect of employees to the following funds:

Employees' Provident Fund (EPF)

The Employees Provident Fund Act 1991 requires employers and employees to make monthly contributions to the EPF to secure lump sum payments to employees at the age of 55 or earlier in the case of incapacity or upon permanent departure from Malaysia. Contributions are mandatory for employees who are Malaysian citizens or permanent residents. Expatriates and foreign workers, who are not Malaysian citizens or permanent residents are not

required to contribute to EPF although they may elect to do so. The rates of contributions are as follows:

The statutory rates of contributions are as follows:

Percent (%) of employee's wages

Contribution by	Malaysian citizens and permanent residents (mandatory)		Expatriates and foreign workers**	
	Employer	Employee	Employer	Employee
Till age 55 (Income ≤ RM5,000****)	13%	11%*	RM5 per person	11%*
Till age 55 (Income > RM5,000)	12%	11%*	RM5 per person	11%*
Age 56 till 75 (from 1 February 2008)	6%***	5.5%***	RM5 per person	5.5%
Age 56 till 75 (from 1 February 2008) (Income ≤ RM5,000****)	6.5%***	5.5%***	RM5 per person	5.5%

* From 1 January 2011, the rate reverted to 11%. From 1 January 2009 to 31 December 2010, the rate was 8% with option to contribute at 11%.

** Not required to contribute to EPF, but can elect to contribute.

*** Exceptions:

EPF monthly rate of contributions is maintained at 12% (employer's share) and 11% (employee's share) under the following circumstances:

- Employees who have attained the age of 55 years before 1 February 2008 and have not made 55 years withdrawal before 1 February 2008;
- Employees who have made 55 years withdrawal before 1 February 2008 and have elected to re-contribute to EPF before 1 February 2008.

**** If the employer pays bonus to an employee who receives monthly wages of RM5,000.00 and below and upon receiving the said bonus renders the wages received for that month to exceed RM5,000.00, the calculation of the employer contribution rate shall be calculated at the rate of 13% / 6.5%, and the total contribution which includes cents shall be rounded to the next ringgit.

Social Security Organisation (SOCSO)

All employees with monthly wages of RM3,000 or less are covered by the Employment Injury Insurance Scheme (EIIS) and the Invalidity Pension Schemes (IPS), which are administered by the Social Security Organisation (SOCSO). Employees falling within the schemes will continue to remain within the schemes, notwithstanding that their monthly wages may subsequently exceed the threshold of RM3,000. A monthly contribution must be made for each eligible employee. There are two categories of contributions:

- The first category of contribution (to both EIIS and IPS) is by both the employer and employee. The amount is based on the employee's monthly wages, restricted to a maximum of RM51.65 and RM14.75 for employer and employee respectively.
- The second category of contribution (EIIS only) is solely by the employer for an employee who is not eligible for coverage under the IPS, restricted to a maximum of RM36.90.

Human Resources Development Fund (HRDF)

HRDF provides financial assistance for training by contributing employers under certain designated training schemes.

The following employers are required to register with the HRDF and contribute in respect of employees who are Malaysian citizens.

1. Employers in the manufacturing sector with 50 or more employees;
2. Employers with 10 to 49 employees and a paid-up capital of RM2.5 million and above in the manufacturing sector (w.e.f. 1 January 1995);
3. Employers with 10 or more employees for the following selected industries in the services sector;

Hotel	Advertising	Engineering support & maintenance services
Air transport	Computer services	Research and development
Tour operating business	Energy	Warehousing services
Telecommunications	Training	Security services
Freight forwarding	Higher education	Private hospital services
Shipping	Direct selling	Commercial land transport and rail transport
Postal or courier	Port services	

4. Employers with 50 or more employees for hypermarkets, supermarkets and departmental stores

5. Employers in the manufacturing sector with 10 to 49 employees and a paid-up capital of less than RM2.5 million (small employers) are given the option to register with the HRDF (w.e.f. 2 August 1996)

Rate of contribution

Up to 31 March 2009

1% of employees' monthly wages on a monthly basis

1 April 2009 to 31 March 2011

0.5% for all employers (except for employers in the industries below):

- Employers in textile, electrical and electronic industries exempted from 1 February 2009. From 1 August 2009 to 31 March 2011, levy was paid at the rate of 0.5%.
- Small employers in manufacturing sector exempted from levy payment for this period.

1 April 2011 onwards

- 1% of employees' monthly wages on a monthly basis (except small employers under the manufacturing sector); and
- 0.5% for small employers under the manufacturing sector

Foreign personnel

Approval for expatriate posts

Approvals for expatriate posts are given by different authorized bodies or agencies depending on the type of core business of the company. The Malaysian Investment Development Authority (MIDA) approves expatriate posts in the following fields:

- Manufacturing
- Manufacturing related services – Regional Office; Operational Headquarters; Overseas Mission; International Procurement Centre, etc.
- Hotel and tourism industry
- Research and Development

Other approving agencies for expatriate posts are:

- Multimedia Development Corporation (MDec) – for expatriate posts and skilled workers in IT based companies with MSC status.
- Public Service Department (PSD) – doctors and nurses in government hospitals and clinics; lecturers and tutors in government institutions of higher learning; contract posts in public services and jobs offered by the Public Service Commission or related government agencies.
- Central Bank of Malaysia - posts in banking, finance and insurance sectors.
- Securities Commission – employment in security and share market.
- Expatriate Committee – employment in sectors other than the above.

The following minimum paid-up share capital requirements must be fulfilled before an application for Expatriate Position can be processed by the Expatriate Committee:

100% Malaysian owned company:
RM250,000

Malaysian and foreign owned company:
RM350,000

100% foreign owned company:
RM500,000

Company undertaking distributive trade and foreign owned restaurant:
RM1,000,000

Restrictions on employment of foreign personnel

The government permits a company investing in Malaysia to bring in technical expertise or other executive personnel necessary for the functioning of the company. However, it is the government's policy that jobs should be filled by Malaysians. The Malaysian government is desirous that Malaysians are eventually trained and employed at all levels of employment.



Chapter 4

Audit requirements and accounting practices

Statutory requirements for Malaysian incorporated companies

Statutory requirements for foreign companies carrying business within Malaysia

Accounting principles and practices

Auditing requirements

Book and tax differences





Statutory requirements for Malaysian-incorporated companies

Accounting and other records

The accounting and other records are the responsibility of the company's directors. Every company incorporated under the Companies Act 1965 is required to keep such accounting and other records so as to sufficiently explain the transactions and financial position of the company and enable preparation of financial statements showing true and fair view to be conveniently and properly audited. All transactions must be recorded within 60 days of completion.

These accounting and other records must be kept at the company's registered office (which must be in Malaysia) or such other place in Malaysia as the directors think fit. Accounting and other records relating to operations outside Malaysia may be kept at a place outside Malaysia, provided statements and returns are sent to a place in Malaysia and are in sufficient detail to enable preparation of financial statements showing true and fair view.

Accounting and other records are to be retained for seven years after the completion of the transactions or operations to which they relate.

Financial statements

The directors must present a set of financial statements to the shareholders in general meeting not later than 18 months after incorporation and, subsequently, at least once in every calendar year at intervals of not more than 15 months. Each set of financial statements must cover the period from the preceding account (or, in the case of the first set of financial statements, from the date of incorporation) to a date not more than six months before the general meeting. Upon application by the company, these periods may be extended by the Registrar of Companies. The financial statements must be prepared in accordance with the MASB approved accounting standards and the provisions of the Companies Act 1965, and duly audited by an approved auditor.

All amounts shown in the financial statements shall be presented in Malaysian currency.

Basic statements

The basic statements included in the annual report to the shareholders are set out below. A copy of this report is filed with the Registrar of Companies and is available for public inspection.

1. Directors' report
2. Financial statements
3. Statement by directors on the financial statements
4. Statutory declaration by the director or officer primarily responsible for financial management
5. Auditor's report

Directors' report

A directors' report with respect to the state of the company's affairs must be attached to every balance sheet. The audited financial statements and the directors' report must be sent to shareholders holders at least 14 days before their meeting (except for public company, 21 days before the meeting).

The directors' report is required to cover the following matters:

- Names of the directors in office
- Principal activities of the company during the year and any significant changes in these activities
- Profits for the year
- Dividends paid and recommended
- Material transfers to or from reserves or provisions
- Issue of shares and share options granted
- Transactions with directors, and directors' interest in the company
- Allowance for and write off of bad and doubtful debts
- Valuation of current assets
- Charges over assets of the company
- Contingent liabilities of the company
- Items, transactions or events of a material and unusual nature
- Directors' benefits, including contracts with directors
- Subsequent events
- Identity of the ultimate holding company, if applicable

Statement by directors on the financial statements

A statement signed by two directors on behalf of the Board of directors that in their opinion the financial statements present a true and fair view and have been made out in accordance with the applicable accounting standards must be attached to every set of statutory financial statements.

Statutory declaration by the director or officer primarily responsible for financial management

In addition, a statutory declaration by the director or officer primarily responsible for the financial management of the company, setting forth that director's or officer's opinion as to the correctness of the financial statements and attested by the Commissioner for Oaths, must also be attached to the statutory financial statements.

Auditor's report

The financial statements must be accompanied by an auditor's report to the members of the company.

The auditor's report shall state whether the financial statements have been properly drawn up so as to give a true and fair view of the company's affairs, results and cash flows and in accordance with the MASB approved accounting standards and provisions of the Companies Act.

Disclosure requirements for public listed companies

Public listed companies are also required to comply with the disclosure required by the Listing Requirements of Bursa Malaysia Securities Berhad in their annual reports.

Public listed companies are required to provide quarterly report on income statement, balance sheet and explanatory notes to their shareholders within 2 months after the end of each quarter and audited financial statements within 4 months of the year end. Guidelines for disseminating material information on public listed companies are set out in the Listing Requirements of Bursa Malaysia Securities Berhad.

Statutory requirements for foreign companies carrying on business within Malaysia

Accounting and other records

A foreign company desiring to establish a place of business or to carry on business within Malaysia is required by the Companies Act 1965 to register itself with the Registrar of Companies. The Companies Act requires the accounting records of a foreign company's operations in Malaysia to be kept in Malaysia. Such a foreign company is required to lodge with the Registrar of Companies a statement showing its assets used in Malaysia and its liabilities arising out of its operations in Malaysia. An income statement that, so far as is practicable, complies with the disclosure requirements of the Act and gives a true and fair view of the profit or loss arising out of the company's operations in Malaysia is also required. The Act requires that this statement of assets and liabilities and the income statement be audited by an approved auditor in Malaysia.

Filing requirements

In addition, a foreign company with operations in Malaysia is required to file with the Registrar of Companies within two months of its annual general meeting a certified true copy of its balance sheet and other documents required to be attached to its balance sheet by the law applicable to the company in its place of incorporation or origin. Where the foreign company is not required to hold an annual general meeting and prepare a balance sheet by the law of the place of its incorporation, the company is required to prepare a balance sheet containing such particulars as if it were a public company incorporated in Malaysia.

Financial statements

The requirement of financial statements is similar to those companies incorporated in Malaysia. In addition, foreign incorporated companies that are publicly listed in Malaysia can also apply the acceptable internationally recognised accounting standards.

Disclosure requirements for public listed companies

Public listed companies are also required to comply with the disclosure required by the Listing Requirements of Bursa Malaysia Securities Berhad in their annual reports.

Public listed companies are required to provide quarterly report on income statement, balance sheet and explanatory notes to their shareholders within 2 months after the end of each quarter and audited financial statements within 4 months of the year end. Guidelines for disseminating material information on public listed companies are set out in the Listing Requirements of Bursa Malaysia Securities Berhad.

Financial Reporting Framework in Malaysia

The financial reporting framework in Malaysia is based on accounting standards which are issued or adopted by the Malaysian Accounting Standards Board (“MASB”).

The MASB approved accounting standards comprise:

1. Malaysian Financial Reporting Standards (MFRS)
2. Financial Reporting Standards (FRS)
3. Private Entities Reporting Standards (PERS)

MFRS is an IFRS-compliant framework which became effective for annual period beginning on or after 1 January 2012.

A private entity shall comply with either PERS in its entirety or the MFRS framework in its entirety for annual period beginning on or after 1 January 2012. Only private entities can apply PERS. Private entities are defined as

private companies incorporated under the Companies Act 1965 that:

- are not required to prepare / lodge any financial statements under any law administered by the Securities Commission (SC) or Bank Negara Malaysia (BNM); and
- are not a subsidiary / associate of / jointly controlled by, an entity which is required to prepare / lodge any financial statements under any law administered by the SC or BNM.

Entities other than private entities shall apply the MFRS Framework for annual periods beginning on or after 1 January 2012, with the exception of entities subject to the application of MFRS 141: Agriculture and/or IC Interpretation 15: Agreements for the Construction of Real Estate.

Entities subject to the application of MFRS 141 and/or IC Interpretation 15:

- An entity subject to the application of MFRS 141 Agriculture and/or IC Interpretation 15 Agreements for the Construction of Real Estate shall comply with the MFRS Framework

for annual periods beginning on or after 1 January 2014. The entity may in the alternative apply Financial Reporting Standards (FRSs) as its financial reporting framework for annual periods beginning before 1 January 2014.

- An entity that consolidates or equity accounts or proportionately consolidates another entity that has chosen to apply FRSs as its financial reporting framework shall comply with the MFRS Framework for annual periods beginning on or after 1 January 2014. Such entity may itself choose to apply FRSs as its financial reporting framework for annual periods beginning before 1 January 2014.
- An entity electing to continue preparing its financial statements in accordance with the FRS framework for annual periods beginning before 1 January 2014 discloses that fact, and when it will first present financial statements in accordance with the MFRS framework.

Auditing requirements

Auditors

A company's first auditors are usually appointed by the directors. Subsequently, except for appointments to fill casual vacancies, auditors are normally appointed by the shareholders at each annual general meeting to hold office until the end of the next annual general meeting. The meeting may pass a resolution appointing as auditor a person other than the retiring auditor. A shareholder must notify the company of the intention to propose such a resolution, normally at least 21 days before the date of the meeting, and the company must provide notice of the meeting to all shareholders. This procedure is designed to avoid the removal of an auditor without a reasonable opportunity being given to all shareholders to attend the meeting and vote on the matter.

To qualify for appointment, a person

must be approved as an "approved auditor" by the Minister of Finance.

No auditor will be so approved if he is not a member of the Malaysian Institute of Accountants (MIA) and whose principal or only place of residence is not in Malaysia.

In practice, a firm of accountants whose partners are approved auditors is usually appointed as auditor.

Approved standards on auditing

Approved standards on auditing in Malaysia are those International Standards on Auditing (ISA) issued or adopted by the International Auditing and Assurance Standards Board (IAASB) that have been adopted in Malaysia by the MIA.



Chapter 5

Business taxation

Principle taxes

Proposed goods and services tax

Income tax

Corporate tax system

Tax administration

Transfer pricing rules

Business reorganisations





Principal taxes

The principal taxes are shown below:

Taxes on income

Income tax
Petroleum income tax

Taxes on transactions

Customs and excise duties
Sales tax
Service tax
Entertainment tax
Stamp duty
Windfall profit levy
Contract levy

Taxes on capital gains

There is no capital gains tax except for real property gains tax (RPGT) which is a tax on gains arising from the disposal of real property or shares in real property companies (RPC).

Income tax

Scope of tax

Income tax is imposed on income accruing in or derived from Malaysia with the general exception of resident companies carrying on a business of air/sea transport, banking or insurance, which are subject to income tax on a world income scope. (Specific exemptions are available for Malaysian banks, insurance companies and takaful companies subject to specified conditions.)

Classes of taxpayers

The principal classes of domestic and foreign taxpayers covered by the income tax legislation are companies, individuals, trade associations, co-operative societies, trusts, and estates. Generally, partnerships are not taxable entities. They are treated as conduits in which the partners and not the partnership, are taxed on the partnership income. However,

Malaysia has in 2013 introduced a new business vehicle, i.e. the Limited Liability Partnership, which will receive the same tax treatment as companies.

Taxable income and gains

The sources of income subject to tax include those listed below:

- Gains or profits from any trade, business, profession, or vocation.
- Gains or profits from employment, including allowances and benefits in kind.
- Dividends, interest and discounts.
- Rents, royalties and premiums.
- Pensions, annuities and other periodic payments.
- Any gains or profits not falling within the gains listed above
- Amounts received by a non-resident person for provision of technical advice, assistance or services, or the provision of services relating to the installation or operation of any apparatus or plant. (Such income is only taxable if the services are performed in Malaysia.)
- Rent or other payments for the use of movable property received by a non-resident.

Corporate tax system

Residence of companies

A company is tax resident in Malaysia in a basis year if at any time during the basis year, the management and control of its affairs are exercised in Malaysia. Generally, a company would be regarded as resident in Malaysia if at any time during the basis period for a year of assessment, at least one meeting of the Board of Directors is held in Malaysia concerning the management and control of the company.

Year of assessment and basis period

The year of assessment (YA) is the year coinciding with the calendar year. For example, the YA 2012 is the year ending 31 December 2012. The basis period for a business source is normally the financial year ending in that particular YA. For example the basis period for YA 2012 for a business which closes its accounts on 30 June 2012, is the financial year ending 30 June 2012. From YA 2001, all non-business sources of income of a company are also assessed on the basis of the financial year.

Taxation of corporations and shareholders

Malaysia replaced the imputation system of taxation with a single-tier system from 1 January 2008. Under this system, tax on a company's profits is a final tax. Dividends are exempt in the hands of shareholders, and companies are not required to deduct tax at source from dividends distributed to shareholders. A transitional period of 6 years is provided for implementation of the single-tier system. All companies will move to the single-tier tax system on 1 January 2014 even though they may still have unutilized franking credits as at 31 December 2013.

Foreign corporations – liability to tax

Foreign corporations (like Malaysian corporations) are taxed on income accruing in or derived from Malaysia. A broad basis for determining whether or not business profits are derived from Malaysia is to determine whether the foreign corporation is “trading within” Malaysia (taxable) or “trading with” Malaysia (non-taxable).

If a double taxation agreement with the home country of the foreign corporation is in force, the taxation of business profits derived by the foreign corporation is limited to the profits that are attributable to its permanent establishment situated in Malaysia.

With respect to income such as royalties, interest or service fees, that is not attributable to a business carried on in Malaysia, the tax liability of the non-resident will be settled by way of withholding tax deducted by the paying entity.

Rates of tax

Resident companies are taxed at the rate of 25% from YA 2009 and subsequent years. However, a resident company with paid-up capital of RM2.5 million or less is taxed at the following rates (provided that specified conditions are met with):

Chargeable income	RM	Rate (%) from YA 2009
On the first	500,000	20
In excess of	500,000	25

Non-resident companies are taxed at the rate of 25% on their business income from YA 2009.

Certain income received by a non-resident company that is not attributable to a business carried on by that non-resident in Malaysia is subject to tax at the following rates (unless the relevant double taxation agreement provides for some other rate):

	Rate (%) from YA 2009
Royalty	10
Rental of moveable property	10
Technical or management service fee*	10
Interest	15
Dividends – single tier – franked	Exempt 25
Income other than the above	10

*Only fees for technical or management services rendered in Malaysia are subject to tax.

Withholding tax

Payments of the above types of income to non-residents (except for dividends) are subject to withholding tax which is due and payable to the Inland Revenue Board (IRB) within one month after paying or crediting such payments. The rates of withholding tax are as shown above, except where the double taxation agreement (DTA) between the Malaysia and the country in which the recipient is resident, provides for a lower rate, in which case the DTA rate would be the withholding tax rate. Appendix D(5.1) shows the list of countries that have concluded DTAs with Malaysia and the rates of tax applicable to interest, royalties and technical fees provided in the respective agreements.

Gross income and profits from business

Gross income subject to income tax is generally based on the audited financial statements of the company. Business profits are computed on the basis of the audited accounts, with adjustments made for non-taxable and non tax deductible items.

Non-taxable income

Capital receipts are non-taxable. Certain types of income may also be specifically exempt by statute. “Single-tier” dividends as well as dividends paid out of tax exempt income received by a corporation are exempt from tax in the hands of shareholders.

Deductible expenses

Deductions are allowed for all outgoings and expenses incurred wholly and exclusively in producing gross income, unless specifically disallowed. Non-allowable expenses include domestic or private expenses, income tax or similar taxes, pre-incorporation, preliminary or start up expenses, capital withdrawn, or capital expenditure on improvements.

Capital allowances

The depreciation charged in the books in arriving at the commercial profit is not deductible for tax purposes. The law, however, provides for corresponding deductions for certain fixed assets used for the purposes of the business in the form of capital allowances (CA). The broad categories of qualifying expenditure are described below.

Industrial buildings (IB)

Industrial building allowances are given on qualifying expenditure incurred on the construction or purchase of buildings or structures used as factories, docks, wharves, jetties, warehouses, farm buildings, or in the working of a mine. Expenditure on land cannot be included in qualifying building expenditure, and buildings used as showrooms, retail shops, offices, and dwelling houses, do not normally qualify as industrial buildings. . However, an office may qualify for CA if it forms part of an industrial building and its cost does not exceed 10 percent of the total building cost.

Other buildings that qualify include the following:

- Buildings used solely for storage of goods for export or storage of imported goods that are to be processed and re-exported;
- Buildings used by a water, electricity or telecommunications undertaking for the purpose of supplying water or electricity or providing telecommunications services to the public;
- Licensed private hospitals, maternity or nursing homes;
- Buildings used as an old folks home or a school or educational institution or for approved industrial, technical or vocational training;
- Buildings used for approved service projects; buildings used for research or training by companies participating in approved industrial adjustment activities;
- Hotel buildings and extensions of approved standards owned by companies granted pioneer status or investment tax allowance; and
- Certain buildings used for the provision of living accommodations or child-care facilities for employees.

The cost of construction of public roads and ancillary structures for the business of toll collection also qualifies for industrial building allowances.

The Ministry of Finance may also prescribe a building that is used for the purpose of a person's business as an industrial building.

Rates of IB allowance

With effect from YA 2002, the rate of initial allowance for IB is 10%, while annual allowance is given at 3% of qualifying expenditure.

Plant and machinery

Qualifying plant expenditure includes:

- The cost of assets used in a business (such as plant and machinery, office equipment, furniture and fittings and motor vehicles);
- Cost of installation and construction of plant and machinery; and
- Expenditure on fish ponds, animal pens, cages, and other structures used for pastoral pursuits.

An initial allowance is granted in the year the expenditure is incurred. An annual allowance at the prescribed rates of 10, 14 or 20% calculated on qualifying expenditure, is given for every year wherein the asset is in use at the end of the year for the purposes of the business. Where an asset is acquired under hire purchase (installment payments), initial and annual allowances are granted on the capital repayments made during the year.

Accelerated capital allowance may be allowed under specific statutory provisions for certain plant and machinery whereby the whole cost of the asset may be fully written off within periods of between 1 and 3 years, depending on the type of asset. Small-value assets costing less than RM1,000 each are eligible for 100% capital allowance, subject to a cap of RM10,000 on the total value of such assets. There is also a limit on the qualifying expenditure on motor vehicles not licensed for commercial transportation of goods or passengers (restricted to RM50,000). However, for new vehicles purchased on or after 28

October 2000, where the “on-the-road price” of the vehicle does not exceed RM150,000, the maximum qualifying expenditure is restricted to RM100,000.

Plantations and forests

Expenditure on new planting (as distinct from expenditure on replanting, which is deductible) and on the construction of roads in a plantation, qualifies for an agriculture allowance of 50% of cost for two years. Expenditure on the construction of roads in a forest, or of buildings that are likely to be of little or no value when the plantation ceases to be worked, or when timber ceases to be extracted, qualifies for an agriculture allowance of 10% of cost for ten years. The cost of construction of buildings used for staff welfare or as living accommodation, qualifies for an agriculture allowance of 20% of cost for five years.

Mining

A mining allowance is given on expenditure on searching for, discovering, gaining access to, or acquiring the source of or rights to mineral deposits of a depleting nature. The construction of works and buildings that are likely to be of little or no value when the source is no longer worked also qualifies for mining allowance. This allowance is calculated so as to write off the expenditure over the life of the mine. Machinery and equipment not meeting the 'no value' test qualify for initial and annual allowances at normal rates for plant and machinery.

Deduction of capital allowances

CA on assets used in one business cannot be deducted against income from another business, or against income from other non-business sources.

When there is insufficient adjusted income to absorb the full amount of allowances available, the unutilized amount is carried forward for deduction against future business income from the same source.

A restriction was introduced from YA 2006 under which companies are not allowed to deduct unutilized CA brought forward from a prior year against income of a particular YA if the shareholders of the company at the beginning of the basis period for that YA are not substantially the same as the shareholders of the company at the end of the basis period for the (prior) YA in which the loss was initially ascertained. However, the Ministry of Finance has issued guidelines which state that the above rule restricting carry-forward CA based on the shareholder continuity test would only apply to dormant companies.

Balancing adjustments upon disposal of assets

Balancing adjustments will arise upon the disposal of assets on which capital allowances have been claimed. A balancing charge/allowance is the excess/shortfall of the sale proceeds over the tax written down value of the asset disposed of. The balancing charge is restricted to the amount of allowances previously claimed. No balancing adjustment is made in the case of an industrial building which is disposed of after the 50th year where expenditure was incurred prior to YA 2005.

Disposals within two years

In the case of an asset sold within two years of purchase, CA that has been previously granted may be withdrawn unless there is commercial justification for the disposal.

Controlled transfers

No balancing adjustments will be made where assets are sold or transferred between companies under common control. In such cases, the actual consideration for the transfer of the asset is disregarded, and the disposer/acquirer is deemed to have disposed of/acquired the assets at their tax-written down values.

Losses

Business losses can be set off against income from all sources in the current year. Any unutilized losses can be carried forward indefinitely to be utilized against income from any business source. A restriction was introduced from YA 2006 under which companies are not allowed to deduct a loss brought forward from a prior year against income of a particular YA if the shareholders of the company at the beginning of the basis period for that YA are not substantially the same as the shareholders of the company at the end of the basis period for the (prior) YA in which the loss was initially ascertained. However, the Ministry of Finance has issued guidelines which state that the above rule restricting carry-forward losses based on the shareholder continuity test would only apply to dormant companies.

Group relief

From YA 2006 group relief is available to all locally incorporated, resident companies that fulfilled certain conditions. Companies that qualify were allowed to surrender a maximum of 50 % of its adjusted loss for a year of assessment to one or more related companies. From YA 2009, the maximum percentage of loss that can be surrendered has been increased to 70%. Companies opting for group relief must make an irrevocable election to surrender or claim the tax loss in the return to be filed with the IRB for that YA.

Companies currently enjoying certain incentives such as pioneer status, investment tax allowance, reinvestment allowance etc. are not eligible for group relief

Capital gains and other taxes

Other than real property gains tax, no tax is imposed on capital gains. For more details on real property gains tax (RPGT) and other taxes, please refer to Chapter 7.

Tax administration

Submission of returns and assessments

Under the Self Assessment System (SAS) companies are required to submit a return of income within 7 months after the closing of accounts. Particulars required to be specified in the return include the amount of chargeable income and tax payable by the company. Upon submission of the return, an assessment is deemed to have been made on the company. The return is deemed to be a notice of assessment, which is deemed to be served on the company on the date that it is submitted.

Tax collection

Companies are required to furnish estimates of their tax payable for a year of assessment not later than 30 days before the beginning of the basis period, but from YA 2008, a newly established company with paid-up capital of RM 2.5 million and less that meets certain specified conditions, is exempted from this requirement for 2 years, beginning from the YA in which the company commences operation. A

revised estimate can be submitted in the 6th and 9th months of the basis period for a year of assessment. Companies are then required to pay tax by monthly installments (based on the estimates submitted) commencing from the second month of the company's basis period (financial year).

From YA 2011, a company commencing operations in a year of assessment, is not required to furnish estimates of tax payable or make instalment payments if the basis period for the year of assessment in which the company commences operations is less than 6 months.

Tax payable by a company under an assessment upon submission of a return is due and payable by the "due date". The "due date" is defined as the last day on expiry of 7 months from the date on which the accounts are closed.

Public rulings and advance rulings

To facilitate compliance with the SAS, the Director General of Inland Revenue (DGIR) is empowered by law to issue public rulings. Public rulings set out the interpretation of the DGIR in respect of a particular tax law, and the policy and procedures that are to be applied. Public rulings are binding on the DGIR but a taxpayer who has applied the treatment as set out in a particular ruling may still appeal against an assessment which is based on the ruling. All public rulings may be downloaded from the IRB's website at www.hasil.gov.my.

With effect from 1 January 2007, a taxpayer may request for an advance ruling from the DGIR, who may make an advance ruling on how any provision of the law applies to an arrangement described in the application. An advance ruling is only applicable to the person making the application and is not subject to review when issued. However, the taxpayer retains his right of appeal against any assessment issued in accordance with the tax treatment set out in the ruling. A charge will be imposed for the issuance of an advance ruling.

Transfer pricing

Transfer pricing legislation

The basis for determining proper compensation is, almost universally, the arm's length principle which has also been accepted by the Malaysian tax authorities. The arm's length principle is incorporated into Section 140A of the Malaysian Income Tax Act, 1967 (ITA). It allows the DGIR to adjust any transfer prices between related parties in Malaysia which, in the view of the DGIR, do not meet the arm's length standard. What constitutes "arm's length" is not defined in the ITA. Consequently, the Malaysian Inland Revenue Board (MIRB) have issued the Transfer Pricing (TP) Rules 2012 and the revised Transfer Pricing Guidelines 2012 to give guidance on the arm's length standard that is acceptable to the Malaysian IRB. The TP Rules and Guidelines seek to provide guidance on the application of the law on controlled transactions, the acceptable methodologies as provided in the rules and administrative requirements including the types of records and documentation expected from taxpayers involved in transfer pricing arrangements.

To enhance transparency of tax treatment relating to transfer pricing and thin capitalization cases, a new provision was introduced effective from 1 January 2009, which empowers the DGIR to make adjustments on transactions of goods, services if the DGIR is of the opinion that the transactions were not entered into on an arm's length basis. With regard to thin capitalization, the portion of the interest charge that relates to the amount of financial assistance which is excessive will be disallowed a deduction. This would cover cross-border related party transactions as well as those involving domestic group of companies. However, the specific rules to be made under this provision have not been issued, and the effective date of implementation of thin capitalization rules has been further deferred to 31 December 2015.

Advance pricing arrangements (APA)

From 1 January 2009, companies are allowed to apply for APAs from the DGIR. The objective of establishing APAs is to provide an avenue for taxpayers to obtain certainty upfront that their related party transactions meet the arm's length standard. The MIRB has issued the APA Rules 2012 and APA Guidelines 2012 to give guidance on the procedures for and APA.

Business reorganisations

Incorporation

The transfer of a business by a sole proprietor or a partnership to a corporation will result in the profits of the business being subject to tax at the corporate tax rate (25% for YA 2009 and subsequent years) as from the date of transfer, as opposed to being taxed at graduated rates for personal tax. Unutilized business losses and capital allowances available to the Malaysian branch of a foreign company are non-transferable upon local incorporation.

Merger or amalgamation

The merging of two corporations by an exchange of shares normally has no tax consequences unless one of them is a real property company. In such cases, there may be RPGT implications arising from an exchange of shares as the transaction may be regarded as an acquisition and disposal of real property company shares

If the two corporations being merged are under common control, transfer of any asset between them is regarded as a “controlled transfer” wherein the disposer/acquirer is deemed to have disposed of / acquired the assets at the tax written down value. (“Control” means management control or the holding of 50 percent or more of the shares by the disposer/acquirer or other controlling corporation.)

In other cases of transfer, the transfer values of the fixed assets will constitute qualifying expenditure for the purpose of computing capital allowances of the transferee corporation, and for the transferor corporation, the disposal value of assets disposed of, on which computation of balancing charge or allowances will be based.

From YA 2006 group relief (outlined above) is available to all locally incorporated tax resident companies that fulfil certain conditions.

There may also be stamp duty implications when assets are transferred. Relief from stamp duty may be available where assets are transferred under a scheme of reconstruction or amalgamation of companies and certain prescribed conditions are satisfied. Relief is also available under certain circumstances on the transfer of assets between associated companies where either company owns 90 percent or more of the other company or where a third company owns 90 percent or more of both. (See Chapter 7)

Chapter 6

Personal taxation

Scope of tax
Taxable income
Basis of assessment
Residence status of individuals
Rates of tax
Employment income
Benefits-in-kind
Deductions
Tax rebates
Filing obligations and tax collection
Capital gains





Scope of tax

Income tax is imposed on income accruing in or derived from Malaysia by any person

Taxable income

An individual is taxable on the income that is sourced from Malaysia. (See Chapter 5.) Gains or profits from an employment, profession or vocation are taxable if derived from Malaysia. Employment income is regarded as derived from Malaysia if the employment is exercised in Malaysia and is subject to Malaysian tax, even if the income is paid outside of Malaysia.

Basis of assessment

With effect from year of assessment (YA) 2004, all income of persons other than a company, cooperative or trust body, are assessed on a calendar year basis. The year of assessment is the year coinciding with the calendar year, for example, the YA 2012 is the year ending 31 December 2012.

Residence status of individuals

An individual is regarded as tax resident if he meets any of the following conditions, i.e. if he is:

- in Malaysia for at least 182 days in a calendar year;
- in Malaysia for a period of less than 182 days during the year (“shorter period”) but that period is linked to a period of physical presence of 182 or more “consecutive” days in the following or preceding year (“longer period”). Temporary absences from Malaysia for certain specified reasons during the shorter or longer period are counted as part of the consecutive days, provided that the individual is in Malaysia before and after each temporary absence;
- in Malaysia for 90 days or more during the year and, in any 3 of the 4 immediately preceding years, he was in Malaysia for at least 90 days or was resident in Malaysia;
- resident for the year immediately following that year and for each of the 3 immediately preceding years.

Rates of tax – resident and non-resident individuals

Please see Appendix E(6.1).

Employment income

Gross employment income includes wages, salary, leave pay, fees, commissions, bonuses, gratuities, perquisites or allowances (whether in money or otherwise), and benefits in kind in respect of having or exercising the employment.

Also included in taxable employment income are value of living accommodation provided by employer for the employee, compensation for loss of employment, and receipts from a pension or provident fund (not approved for purposes of the Malaysian Income Tax Act) arising from contributions made by the employer in respect that employee.

Benefits-in-kind (BIK)

The following benefits provided by an employer to employees are taxable:

- Leave passage – value to be taxed is the amount paid by the employer, but restricted exemption is available in respect of leave passages for overseas and local trips (detailed below).
- Accommodation provided by the employer is taxed at a value imputed at the lower of the actual rental paid or 30% of the gross cash remuneration for the period of occupation. The benefit of accommodation in a hotel is taxable at 3% of the gross cash remuneration for the duration of stay.
- Household utilities or servants paid for by the employer, household appliances and apparatus as well as cars provided for employees, are taxable at prescribed values.

Appendix E(6.2) shows the value of perquisites arising from employment and benefits-in-kind).

Tax exempt benefits-in-kind

In general, all BIKs received by an employee are taxable but exemption is available in respect of the following:

- Medical, dental or child care benefit;
- A benefit consisting of :
 - Leave passage in Malaysia including fares, meals and accommodation, restricted to not more than 3 times in a calendar year; or
 - One overseas leave passage in a calendar year, limited to a maximum amount of RM3,000 for fares only.

The exemption of this benefit is only applicable if it is provided to the employee and members of his/her immediate family.

- Food and drinks provided free of charge.

Exemptions and concessional tax treatment for foreign nationals

- Non-resident employees, who are short-term visitors, (other than public entertainers), are exempt from tax on their income from employment exercised in Malaysia if their period(s) of employment in aggregate do not exceed 60 days in a calendar year or two overlapping calendar years. If the non-resident short-term visiting employee is resident in a country that has a double tax treaty with Malaysia, the qualifying period is generally extended to 183 days provided certain other prescribed conditions are satisfied.
- Income tax exemption is granted:
 - to foreign nationals who are exercising an employment in a managerial capacity with a Labuan entity in Labuan, co-located office or marketing office (YA 2011 to YA 2020 only). The exemption is on 50% of gross income from such employment.
 - on director's fees received by a director of a Labuan entity, who is a non-Malaysian citizen, for the years of assessment 2011 to 2020
 - on housing allowance and Labuan Territory allowance received by a citizen from an employment in Labuan with a Labuan entity (exempt to the extent of 50% of gross allowance) (YA 2011 to YA 2020)
- A qualified person (defined by legislation), who may be a Malaysian or foreign citizen, and who is a knowledge worker residing in Iskandar Malaysia is taxed at the rate of 15% on income from an employment with a designated company engaged in a qualified activity in that specified region. The employment must have commenced on or after 24 October 2009 but not later than 31 December 2015. The reduced tax rate is only applicable in respect of employment income from that designated company beginning from 1 January 2010.
- An approved individual under the Returning Expert Programme who is a resident is taxed at the rate of 15% on income in respect of having or exercising employment with a person in Malaysia for 5 consecutive years of assessment.
- Expatriates (non Malaysian citizens) working in approved Operational Headquarters, Regional Offices, International Procurement Centres, Regional Distribution Centres or Treasury Management Centres, who are based in Malaysia are taxed on a time apportionment basis in accordance to the employment income attributable to the number of days the employment is exercised in Malaysia.

Deductions

Expenses and other payments

Employees are allowed a deduction for any expenditure wholly and exclusively incurred in the performance of their duties, but deduction of capital allowance (e.g. on a vehicle used in the performance of their duties) is not available. Where an employer provides an allowance for business purposes, such as for entertaining clients or customers, the employee may only deduct up to the amount of the actual expenditure incurred or the allowance received.

Non-business expenses, such as medical expenses and taxes, are not deductible. Expenses of a private or domestic nature are expressly excluded from deduction. For example, the cost of engaging domestic help for housekeeping while one is away at work is not deductible. Mortgage interest incurred to finance the purchase of a house is deductible only to the extent of any rental income derived from the house (which is a taxable source). However, effective from YA 2009, a deduction in the form of a personal relief is given for interest incurred on housing loans by qualified house-buyers for

a period of 3 consecutive years of assessment. (See Appendix E(6.3).) Subscriptions to an association related to the individual's profession and fees incurred for training courses related to one's profession are deductible. Donations to approved institutions are also allowed to be deducted.

Personal relief

Personal reliefs are deductible from the total income of a tax resident individual to arrive at taxable income. See Appendix E(6.3) for the list of personal reliefs available.

Tax Rebates

Individuals who are tax resident in Malaysia may qualify for the following tax rebates which are deducted from tax chargeable on that individual:

- Individuals with chargeable income of not more than RM35,000 are granted a rebate of RM400.
- A rebate is also granted for any zakat, fitrah or any other Islamic religious dues (obligatory payments) paid during the year and evidenced by receipts issued by an appropriate religious authority.

Filing obligations and tax collection

Self assessment

A Self-assessment system (SAS) for individuals has been implemented under which the taxpayer is responsible for computing his own chargeable income and tax payable, as well as making payments of any balance of tax due.

The tax return form for a year of assessment (year ended 31 December) is issued to individual taxpayers in January of the following year or earlier and will be due for submission not later than 30 April of the following year for individuals without business income, and 30 June of the following year for individuals with business income. For example, the 2012 tax return will be issued in December 2012/January 2013 and is due for submission by 30 April 2013 for individuals receiving employment and other non-business income. Taxpayers now have the option of submitting their returns manually or by “e-filing” via the Internet. Those who have chosen to file their returns for a year of assessment by way of e-filing will not be issued with a return form by the IRB for subsequent years.

Upon submission of the Return Form, the taxpayer is deemed to be served with a notice of assessment for which tax is due and payable.

Payment of tax

Tax payments by employees are collected through compulsory monthly deductions from salary. All deductions are made on a “Pay-as-you-earn” (PAYE) basis. Under the SAS, tax for a year of assessment is due and payable on the following dates (the “due dates”) in the year following that year of assessment:

- 30 April for individuals deriving non-business income,
- 30 June for those having business income as well as other income sources.

If the amount of tax deemed assessed on an individual upon the submission of his return for that year of assessment exceeds the total amount deducted from the individual’s salary, the difference must be paid on or before the due date.

Capital gains

Real property gains tax

There is no capital gains tax in Malaysia other than Real property gains tax (RPGT). See Chapter 7 (Other Taxes) for more details.



SOLD

Chapter 7

Other taxes

Sales tax
Service tax
Import duties
Excise duties
Export duties
Stamp duty
Other taxes





Sales tax

Sales tax is a single stage tax imposed on all goods (unless specifically exempt) manufactured in or imported into Malaysia. It is a consumption tax, and under the system the onus is on the manufacturer to calculate the tax, levy it and collect it from its customers. In the case of imported goods, sales tax is collected from the importer at the time the goods are cleared from customs control.

Sales tax will be replaced with a single broad based Goods and Services Tax (GST) on a date yet to be announced.

Taxable goods

All goods manufactured in Malaysia or imported are taxable unless they are specifically exempted by order of the Minister of Finance.

Licensing and exemption from licensing

Sales tax is computed and paid by every person who carries on business in Malaysia as a manufacturer of taxable goods or who imports taxable goods into Malaysia. No person is permitted to manufacture taxable goods unless duly licensed as a manufacturer. However, an application for a certificate of exemption from licensing may be made if total sales in the preceding year did not exceed RM100,000 and is not expected to exceed that amount during the next 12 months.

Certain manufacturing operations are exempt from licensing requirements. They include the developing and printing of photographs and production of film slides, the preparation of ready mixed concrete, the repacking of bulk goods, and the repair of second-hand goods and the installation of air conditioners in motor vehicles.

Value of goods

The valuation of goods for sales tax purposes is based on the World Trade Organisation (WTO) principles of customs valuation.

Class of goods and rates of tax

	Rate (%)
Fruits, certain foodstuff, timber and building materials	5
Cigarettes and tobacco	5
Liquor and alcoholic drinks	5
All other goods, except petroleum subject to specific rates and goods not specifically exempted	10

Goods exempted

- All exports are exempted from sales tax.
- Goods which are specifically exempted include:
 - Live animals, fish, seafood and certain essential food items including meat, milk, eggs, vegetables, fruits, bread, etc.
 - Medical and educational equipment including sports equipment, books, etc.
 - Photographic equipment and films.
 - Motorcycles below 201 c.c. capacity, bicycles for adult use including parts and accessories.
 - Machinery for textile industry, food preparation industry, paper and printing industry, construction industry, metal industry, etc.
 - Primary commodities including cocoa, rubber and their related products.
 - Naturally occurring mineral substances, chemicals, etc.
 - Helicopters, aircraft, ships and other vessels.

Tax-free raw material

In order to maintain the single-stage concept, there are facilities available to allow for inputs (raw materials and components) to be imported or acquired free of sales tax by a licensed manufacturer for use in the manufacturing process.

Drawback

A licensed manufacturer or importer can claim drawback on the sales tax paid in respect of goods, which are subsequently exported.

Payment of sales tax/taxable period

Generally, sales tax shall be due at the time the taxable goods are sold, or disposed of otherwise than by sale by the taxable person. Any sales tax that falls due during any taxable period, which is normally 2 calendar months, shall be paid to the customs authorities within 28 days from the expiration of the taxable period. However, in relation to the classes of petroleum that are subject to sales tax, special provisions apply regarding the time when sales tax is due and payable.

Service tax

Service tax is a consumption tax levied and charged on any taxable service provided by any taxable person.

Service tax will be replaced with a single broad based Goods and Services Tax (GST), on a date yet to be announced.

Taxable person/licensing

Any taxable person who carries on business of providing taxable service must apply for a licence, and the term “person” includes an individual, a firm, a society, an association, a company and every other juridical person.

Rate of tax

The rate of service tax is 5% ad valorem. This tax is levied on both taxable goods and services except for the provision and issuance of charge or credit card, for which the service tax is as follows:

- RM50 per year on the principal card; and
- RM25 per year on the supplementary card.

Taxable persons and taxable services

A complete list of taxable persons and taxable services can be found in the Second Schedule to the Service Tax Regulations 1975. A summary of taxable persons and taxable services is found in Appendix F(7.1)

Taxable services include:

- The provision of rooms for lodging/sleeping accommodation;
- Health services;
- Certain professional services;
- Certain telecommunication services including bandwidth services;
- Certain value-added services;
- Management services;
- Security services;
- Provision of parking space;
- Provision of golf course, golf driving range or services related to golf or golf driving range;
- Courier delivery services (other than to destinations outside Malaysia);
- Provision and issuance of charge card or credit card; and
- Sale or provision of food, drinks and tobacco products.*

With effect from 1 January 2003, certain professional services provided to companies within the same group would not be taxable subject to certain qualifying criteria.

Payment of service tax/ taxable period

Service tax is due when payment is received for taxable services rendered. If payment is not received within 12 calendar months from the date of issuance of invoice, the tax is due on the day immediately after the expiry of the 12-month period. Any service tax that falls due during a taxable period, which is 2 calendar months, is payable to the customs authorities within 28 days after the end of the taxable period.

Import duties

Imports of goods are generally subject to import duties.

Rates of tax

Import duties are generally levied on an ad valorem basis, but they may also be imposed on 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.

Tariff rate quota

With effect from 1 April 2008, Malaysia implemented tariff rate quota (TRQ) on selected agricultural products, such as chicken, milk and cream, hen eggs, cabbages. Under TRQ, the tariff charged depends on the volume of imports. Imports within quota (volume) attract duties at a lower tariff rate while a higher tariff rate applies on goods in excess of the quota volume “out-quota tariff rate”. The quota applicable is determined by the relevant agency, e.g. Department of Veterinary Services.

Value of goods

The value of goods for the purpose of computing import duties is determined largely in accordance with the World Trade Organisation (WTO) principles of customs valuation.

Exemptions

Manufacturers may apply to the relevant authorities for exemption from import duties for the following:

- raw materials and components used directly for the manufacture of goods for export and domestic markets.
- dutiable machinery and equipment which are used directly in the manufacturing process.

Prohibition of imports

Import restrictions are seldom imposed except on a limited range of products for protection of local industries or for reasons of security and public safety. An import licence has to be obtained for the importation of prohibited goods.

Excise duties

Excise duties are imposed on a selected range of goods manufactured in Malaysia or imported into Malaysia. Goods which are subject to excise duty include beer/stout, cider and perry, rice wine, mead, undenatured ethyl alcohol, brandy, whisky, rum and tafia, gin, cigarettes containing tobacco, motor vehicles, motorcycles, playing cards and mahjong tiles. No excise duty is payable on dutiable goods that are exported.

Licensing

Unless exempted from licensing, a manufacturer of tobacco, intoxicating liquor or goods subject to excise duties must have a licence to manufacture such goods.

A warehouse licence is required for storage of goods subject to excise duty. However, a licence to manufacture tobacco, intoxicating liquor or goods subject to excise duty also permits the holder to store such goods.

Rates of duties

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 (depending on engine capacity).

Payment of duty

As a general rule, duty is payable at the time the goods leave the place of manufacture. However, for motor vehicles, duty is payable at the time the vehicles are registered with the Road Transport Department.

Export duties

Export duties are generally imposed on Malaysia's main commodities such as crude petroleum and palm oil for revenue purpose.

Proposed Goods and Services Tax

It was announced in the 2005 Budget that a single, broad based Goods and Service Tax (GST) will be introduced to replace the existing sales tax and service tax. The Goods and Services Tax Bill 2009 was tabled in Parliament for a first reading on 16 December 2009. However, the second reading of the bill, which was scheduled for March 2010 has been postponed indefinitely. In a statement issued by the Ministry of Finance on 13 October 2009, it was reiterated that despite the postponement, the importance of GST as a key component of fiscal reforms to ensure a strong and sustainable fiscal position that is capable of supporting long term economic growth is recognized by the government.

The proposed rate of GST is 4%. Companies with revenue below a certain threshold (to be gazette separately, and expected to be RM500,000) will be exempted from imposing GST.

Stamp duty

Stamp duty is chargeable on instruments and not on transactions. If a transaction can be effected without creating an instrument of transfer, no duty is payable. Generally, transfers of real property or mortgages on real property and transfers of marketable securities (excluding stocks and shares of public listed companies) attract stamp duties.

With effect from 1 January 2009, payment of stamp duty by electronic medium is available for persons who have registered with the Collector. However, this payment mode is restricted for the time being to the stamping for transfers of property only. Instruments can also be stamped using the digital franking machine as an additional mode to the postal franking machine.

Rates of tax

The rates of duty vary according to the nature of the instruments and transacted values. Generally, the transfer of properties can give rise to significant stamp duty.

Properties (other than shares or marketable securities)

	Value (RM)	Rate	Duty payable (RM)
On the first	100,000	RM1 per RM100 or part thereof	1,000
On the next	400,000	RM2 per RM100 or part thereof	8,000
	500,000		9,000
In excess of	500,000	RM3 per RM100 or part thereof	

Shares

RM3 for every RM1000 or any fraction thereof based on consideration or value, whichever is greater. The Stamp Office generally adopts one of the 4 methods for valuation of ordinary shares for purposes of stamp duty:

- price earnings ratio;
- net tangible assets;
- sale consideration; and
- par value.

Loan, services and equipment lease agreement

Stamp duty of 0.5% on the value of the loan/services/lease.

Real property gains tax (RPGT)

Relief from stamp duty

Relief from stamp duty may be available where assets are transferred under a scheme of reconstruction or amalgamation of companies and certain prescribed conditions are satisfied. Relief is also available under certain circumstances on the transfer of assets between associated companies where either company owns 90% or more of the other company or where a third company owns 90% or more of both

Relief from stamp duty (either by way of exemption or remission) are also available for transactions involving specified instruments and subject to prescribed conditions.

RPGT is a tax that is imposed on capital gains arising from the sale of real property or shares in a real property company (“chargeable assets”). A real property company (RPC) is a controlled company that owns or acquires real property or RPC shares with a defined value of not less than 75 percent of its total tangible assets. RPGT is imposed at the following rates:

Disposal from the date acquisition	RPGT rates for companies and individual	
	From 1 Jan 2012 to 31 Dec 2012	From 1 Jan 2013 onwards
Up to 2 years	10%	15%
Exceeding 2 until 5 years	5%	10%
Exceeding 5 years	0%	0%

Windfall profit levy

A levy is imposed on crude palm oil and crude palm kernel oil where the price exceeds RM2,500 per metric ton in Peninsula Malaysia, and RM3,000 per metric ton in Sabah and Sarawak.

Contract levy

A levy of 0.125% on contract works having a contract sum above RM500,000 is imposed on every registered contractor by the Construction Industry Development Board (CIDB).

HRD levy

Employers engaged in the manufacturing and services sectors that employ more than a specified number of employees must contribute to the Human Resource Development Fund (“HRDF”). From 1 April 2011 onwards, the levy required to be paid is at the rate of 1 % of the employees’ monthly wages on a monthly basis. Employers in the manufacturing sector whose paid-up capital is less than RM2.5 million and with 10 employees and above but less than 49 employees may opt to be registered and make levy payments at the reduced rate of 0.5 % of the employees’ monthly wages.

Assessment, quit rent and road tax

Assessment rates and quit rent is payable by property owners according to the legislation of the local or municipal authorities on properties located in areas under their jurisdiction. Essentially, these levies are intended for the maintenance and the provision of essential services to the areas. The tax is levied as a percentage either of the capital value or of the taxable value of the property.

Road tax is levied on owners of motor vehicles at rates that vary according to the type of vehicle and engine capacity.

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Appendices

- A (1.1) Investment incentives
- (1.2) Investment guarantee agreements
- (1.3) Government departments and agencies
- B (2.1) Structuring an investment
- (2.2) Important Regulatory Agencies
- C (3.1) Minimum conditions of employment
- D (5.1) Double Tax Treaties and withholding tax rates
- E (6.1) Rates of personal tax
- (6.2) Value of perquisites from employment and benefits-in-kind
- (6.3) Personal reliefs
- F (7.1) Service tax – list of taxable persons





APPENDIX A (1.1)

Investment incentives

Investment Incentives

The following is a list of the main incentives for the promotion of investments in Malaysia.

The main incentives available for corporations in the manufacturing, agricultural, hotel and tourism sectors or any other industrial or commercial sector that participate in a promoted activity or produce a promoted product are:

Pioneer Status (PS)

This incentive is given by way of exemption from income tax on 70% of the statutory income for five years. The remaining 30% is taxed at the prevailing corporate income tax rate. The profits exempted from tax is available for distribution as tax-free dividends.

Investment tax allowance (ITA)

A corporation may be granted an investment tax allowance (ITA) of 60% of capital expenditure incurred on a factory or plant and machinery used for the purposes of an approved manufacturing, agricultural, hotel, tourist, knowledge intensive or other industrial or commercial activity (other than one granted pioneer status). ITA is granted on capital expenditure incurred for a period of five years. The amount of ITA to be utilized for each year of assessment is restricted to a maximum of 70% of the statutory income, while the balance 30% is taxed at the prevailing corporate income tax rate. Unutilized allowances may be carried forward indefinitely for set off against future profits of the business. Dividends paid out of exempt profits are exempt from tax in the hands of shareholders. ITA is an alternative to PS.

Enhanced PS and ITA incentives

The PA and ITA incentives are enhanced for the following type of projects:

	% of statutory income exempted under Pioneer Status	% of ITA against % of statutory income (SI)
Corporations undertaking a project of national and strategic importance involving heavy capital investment and high technology.	100%	100% ITA against 100% SI
High-technology companies participating in areas of new and emerging technologies.	100%	60% ITA against 100% SI
MSC status multimedia companies operating in Malaysia MSC Cybercities/ Cybercentres: <ul style="list-style-type: none"> • Cyberjaya • Technology Park Malaysia • Kuala Lumpur City Centre • UPM-MTDC • Penang Cybercity-1 • Kulim High Tech Park • Kuala Lumpur Sentral, • Melaka International Trade Centre • MSC Cyberport Johor • Other multimedia faculties located in institutions of higher learning outside the cybercities 	100%	100% ITA against 100% SI
Companies establishing 4 and 5 star hotels in Sabah and Sarawak, and Peninsular Malaysia (for applications received before 31 December 2013).	100%	100% ITA against 100% SI
Small-scale manufacturing companies (defined).	100%	60% ITA against 100% SI
Companies providing energy conservation services (for applications received before 31 December 2015).	100%	100% ITA against 100% SI
Companies undertaking conservation of energy for own consumption (for applications received before 31 December 2015).	-	100% ITA against 100% SI
Companies undertaking generation of energy using biomass, hydropower (not exceeding 10 megawatts) and solar power (for applications received before 31 December 2015).	100%	100% ITA against 100% SI
Companies utilizing oil palm biomass to produce value added products.	100%	100% ITA against 100% SI
Companies undertaking waste recycling activities that are high value-added and use high technology.	100%	100% ITA against 100% SI
A contract R&D company, i.e., a company that provides R&D services in Malaysia to a company other than its related company.	100%	100% ITA against 70% SI

	% of statutory income exempted under Pioneer Status	% of ITA against % of statutory income (SI)
Companies that provide technical and vocational training or private higher education institutions providing qualifying science courses.	-	100% ITA against 70% SI
Companies producing specialized machinery and equipment.	100%	100% ITA against 100% SI
Companies providing Integrated logistics services.	100%	100% ITA against 100% SI
Companies with halal certification from Jabatan Kemajuan Islam Malaysia (JAKIM) and other quality certification producing halal food.	100%	100% ITA against 100% SI
Companies reinvesting in promoted food processing activities.	100%	100% ITA against 100% SI
Companies engaged in the rubber, oil palm and wood based industries manufacturing products that are reinvesting.	100%	100% ITA against 100% SI

Infrastructure for public use

A company which has incurred capital expenditure on provision of infrastructure in relation to its business which is available for public use is eligible for 100% deduction of that expenditure.

Green Building Index (GBI) certification

A person (resident in Malaysia) awarded GBI certificate by the Board of Architects Malaysia from 24 October 2009 until 31 December 2014 is granted 100% allowance on qualifying expenditure incurred for the purpose of obtaining the GBI certificate, to be set off against 100% of statutory income.

Proprietary rights

A manufacturing company at least 70% owned by Malaysians which has incurred expenditure on the acquisition of proprietary rights for use for purposes of the business is allowed a tax deduction on the cost of acquisition at the rate of 20% per year.

Reinvestment allowance

A Malaysian resident company that embarks on a program to expand, modernize, automate, or diversify its existing business in respect of a manufacturing project or agriculture project is eligible for reinvestment allowance (RA). The amount of RA is 60% of qualifying capital expenditure incurred within a period of fifteen

years to be deducted against 70% of statutory income (100% for projects which have achieved prescribed level of productivity). The remaining 30% is taxed at the normal corporate income tax rate. Unused reinvestment allowances may be carried forward indefinitely for setoff against future profits of the business. Dividends paid out of exempt profits are not taxable in the hands of shareholders.

Accelerated capital allowance (ACA)

After the 15 year period of eligibility for RA, companies that reinvest in the manufacture of promoted products are eligible to apply for accelerated capital allowance, whereby qualifying capital expenditure may be written off in 3 years (40% initial allowance and 20% annual allowance).

In addition, companies that incur certain qualifying capital expenditure (QCE) may also qualify for ACA at various rates. The QCE includes:

- Plant and machinery used by manufacturing companies for recycling of wastes
- Power quality equipment
- ICT equipment
- Security control and Monitor equipment

Special incentive scheme

A Malaysian resident company deriving income from an approved business (approved by the Minister of Finance) under the special incentive scheme is eligible for the following:

- A. Income tax exemption on 70% of statutory income (or at any other rate prescribed by the Minister) from the approved business;
- B. Income tax exemption by way of an allowance, which is computed by applying a rate (to be determined by the Minister) to the amount of qualifying capital expenditure incurred by the claimant for the relevant year.

Approved services project (ASP)

A Malaysian resident company in the communication, utilities and transportation services subsectors which has incurred capital expenditure on an ASP (approved by the Minister of Finance) is eligible for:

- Investment allowance of 60% of qualifying capital expenditure, available within 5 years from the date the expenditure was first incurred, to be deducted against 70% of statutory income; or
- Income tax exemption of up to 70% of statutory income for 5 years.

Buildings used solely for the purposes of ASP qualify for an industrial building allowance. Enhanced relief is available for projects in a promoted area and other qualifying projects. Dividends paid out of exempt profits are exempt in the hands of shareholders.

Venture capital industry

- Any resident company or individual investing in approved venture companies (which should not be companies within the same group) in the form of start-up, early stage or seed capital financing is given a deduction equivalent to the value of the investment; or

- A venture capital company investing funds in the form of start up, early stage or capital seed financing or its combination in approved venture companies (which should not be companies within the same group) is eligible for tax exemption for 10 or 5 years on income from all sources, other than interest income from savings or fixed deposits, where at least 50% or 30% (respectively) of its funds are invested in Venture Companies

Establishments for doing business in Malaysia

The following are aimed at facilitating the setting up of business establishments in Malaysia by foreign enterprises. In all cases, the Malaysian entity must take the form of a company incorporated in Malaysia. Except for the international trading company, they must all have a minimum paid up capital of RM500,000 and approval for all are subject to specific conditions:

- **Approved operational headquarters (OHQ)** company is one that provides qualifying services to its offices and related companies within or outside Malaysia. An OHQ company is granted tax exemption for 10 years except for income from related companies in Malaysia exceeding

20% of total OHQ income from qualifying services. It also enjoys other non-tax incentives (such as being able to obtain credit facilities in foreign currency from Malaysian banks without approval from the Central Bank of Malaysia).

- **International procurement centres (IPC)**

An IPC is a Malaysian company that carries on a business in Malaysia of procurement and sale of raw materials, components and finished products to its group companies in Malaysia or abroad. It is granted tax exemption on 100% of statutory income (net income after deducting depreciation allowances) from its business for 10 years provided that it meets the condition (amongst others) that the annual value of its sales is RM100 million of which the annual value of export sales must be RM 80 million and the value of direct export sales must be RM50 million. Non-tax incentives granted to an IPC include exemption from foreign equity ownership restrictions.

- **International trading companies**

Companies that obtained approval as “international trading companies” are exempt for five years on income equivalent to 20% of increased export value up to a maximum of 70% of statutory income. The qualifying conditions for exemption include the achievement of a minimum annual sales of RM10 million, of which not more than 20% of that value may be derived from the trading of commodities the use of local services (banking, finance and insurance) and infrastructure (local ports and airports) in its operations.

- **Regional distribution centre (RDC)**

A RDC is a collection and consolidation center for finished goods, components and spare parts from overseas or within the country to be distributed to the dealer, importer or its subsidiary or associated company within or outside the country. Among the activities involved are bulk breaking, repackaging and labeling. An RDC is accorded 100% tax exemption on statutory income from qualifying activities in respect of export sales (subject to conditions), for 10 years. Other tax incentives include exemption from import duty and sales tax on goods for distribution.

- **Treasury management centre (TMC)**

A TMC is a locally incorporated company that provides centralised qualifying financial and fund management services to a group of related companies within or outside Malaysia. The qualifying services are categorised into three main areas i.e. Cash, financing and debt management, Investment services and Financial risk management. A TMC is granted 70% exemption of its statutory income from provision of qualifying services for 5 years. In addition, interest income derived by non-resident from lending of fund to a TMC for the purpose of providing qualifying services is exempted from tax. Other tax incentives include exemption from stamp duty on loan and service agreements for qualifying activities. Furthermore, expatriates employed by a TMC are taxed only on the portion of their chargeable income attributable to the number of days they are in Malaysia.

MSC Malaysia status companies

MSC (Multimedia Super Corridor) status is awarded to both local and foreign companies that develop or use multimedia technologies to produce or enhance their products and services and for process development. Besides pioneer status and Investment tax allowance incentives, companies awarded MSC status are also eligible for the following:

- Eligibility for R&D grants (for majority Malaysian-own, MSC-status companies);
- Exemption from indirect taxes on multimedia equipment;
- Unrestricted employment of local and foreign knowledge workers;
- Freedom to source funds globally for investments;
- Protection of intellectual property and cyberlaws; and
- No censorship of the Internet.

Biotechnology industry

Companies undertaking biotechnology activity with approved bionexus status from Malaysian Biotechnology Corporation Sdn Bhd are eligible for 100% income tax exemption on statutory income for 10 years from the first year in which the company derives profit or ITA of 100% on qualifying capital expenditure incurred for a period of 5 years. Dividends distributed from exempt income is tax exempt for the recipient. Double deduction is available for expenditure incurred on research and development and on promotion of exports

The following incentives are also available:

- A company or individual investing in a bionexus company is given a tax deduction of an amount equal to the value of investment in seed capital stage and early stage financing;
- Stamp duty and real property gains tax exemption is granted to a bionexus company undertaking a merger and acquisition with a biotechnology company within a period of 5 years till 31 December 2011;
- Accelerated industrial building allowance is given (over 10 years) on qualifying building expenditure for buildings used by a Bionexus status company for the sole purpose of its new business or expansion project; and
- Concessionary tax rate of 20% of statutory income from qualifying activities to be applied for 10 years upon expiry of the tax exempt period.

Tourism industry

Besides pioneer status and investment tax allowance incentives for eligible companies in the tourism industry, the following are additional incentives:

- Hotel and tour operators may qualify for double deduction on specified expenses incurred on promotional activities overseas;
- Companies may qualify for double deduction on expenses incurred on participating in an approved international trade fair;

- Resident carrying on an inbound tour operating business approved and registered with the Ministry of Tourism qualify for tax exemption on statutory income from such tours where the total number of inbound tourists from outside Malaysia is 750 or more for the period (effective for YA 2013 to YA 2015); and
- Companies organising domestic tour packages are eligible for tax exemption on statutory income from domestic tour packages where the total number of local tourists is 1,500 or more per year. (available for YA 2013 to 2015).

Healthcare service providers

Healthcare service providers who derive income from healthcare services provided in Malaysia to foreign clients will enjoy an increased rate of exemption of 100% of the value of increased services (defined by legislation), limited to 70% of statutory income (YA 2010 to 2014 only). "Foreign clients" include entities such as a corporation or partnership registered outside Malaysia, or a non-Malaysian citizen (excluding those holding a Malaysian student pass or work permit and their dependents).

A resident company which undertakes qualifying projects will be given exemption of its statutory income from the qualifying projects based on the amount of qualifying capital expenditure incurred for the purpose of the qualifying projects within a

period of 5 years. The qualifying projects are new private healthcare facilities business or expansion, modernisation or refurbishment of its existing private healthcare facilities business.

Education

100% statutory income of a person from management of profit oriented private and international school is exempted from tax.

Exemption of 70% of statutory income derived from private school business; OR 70% of statutory income based on qualifying capital expenditure incurred for the purpose of a business of private school in Malaysia. The exemption is given for a period of 5 years. Applicable to application received by MIDA from 8 October 2011 to 31 December 2015.

Exemption of 70% of statutory income derived from international school business for application received by MIDA from 8 October 2011 to 31 December 2015; OR 70% of statutory income based on qualifying capital expenditure incurred for the purpose of an international school in Malaysia. Applicable to application received by MIDA from 14 July 2010 to 31 December 2015. Both exemptions are given for a period of 5 years.

Research and development

Other than pioneer status and investment tax allowance for Contract R & D companies (companies that provide R&D services to third parties) other incentives available are:

- The ITA incentive for R&D companies (companies undertaking R&D for their group companies). The rate of ITA is 100% of qualifying capital expenditure incurred within 10 years to be set off against 70% of statutory income for each year;
- Companies undertaking in-house R&D projects are eligible for ITA at the rate of 50% of the qualifying capital expenditure incurred within a period of ten years against 70% of statutory income;
- A company that has invested in a subsidiary engaged in the commercialization of R&D (both resource based and non-resource based) findings is given a deduction equivalent to the value of that investment;
- Double deduction is granted for expenses incurred on approved research and development projects, as well as for payments made to defined R&D companies; and
- Buildings used for approved R&D activities qualify for the industrial building allowance at the normal rate.

Training

Tax deduction is allowed in respect of the following expenses:

Double deduction for:

- Expenditure on the training of employees under an approved training program by companies in the manufacturing or hotel and tour operation industries that do not contribute to the Human Resources Development Fund;
- Expenditure on pre-operating expenses on training of employees for manufacturing companies that are not registered with the Human Resources Development Fund;
- Training expenses incurred by employers for employees who take up certain courses including aircraft maintenance engineering courses and post-graduate courses in ICT are given double deduction (for YA 2009 – 2012);
- Expenses incurred for conducting a structured internship programme approved by Talent Corporation Malaysia Berhad (for YA 2012 - 2016);
- Expenses incurred and paid by that company in that basis period for sponsoring scholarship for a student. The student must meet certain pre-determined criteria (for YA 2012 - 2016); and
- Expenses incurred primarily or principally for the purpose of participating in an approved career fair. The approved career fair must be organized or endorsed by Talent Corporation Malaysia Berhad and approved by the Minister.



Single deduction for:

- Expenses on training of potential employees before commencement of business;
- Cash contributions to technical or vocational training institutions that are not operated primarily for profit and those established by a statutory body

Shipping

Tax-resident corporations and individuals carrying on shipping business are exempt from tax on income derived from the operation of Malaysian ships up to YA 2013. From YA 2014 onwards, only 70% of the income is exempt from tax. The balance of 30% of the income is subject to tax.

Export of goods and services

Allowance for increased exports is given to companies in manufacturing or agriculture or services sector which have exported goods (having a value-added* element) or services in a particular year. The rates of allowance are as follows:

Where percent of value added* attained by products exported is at least (...) %		Allowance (% of increased exports)
Manufactured products	30	10
	50	15
Agriculture produce	-	10
Designated "qualifying services"	-	50

* Value added means ex-factory price less total cost of raw materials

Effective from YA 2003, a Malaysian-owned manufacturing company may be granted exemption on statutory income of an amount equal to 30% of the value of increased export value, provided it achieves a significant increase in exports. The rate is increased to 50% of the value of increased export for a company that succeeds in penetrating new markets. Full exemption on increased export value is granted if the company receives Export Excellence Award or Brand Excellence Award (from YA 2008 onwards).

Export of financial services

Income tax exemption is granted to Malaysian banks, insurance companies and takaful companies on profits of newly established branches overseas or income remitted by new overseas associated/subsidiary companies. The exemption period, which is 5 years, may commence from a date to be determined by the company but should not be later than the third year of operations. (Applications to establish new branches or associated/subsidiary companies overseas should be received not later than 31 December 2015.)

Deduction for export expenses

Resident corporations in the manufacturing, hotel, tourism, and service sectors are entitled to double deduction for expenditure incurred on the promotion of exports, such as overseas advertising, free samples, export market research, participation in trade exhibitions, preparation of tenders, travel, participation in virtual trade show, participation in trade portals for promotion of local products, maintenance of overseas sales offices and warehouses. For promotion of export of services, expenses such as feasibility studies for overseas tender projects, participation in a trade or industrial exhibition in Malaysia or overseas, airfares, and sustenance are entitled to double deduction. Qualifying export promotion expenses incurred by pioneer companies are aggregated and set off against post-pioneer (taxable) profits.

Offshore trading through websites in Malaysia

Income received by companies undertaking offshore trading (comprised of the buying and selling of foreign goods to non-residents for consumption outside Malaysia) via websites in Malaysia, is to be taxed at a reduced rate of 10% for a period of 5 years.

Foreign fund management company

A foreign fund management company providing fund management services to foreign clients will be taxed at a concessionary rate of 10% in respect of its income derived from the management of foreign funds while income arising from services rendered to clients in Malaysia will be taxed at the prevailing corporate tax rate. Its income after deduction of tax at 10% may be distributed as tax-exempt dividends to its shareholders. A foreign fund management company is a Malaysian incorporated company licensed under the Securities Industry Act 1983. Its activities are regulated by the Securities Commission.

Unit trusts

Gains from the realization of investments are not regarded as taxable income of a unit trust. Interest received by unit trusts from certain bonds and securities, as well as interest credited by banks and other financial institutions licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, are exempt from tax. Distributions from such gains are tax exempt to the unit holders. Capital allowance in respect of plant and machinery used for the purpose of the letting of properties is allowed against the rental income of a property unit trust.

Real estate investment trusts (REIT)

With effect from YA 2007, REITs or property trust funds (PTF) approved by Securities Commission are exempted from tax on all income provided that at least 90 per cent of their total income is distributed to unit holders in the basis period for that YA. If the 90 per cent distribution condition is not complied with, the REIT will be subject to income tax and tax credit will be claimed by the unit holders. With effect from 1 January 2009, unit holders are taxed as follows:

Unit holders	Income tax
Individuals (whether resident or non-resident), body of persons, other unincorporated persons	Withholding tax of 10% from 1 January 2009 to 31 December 2016.
Non-resident company	Withholding tax at 25% (from YA 2009 onwards).
Resident company	No withholding tax (income to be included in annual tax return and taxed at prevailing corporate tax rate).
Institutional investor (pension fund, collective investment scheme or other person approved by MOF)	Withholding tax at 10% from 1 January 2009 to 31 December 2016.

Other incentives available are:

- Real property gains tax exemption on disposal of real property to a REIT/PTF;
- Stamp duty exemption on transfer of real property to REIT/PTF;
- Tax deduction given for consultancy, legal and valuation service fees incurred on the establishment of a REIT.

Islamic banking and other Islamic financing activities

To further the government's objective of developing Malaysia into a leading international Islamic Financial Centre, the following incentives are available:

- Tax deduction is allowed for expenses incurred in the issuance of Islamic securities under certain principles approved by the Securities Commission or by the Labuan Financial Services Authority (until YA 2015 only).
- Full income tax exemption is granted to Islamic banks licensed under the Islamic Banking Act 1983 on income from Islamic banking business conducted in international currencies, and to Takaful (insurance) companies on income from the Takaful business conducted in international currencies (until YA 2016 only).
- Full income tax exemption on management fees received by local and foreign companies for managing funds of foreign and local investors in accordance with Syariah principle certified by the Securities Commission (until YA 2016 only).
- A special purpose vehicle (SPV) established solely for the issuance of Islamic securities under certain principles approved by the Securities Commission or Labuan Financial Services Authority, is not subject to income tax and is not required to comply with administrative procedures under the tax law. Deduction for the cost

of issuance of Islamic securities is allowed for the company that established the SPV (until YA 2015 only), which is also deemed to be the recipient of income received by the SPV and taxed accordingly.

- Expenses incurred prior to the commencement of an Islamic stock-broking company is allowed to be deducted, provided that the company commences the Islamic stock broking business within 2 years from the date of approval (available for applications to establish such a company that is received by the Bursa Malaysia before 31 December 2015).
- Double deduction for specified expenses incurred for the purpose of its business in promoting Malaysia as an international Islamic Financial Centre (until YA 2015 only).
- Double deduction for expenses incurred for the issuance of Agro-Sukuk (from YA 2013 to YA 2015). Double deduction is also available for expenses incurred for issuance of retail sukuk and retail bonds (from YA 2012 to YA 2015).

Small and medium enterprises (SME)

Expenses incurred by SME on the registration of patents and trademarks in Malaysia are allowed as a deduction against business income of the SME. The SME must fulfill the conditions provided in the specified legislation.

Development regions

As part of the Malaysian government’s plan for national economic advancement through regional development and growth acceleration in various strategic locations by promotion of domestic and foreign investments, the following development regions were launched during the period from the end of 2006 to early 2008:

Economic Region	Location	Year of launch
Iskandar Development Region (IDR) -renamed 'Iskandar Malaysia' in April, 2008. www.iskandarmalaysia.com.my	Southern Johor	2006
Northern Corridor Economic Region www.ncer.com.my	States of Perlis, Kedah, Penang and northern Perak	2007
East Coast Economic Region www.ecerdc.com.my	States of Kelantan, Trengganu, Pahang and district of Mersing in Johor	2007
Sabah Development Corridor www.sdc.gov.my	Western, central and eastern regions of Sabah	2008
Sarawak Corridor of Renewable Energy www.sarawakscore.com.my	Central Sarawak	2008

Basic to the strategy for promotion of investments in these development regions is the provision of all necessary infrastructure (financial and non-financial) for the creation of a business-friendly environment, including tax and other financial incentives. Apart from existing incentives which are available for promoted activities and products provided under the Promotion of Investments Act 1986 (pioneer status, investment tax allowance, etc.) and the Income Tax Act 1967 (outlined above), special incentives which are customized for the purpose of each development region have been (or will be) developed. So far, however, special legislation has been enacted only in respect of Iskandar Malaysia to grant the following incentives:

- Income tax exemption for an approved IDR status company in respect of income from the provision of qualifying services to a person situated within designated node in the IDR or outside Malaysia, for 10 years, provided that these operations commence on or before 31 December 2015. Income from technical fees and royalties received by non-residents from IDR status companies are exempt from tax and withholding tax requirements are also waived in respect of such payments.
- Income tax exemption for an approved developer in designated node on income from the disposal of rights over land or buildings in designated node in the IDR until year of assessment 2015 or rental from such buildings until YA

2020. Technical fees, royalties and interest received by non-residents from approved developers are exempt from tax and withholding tax requirements are also waived in respect of such payments.

- Exemption is also granted to an approved development manager on income from the provision of management, supervisory and marketing services to such developers until YA 2020. Income from technical fees received by non-residents from approved development managers are exempt from tax and withholding tax requirements are also waived in respect of such payments.
- A qualified person (defined) who is a knowledge worker residing in Iskandar Malaysia, is taxed at the rate of 15% on chargeable income from an employment with a designated company (defined by legislation) engaged in a qualified activity (green technology; biotechnology; educational services; healthcare services; creative industries; financial advisory and consulting services; logistics services; tourism) in that specified region. The employment must have commenced on or after 24 October 2009 but not later than 31 December 2015.

Information pertaining to each development corridor including incentives available may be obtained from the corridor's website, the address of which is shown above.



APPENDIX A (1.2)

Investment guarantee agreements

Investment Guarantee Agreements

Malaysia has signed Investment Guarantee Agreements with the following groupings and countries:

Groupings

- Association of South-East Asian Nations (ASEAN)
- Organisation of Islamic Countries (OIC)

Countries

Albania	Egypt	Laos	Sri Lanka
Algeria	Ethiopia, Republic of	Lebanon	Sudan, Republic of
Argentina	Finland	Macedonia	Sweden
Austria	France	Malawi	Switzerland
Bahrain	Germany	Mongolia	Syrian Arab Republic
Bangladesh	Ghana	Morocco	Taiwan
Belgo-Luxembourg	Guinea	Namibia	Turkey
Bosnia Herzegovina	Hungary	Netherlands	Turkmenistan
Botswana	India	Norway	United Arab Emirates
Burkina Faso	Indonesia	Pakistan	United States of
Cambodia	Iran	Papua New Guinea	America
Canada	Italy	Peru	United Kingdom
Chile, Republic of	Jordan	Poland	Uruguay
China, People's Republic of	Kazakhstan	Romania	Uzbekistan
Croatia	Korea, North	Saudi Arabia	Vietnam
Cuba	Korea, South	Senegal	Yemen
Czech Republic	Kuwait	Slovak, Republic of	Zimbabwe
Denmark	Kyrgyz, Republic of	Spain	
Djibouti, Republic of			

Source: Malaysian Investment Development Authority website

APPENDIX A (1.3)

Government departments and agencies

Government departments and agencies

Ministry of International Trade and Industry (MITI)

(Kementerian Perdagangan Antarabangsa dan Industri)
Block 10, Government Offices Complex, Jalan Duta, 50622 Kuala Lumpur

T: +60 (3) 6200 0000
F: +60 (3) 6201 2337
W: www.miti.gov.my

This ministry has overall responsibility for all aspects of international trade and industrial development.

Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC)

(Kementerian Perdagangan Dalam Negeri, Kooperasi dan Kepenggunaan)
Lot 2G3, No. 13, Pesiaran Perdana, Precint 2, Federal Government Administrative Centre, 62623 Putrajaya

Hotline: 1800 886 800
T: +60 (3) 8882 5500
F: +60 (3) 8882 5762
W: www.kpdnk.gov.my

This ministry formulates policies and implements measures aimed at creating a healthy commercial climate in the country and at providing adequate protection to local industries. The Committee of Distributive Trade is the main reference for any query/application relating to foreign participation in wholesale and retail trade.

Immigration Department

(Jabatan Immigresen Malaysia)
Level 1-7 (Podium),
No. 15, Pesiaran Perdana,
Precint 2, Federal Government Administration Centre,
62550 Putrajaya

T: +60 (3) 8880 1000
F: +60 (3) 8880 1200
W: www.imi.gov.my/

The Immigration Department is part of the Ministry of Home Affairs. The responsibilities of this department include safeguarding national security; ensuring compliance with the Immigration Act 1959/1963, Immigration Regulations 1963 and Passport Act 1966; issuing passports and other travel documents; controlling entry into and departure from Malaysia and issuing Certificates of Status to those who qualify as Malaysian citizen.

Ministry of Science, Technology and Innovation

(Kementerian Sains, Teknologi dan Inovasi)
Level 1-7, Block C4 & C5,
Complex C, Federal Government
Administrative Centre,
62662 Putrajaya

T: +60 (3) 8885 8000
F: +60 (3) 8888 9070
W: www.mosti.gov.my/

Malaysian Science Technology and Information Centre:
<http://mastic.gov.my/>

This ministry has responsibility for promoting awareness, research and development in science and technology.

Ministry of Agriculture and Agro-Based Industry

(Kementerian Pertanian dan Industri Asas Tani)
Level 1, Wisma Tani,
No. 28, Persiaran Perdana,
Precint 4, Federal Government
Administrative Centre,
62624 Putrajaya

T: +60 (3) 8870 1000
F: +60 (3) 8888 6906
W: www.moa.gov.my

The Ministry of Agriculture and Agro-based Industry is responsible for improving the incomes of farmers, livestock breeders and fisherman by efficient utilization of the nation's resources and manages food production for domestic consumption and export.

Ministry of Natural Resources and Environment

(Kementerian Sumber Asli dan Alam Sekitar)
Level 14, No.25, Persiaran Perdana,
Wisma Sumber Asli,
Precint 4,
62574 Putrajaya

T: +60 (3) 8886 1111
F: +60 (3) 8889 2672
W: www.nre.gov.my/

The ministry is responsible for the nation's nature resources management; conservation and management of environment and shelters; and management of land survey and mapping administration.

Malaysia External Trade Development Corporation (MATRADE)

Menara MATRADE
Jalan Khidmat Usaha,
Off Jalan Duta,
50480 Kuala Lumpur

T: +60 (3) 6207 7077
F: +60 (3) 6203 7037/7033
E: info@matrade.gov.my
W: www.matrade.gov.my/

MATRADE is an export development organization that assists Malaysian entrepreneurs to develop foreign markets for products and services from Malaysia. It also organizes trade missions, facilitates participation in trade fairs, and puts buyers and sellers together and assist foreign importers to source for trade related information by providing market and relevant advise. MATRADE is supported by 34 overseas offices around the world.

Malaysia Productivity Corporation (MPC)

Lorong Produktiviti,
Off Jalan Sultan,
46200 Petaling Jaya,
Selangor

T: +60 (3) 7955 7266
F: +60 (3) 7957 8068
E: marketing@mpc.gov.my
W: www.mpc.gov.my

MPC's mission hinges on its efforts to enhance productivity and quality in line with the national industrialization plan by providing training, promotion, consultancy and research services.

Malaysian Technology Development Corporation Sdn. Bhd. (MTDC)

Level 8 - 9,
Menara Yayasan Tun Razak,
Jalan Bukit Bintang,
55100 Kuala Lumpur, Malaysia

T: +60 (3) 2172 6000
F: +60 (3) 2163 7541
E: comms@mtdc.com.my
W: www.mtdc.com.my

MTDC is a joint venture company between the government and the private sector. The objectives of MTDC are to promote the commercialization of research and innovation for application and to be a catalyst for venture capital in technology based areas.

Malaysian Investment Development Authority (MIDA)

(Lembaga Pembangunan Pelaburan Malaysia)
MIDA Sentral No.5,
Jalan Stesen Sentral 5
Kuala Lumpur Sentral
50470 Kuala Lumpur

T: +60 (3) 2267 3633
F: +60 (3) 2274 7970
E: investmalaysia@mida.gov.my
W: www.mida.gov.my/

MIDA controls the promotion and coordination of all industrial activities. MIDA provides assistance to companies intending to invest in the manufacturing and services sectors as well as facilitates the implementation and operation of the projects. MIDA provides services which include providing information on the opportunities for investments as well as facilitating companies which are looking for joint venture partners. MIDA also evaluates applications for manufacturing licenses, tax incentives, expatriate posts and duty exemptions on raw materials, components, machinery and equipment for projects in manufacturing and its related services. MIDA has established a one-stop Business Information Centre (BIC) on the 2nd floor of the MIDA Sentral building where information on investment, trade, financing and productivity in Malaysia's manufacturing and its related services sectors are available. MIDA also has offices in Bangkok, Boston, Chicago, Dubai, Frankfurt, Guangzhou, Houston, Johannesburg, London, Los Angeles, Milan, Mumbai, Munich, New York, Paris, Osaka, San Jose, Seoul, Shanghai, Singapore, Stockholm, Sydney, Taipei and Tokyo.

Malaysian Industrial Development Finance Berhad (MIDF)

Level 21, Menara MIDF
82, Jalan Raja Chulan
50200 Kuala Lumpur

T: +60 (3) 2173 8888
F: +60 (3) 2173 8877
W: www.midf.com.my/

MIDF is responsible for promoting the progress and development of industries by providing financial products and services.

Department of Occupational Safety & Health (DOSH)

(Jabatan Keselamatan dan Kesihatan Pekerjaan Malaysia)
Ministry of Human Resources,
Level 2-4, Block D3, Complex D,
Federal Government
Administrative Centre,
62530 Putrajaya

T: +60 (3) 8886 5000
F: +60 (3) 8889 2443
E: jkkp@mohr.gov.my
W: www.dosh.gov.my/

This department, under the Ministry of Human Resources, is responsible for administering and enforcing various occupational safety and health rules to ensure that the safety, health and welfare of the people at work are protected from hazards resulting from occupational activities in the various sectors. DOSH also certifies safety of machinery and factory premises. Approval from this department is required before manufacturing operations can begin.

Companies Commission Malaysia (CCM)

(Suruhanjaya Syarikat Malaysia)
Menara SSM@Sentral
No 7, Jalan Stesen Sentral 5
Kuala Lumpur Sentral
50623 Kuala Lumpur

T: +60 (3) 2299 4400
F: +60 (3) 2299 4411
Hotline: +60 (3) 2299 5500
E: enquiry@ssm.com.my
W: www.ssm.com.my/

CCM acts as an agency to incorporate companies and register businesses as well as provide the public with company and business information. All companies intending to do business in Malaysia are required to register with the CCM.

Securities Commission

(Suruhanjaya Sekuriti)
No. 3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

T: +60 (3) 6204 8777
F: +60 (3) 6201 5078
E: cau@seccom.com.my
W: www.sc.com.my/

This statutory committee serves as an advisory body to the Ministry of Finance on all matters related to the securities and futures industry. Its activities include approving corporate bond issues, regulating the issuance of securities, futures contracts, and all matters relating to unit trusts and takeover and mergers. SC also acts as a registering authority for company's prospectus, supervises exchanges, clearing houses and central depositories as well as to ensure proper conduct of market institutions and licensed persons.

Inland Revenue Board

(Lembaga Hasil Dalam Negeri)
Level 18, Hasil Tower
Persiaran Rimba Permai
Cyber 8, 63000 Cyberjaya
Selangor

T: +60 (3) 8313 8888
F: +60 (3) 8313 7801/7806
W: www.hasil.gov.my

The Board is responsible for the overall administration, assessment and collection of income tax and other direct taxes.

Royal Malaysian Customs

(Kastam Di Raja Malaysia)
Head Office,
Ministry of Finance Complex,
No. 3, Persiaran Perdana,
Precint 2, Federal Government
Administrative Centre,
62596 Putrajaya

T: +60 (3) 8882 2100/2300/2500
F: +60 (3) 8889 5899/8882 5901
W: www.customs.gov.my/

This department is principally a revenue-collecting department that is also responsible for the administration and enforcement of regulations relating to customs and excise duties, sales tax, and service tax.

Ministry of Human Resources

(Kementerian Sumber Manusia)
Level 6-9, Block D3, Complex D,
Federal Government
Administrative Centre,
62530 Putrajaya

T: +60 (3) 8886 5000/5200
F: +60 (3) 8889 2381
E: ksm1@mohr.gov.my
W: www.mohr.gov.my/

The Labour Department of this ministry is responsible for the enforcement of the Employment Act.

Labuan Financial Services Authority (Labuan FSA)

Level 17, Main Office Tower,
Financial Park Complex,
Jalan Merdeka,
87000 Federal Territory of Labuan

T: +60 (87) 591 200
F: +60 (87) 453 442
W: www.labuanfsa.gov.my

This authority was established as a single regulatory body to spearhead and coordinate efforts to promote and develop Labuan as an International Business & Financial Centre (IBFC) and to streamline and rationalize the administrative machinery in supervising the Labuan IBFC.

Multimedia Development Corporation Sdn Bhd (MDeC)

MSC Malaysia Headquarters,
2360, Persiaran APEC,
63000 Cyberjaya,
Selangor Darul Ehsan, Malaysia

T: +60 (3) 8315 3000
F: +60 (3) 8315 3115
W: www.mdec.com.my/

The MDeC is the agency responsible for implementing the MSC (Multimedia Super Corridor) Malaysia. It also serves as promoter and facilitator to companies setting up operations in MSC Malaysia.

State Economic Development Corporations (SEDCs)

State Economic Department Corporations are responsible for carrying out economic activities at the state level and developing the economy of the states in accordance with the objectives of the New Economic Policy.

Johor

Johor Corporation

(formerly known as Johor State Economic Development Corporation)
Level 2, PERSADA JOHOR,
Jalan Abdullah Ibrahim,
80000 Johor Bahru,
Johor Darul Takzim

T: +60 (7) 223 2692/219 2692
F: +60 (7) 223 3175/224 2692
E: pdnjohor@jcorp.com.my
W: www.jcorp.com.my/

Kedah

Kedah State Development Corporation

(Perbadanan Kemajuan Negeri Kedah)
14th Floor, Wisma PKNK,
Jalan Sultan Badlishah,
05000 Alor Setar,
Kedah Darul Aman

T: +60 (4) 775 2455
F: +60 (4) 731 2957
E: admin@pknk.gov.my
W: www.pknk.gov.my/

Kelantan

Kelantan State Economic Development Corporation

(Perbadanan Kemajuan Iktisad Negeri Kelantan)
4th-11th Floors, Bangunan PKINK,
Jalan Tengku Maharani,
(P.O. Box 142)
15710 Kota Bharu,
Kelantan Darul Naim

T: +60 (9) 741 4141
F: +60 (9) 741 4140
E: pkink@pkink.gov.my
W: www.pkink.gov.my/

Melaka (Malacca)

Melaka State Development Corporation

(Perbadanan Kemajuan Negeri Melaka)
4th-11th Floors, Menara MITC,
Jalan Konvensyen,
Kompleks MITC,
75450 Ayer Keroh,
Melaka

T: +60 (6) 232 4433
F: +60 (6) 232 4434
W: www.pknm.com/

Negeri Sembilan

Negeri Sembilan State Development Corporation

(Perbadanan Kemajuan Negeri, Negeri Sembilan)
Bangunan PKNNS,
Jalan Yam Tuan,
(P.O. Box 158)
70710 Seremban,
Negeri Sembilan Darul Khusus

T: +60 (6) 762 3251
F: +60 (6) 763 7924
E: pkns@tm.net.my
W: www.ns.gov.my/pkns

Pahang

Pahang State Development Corporation

(Perbadanan Kemajuan Negeri Pahang)
16th Floor, Kompleks Teruntum,
Jalan Mahkota,
25000 Kuantan,
Pahang Darul Makmur

T: +60 (9) 565 8588
F: +60 (9) 513 0510
E: pknpp@pahang.gov.my
W: www.pknpp.gov.my

Perak

Perak State Development Corporation
(Perbadanan Kemajuan Negeri Perak)
Wisma Wan Mohamed,
Jalan Panglima Bukit
Gantang Wahab,
(P.O. Box 217)
30904 Ipoh,
Perak Darul Ridzuan

T: +60 (5) 529 6600
F: +60 (5) 253 6604
E: info@pknpp-perak.gov.my
W: www.pknpp-perak.gov.my/

Perlis

**Perlis State Economic
Development Corporation**
(Perbadanan Kemajuan Ekonomi
Negeri Perlis)
No. 173-191, Taman Kemajuan,
Jalan Raja Syed Alwi,
01000 Kangar,
Perlis Indera Kayangan

T: +60 (4)-9761 088/037/616
F: +60 (4) 976 2181
E: webmaster@pkenps.gov.my
W: www.pkenps.gov.my/

Pulau Pinang (Penang)

Penang Development Corporation
(Perbadanan Pembangunan Pulau
Pinang)
Bangunan Tun Dr Lim Chong Eu
No. 1, Persiaran Mahsuri,
Bandar Bayan Baru,
11909 Bayan Lepas,
Pulau Pinang

T: +60 (4) 634 0111
F: +60 (4) 643 2405
E: enquiry@pdc.gov.my
W: www.pdc.gov.my/

Sabah

**Sabah Economic Development
Corporation (SEDCO)**
(Perbadanan Pembangunan Ekonomi
Sabah)
Level 8,9,10, Wisma SEDCO,
Lorong Plaza Wawasan,
Off Coastal Highway,
PO Box 12159,
88823 Kota Kinabalu, Sabah

T: +60 (88) 266 777
F: +60 (88) 219 179/249 545/219 263
W: www.sedco.com.my

Sarawak

**Sarawak Economic
Development Corporation**
(Perbadanan Pembangunan Ekonomi
Sarawak)
6th-11th Floor, Menara SEDC,
Jalan Tunku Abdul Rahman,
Peti Surat 400,
93100 Kuching, Sarawak

T: +60 (82) 416 777
F: +60 (82) 424 330
E: ssedc@po.jaring.my
W: www.sedc.com.my/

Selangor

**Selangor State Development
Corporation (SSIC)**
(Perbadanan Kemajuan
Negeri Selangor)
Level 2-9, Menara HPAIC
Laman Seri Business Park
No. 7, Persiaran Sukan, Seksyen 13
40100 Shah Alam
Selangor Darul Ehsan

T: +60 (3) 5520 1234
F: +60 (3) 5510 2186
E: general@pkns.gov.my
W: www.pkns.gov.my

Terengganu

**Terengganu State Economic
Development Corporation**
(Perbadanan Memajukan Iktisad
Negeri Terengganu)
14th Floor, Menara PERMINT,
Jalan Sultan Ismail,
20200 Kuala Terengganu,
Terengganu Darul Iman

T: +60 (9) 627 8000
F: +60 (9) 623 3880
E: admin@pmint.gov.my
W: www.pmint.gov.my/utama.php

Chambers of commerce

The chambers of commerce are responsible for the promotion, protection and advancement of all mercantile interests and all other interests affecting merchants in Malaysia.

National Chamber of Commerce and Industry of Malaysia (NCCIM)

Level 3, West Wing,
Menara MATRADE,
Jalan Khidmat Usaha off Jalan Duta,
50480 Kuala Lumpur

T: +60 (3) 6204 9811
F: +60 (3) 6204 9711
E: enquiry@nccim.org.my
W: www.nccim.org.my/

Malaysian International Chamber of Commerce and Industry (MICCI)

C-8-8, Block C, Plaza Mont' Kiara,
No. 2, Jalan Kiara, Mont' Kiara,
50480 Kuala Lumpur

T: +60 (3) 6201 7708
F: +60 (3) 6201 7705
E: micci@micci.com
W: www.micci.com/

Malay Chamber of Commerce Malaysia (MCCM)

33 & 35, Jalan Medan Setia 1,
Bukit Damansara,
50490 Kuala Lumpur

T: +60 (3)2096 2233
F: +60 (3)2096 2533
W: www.malaychamber.com

The Associated Chinese Chamber of Commerce and Industry of Malaysia (ACCCIM)

6th Floor, Wisma Chinese Chamber
258, Jalan Ampang
50450 Kuala Lumpur

T: +60 (3) 4260 3090/3091/3092/
3093/3094/3095
F: +60 (3) 4260 3080
E: acccim@accim.org.my
W: www.acccim.org.my/

Malaysian Associated Indian Chamber of Commerce (MAICCI)

Megan Avenue 11, Block B,
9th floor, Unit 1,
No. 12, Jalan Yap Kwan Seng,
50450 Kuala Lumpur

T: +60 (3) 2171 2616
F: +60 (3) 2171 1195
E: info@maicci.org.my
W: www.maicci.org.my/

Sabah United Chinese Chamber of Commerce

P.O. Box 12176,
88824 Kota Kinabalu,
Sabah

T: +60 (88) 225 460/255 471
F: +60 (88) 218 185
E: succc01@tm.net.my
W: www.succc.org

Sarawak Chamber of Commerce & Industry

L3-12, 3rd Floor,
DUBS Commercial Centre,
Lot 376, Section 54 KTLD,
Jalan Petanak,
93100 Kuching,
Sarawak

T: +60 (82) 237 148
F: +60 (82) 237 186
W: www.scci.org.my

APPENDIX B (2.1)

Structuring an investment

Structuring an investment

Incorporation

Foreign ownership of shares – equity conditions

To be a developed nation by 2020, the Malaysian government is adopting a holistic approach to implement a new economic model (NEM) that will foster competition in all sectors of the economy. Malaysia's NEM is a significant departure from the previous approach on Bumiputra equity participation. Recent unprecedented announcements on liberalization measures mark a major milestone for the opening of the Malaysian capital market. Please refer to Chapter 1 ("Foreign Investment") for more details of these measures.

Founder shareholders

- Only two founder shareholders are required, who need not be Malaysians.
- Two resident directors are required, who need not be Malaysians but must have valid work permits for employment in Malaysia.

Advantages of incorporating

- Limited liability
- Relatively low corporate tax rate

28 % - YA 1998 to 2006
27% - YA 2007
26% - YA 2008
25% - YA 2009 and subsequent years

With effect from YA 2004, small and medium scale companies with paid-up capital not exceeding RM2.5 million are subject to income tax at the rate of 20% on chargeable income up to RM500,000. The remaining chargeable income will continue to be taxed at 25% from YA 2009 and subsequent years.

- Benefits from tax treaties.
- Better public image.
- Preferred by authorities for compliance with equity ownership.

Availability of local funding

- Funds may be obtained from the domestic capital market through a public issue for a public listed company.
- Working capital requirements from local financial institutions.

Formation requirements

- Practising company/ qualified secretaries, public accountants or lawyers can provide assistance with the incorporation documents and other requirements.
- Incorporation documents must be submitted to the Companies Commission of Malaysia (CCM).
- Registration fee is payable, depending on the amount of authorized share capital.
- With the deregulation of the FIC guidelines announced by the Prime Minister on 30 June 2009, the Foreign Investment Committee no longer processes any share transactions or impose any equity conditions on such transactions.

Taxation

- Tax incentives are generally available.
- Payment of dividends is restricted by availability of profits and by dividend franking tax credits up to 31 December 2013. Malaysia will move fully into a single-tier dividend system from 1 January, 2014 under which dividends are fully exempt in the hands of shareholders and payment of dividend are not dependent on the availability of franking credits.
- Professional advice should be sought on tax planning opportunities.

Branch

Limitations on foreign participation

- In general, CCM do allow the registration of foreign branches except for establishments involved with the wholesale and retail trade.

Advantages

- Cessation of business is more straightforward than liquidation of a company.
- Capital and profits can be freely repatriated. However for amounts exceeding RM200,000 or its equivalent in foreign currency, Form P has to be completed by remitting banks, on behalf of their clients.

Formation and registration requirements

- Resident agent is required.
- Registration fee is payable at the same rate as for locally incorporated companies, depending on the amount of authorized share capital of the foreign corporation.
- Documentation similar to those for a locally incorporated company must be filed annually.

Taxation

- Foreign (non-resident) corporations have the same obligations and rights as resident companies.
- Tax rate is at a flat rate of 25 % for YA 2009 and subsequent years.
- Professional advice should be obtained on tax planning opportunities.

Sole proprietorship or partnership (excluding limited liability partnership)

Limitation on foreign participation

- Foreign nationals require valid work permits to work in Malaysia.
- Foreign nationals are generally not permitted to set up sole-proprietorships or partnership businesses, except for carrying out government or other approved projects.

Advantages

- Minimal regulatory requirements to comply.

Disadvantages

- Sole proprietors and partners are personally liable for the liabilities of the business.

Formation requirements

- Registration as a business with the CCM
- Partnership agreement.

Taxation

- Sole proprietors are taxed as individuals.
- Partnerships are treated as conduits, with partners taxed on their shares of the income.

Limited liability partnership (LLP)

Founder partners

- Minimum of two partners with no limit to maximum number of partners. The partners can be individuals (natural persons) or bodies corporate or a combination of both.
- The partners need not be resident in Malaysia, however there is requirement for the compliance officer* to be resident in Malaysia.

Advantages of a LLP

- Limited liability status for partnership type of business.
- Provides flexibility of organization arrangement through a partnership agreement whereas a company is subject to more stringent compliance requirements.
- More affordable business vehicle.

Formation requirements

- Practising company / qualified secretaries, public accountants or lawyers can provide assistance with the partnership agreement and other requirements.
- The partnership agreement and other relevant documents must be submitted to the CCM along with payment of the required fees.

Taxation

- A LLP is taxed as a company.
- Tax rate is at flat rate of 25% .
- Professional advice should be obtained on tax-planning opportunities.

** The LLP requires the appointment of a least one compliance officer who's main responsibilities include registering changes in registered particulars of the LLP and keeping and maintaining the records of the LLP.*



APPENDIX B (2.2)

*Some
regulatory
agencies*

Some regulatory agencies

The following are some of the important regulatory agencies:

Ministry of International Trade and Industry (MITI)

This ministry has overall responsibility for all aspects of international trade and industrial development, acting through the following agencies:

- **Malaysian Investment Development Authority (MIDA):** Main government agency that provides assistance for investors intending to set up manufacturing and its related support services projects in Malaysia.
- **Malaysia External Trade Development Corporation (MATRADE):** An external trade arm of MITI, functions as a central source for trade related information for Malaysian exporters and foreign importers.
- **Malaysia Productivity Corporation (MPC):** MPC's mission hinges on its efforts to enhance productivity and quality in line with the national industrialization plan by providing training, promotion, consultancy and research services.

- **Malaysian Industrial Development Finance Berhad (MIDF):** Established to speed up industrial development in Malaysia and acts as a conduit for the government to manage funds under the various government schemes.
- **Malaysian Technology Development Corporation. (MTDC):** Set up with the objective of promoting the commercialization of research and innovation for application and to be a catalyst for venture capital in technology based areas.
- **Small and Medium Enterprise Corporation Malaysia (SME Corp Malaysia):** Set up to promote further the development of small and medium-size industries (SMIs) through the provision of advisory services, fiscal and financial assistance, infrastructural facilities, market access, and other support programs.

Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC)

This ministry is responsible for supervising domestic trade and formulates policies and implements measures aimed at encouraging fair ethical domestic trade practices and protecting the interests and rights of consumers. Its functions also include the following:

- Licensing and controlling the manufacturing and sale of items of necessity
- Licensing and monitoring direct selling activities;
- Licensing and monitoring marketing of petroleum products as well as formulating guidelines relating to petroleum safety in petroleum, petrochemical and gas industry;
- Drafting and conducting research on policies and strategies related to domestic trade development, consumerism and intellectual property.

Companies Commission of Malaysia (CCM)

All companies, partnerships and sole proprietors intending to do business in Malaysia are required to register with the CCM, which is responsible for the administration of the Registration of Businesses Act 1956 and the Companies Act 1965.

Immigration Department

This department processes applications of work permits for new or additional expatriate posts, renewal of existing expatriate posts and conversion of social/tourist passes into business passes.

Ministry of Science, Technology and Innovation

This ministry has responsibility for promoting awareness, research and development in science and technology.

Local government authorities

These authorities are responsible for local regulations that affect business operations. Such laws relate mainly to buildings and structures (business premises), health, public safety and security, sale of liquor, and displays (signboards, advertisements, billboards, etc.).

Various other government agencies regulate specific industries. In addition to incorporating a company, specific licensing requirements apply to companies that may wish to undertake specialized activities, e.g., finance and banking, insurance, real estate, petroleum, and utilities.



APPENDIX C (3.1)

Minimum conditions of employment

Paid Leave under Employment Act, 1955

The Employment Act, 1955 is the main legislation on labour matters in Malaysia.

Paid maternity leave:	60 days
Normal work hours:	Not exceeding eight hours in one day or 48 hours in one week
Paid holiday:	At least 11 gazetted public holidays (inclusive of five compulsory public holidays; National Day, Birthday of the Yang Dipertuan Agong, Birthday of Ruler, Federal Territory Day, Labour day and Malaysia day) in one calendar year and on any day declared as a public holiday under section 8 of the Holiday Act 1951

Paid annual leave for employees

Less than two years of service	8 days
Two or more but less than 5 years of service	12 days
Over five years of service	16 days

Paid sick leave per calendar year

Less than two years of service	14 days
Two or more but less than five years of service	18 days
Over five years of service	22 days
Where hospitalisation is necessary	up to 60 days

Payment for overtime work

Normal working days:	One-and-a-half times the hourly rate of pay
Rest days:	Two times the hourly rate of pay
Public holidays:	Three times the hourly rate of pay

Source: Cost of Doing Business, MIDA website: www.mida.gov.my

APPENDIX D (5.1)

Double taxation treaties and withholding tax rates

List of double tax treaties and withholding tax rates

Rate of withholding tax %

Treaty countries	Interest	Royalties	Technical Fees
Albania	10 or Nil	10	10
Australia	15 or Nil	10 or Nil	Nil
Austria	15 or Nil	10	10
Bahrain	5 or Nil	8	10
Bangladesh	15 or Nil	10 or Nil	10
Belgium	10 or Nil	10	10
Bosnia & Herzegovina *	10 or Nil	8	10
Brunei	10 or Nil	10	10
Canada	15 or Nil	10 or Nil	10
China, People's Republic	10 or Nil	10	10
Chile	15	10	5
Croatia	10 or Nil	10	10
Czech Republic	12 or Nil	10	10
Denmark	15 or Nil	10 or Nil	10
Egypt	15 or Nil	10	10
Fiji	15 or Nil	10	10
Finland	15 or Nil	10 or Nil	10
France	15 or Nil	10 or Nil	10
Germany	10 or Nil	7	7
Hong Kong *	10 or Nil	8	5
Hungary	15 or Nil	10	10
India	10 or Nil	10	10
Indonesia	10 or Nil	10	10
Iran	15 or Nil	10	10
Ireland	10 or Nil	8	10

Rate of withholding tax %

Treaty countries	Interest	Royalties	Technical Fees
Italy	15 or Nil	10 or Nil	10
Japan	10 or Nil	10	10
Jordan	15 or Nil	10	10
Kazakhstan	10 or Nil	10	10
Korea Republic	15 or Nil	10 or Nil	10
Kyrgyz Republic	10 or Nil	10	10
Kuwait	10 or Nil	10	10
Laos	10 or Nil	10	10
Lebanese Republic	10 or Nil	8	10
Luxembourg	10 or Nil	8	8
Malta	15 or Nil	10	10
Mauritius	15 or Nil	10	10
Morocco	10 or Nil	10	10
Mongolia	10 or Nil	10	10
Myanmar	10 or Nil	10	10
Namibia	10 or Nil	5	5
Netherlands	10 or Nil	8 or Nil	8
New Zealand	15 or Nil	10 or Nil	10
Norway	15 or Nil	10 or Nil	10
Pakistan	15 or Nil	10 or Nil	10
Papua New Guinea	15 or Nil	10	10
Philippines	15 or Nil	10 or Nil	10
Poland	15 or Nil	10 or Nil	10
Qatar	5 or Nil	8	8
Romania	15 or Nil	10 or Nil	10
Russian Federation	15 or Nil	10	10
San Marino	10 or Nil	10	10
Saudi Arabia (full agreement)	5 or Nil	8	8
Senegal*	10 or Nil	10	10
Seychelles Republic	10 or Nil	10	10
Singapore	10 or Nil	8	5
Sri Lanka	10 or Nil	10	10
South Africa	10 or Nil	5	5

Rate of withholding tax %

Treaty countries	Interest	Royalties	Technical Fees
Spain	10 or Nil	7	5
Sudan	10 or Nil	10	10
Sweden	10 or Nil	8	8
Switzerland	10 or Nil	10 or Nil	10
Syria	10 or Nil	10	10
Thailand	15 or Nil	10 or Nil	10
Turkey	15 or Nil	10	10
Turkmenistan	10 or Nil	10	Nil
United Arab Emirates	5 or Nil	10	10
United Kingdom	10 or Nil	8	8
Uzbekistan	10 or Nil	10	10
Venezuela	15 or Nil	10	10
Vietnam	10 or Nil	10	10
Zimbabwe *	10 or Nil	10	10

* Pending ratification

There is no withholding tax on dividends paid by Malaysian companies.

With effect from 21 September 2002, only fees for technical and management services rendered in Malaysia are liable to Malaysian income tax.

There is a restricted double tax treaty with Argentina and with the United States of America which deals with the taxation of air and sea transport operations in international traffic.

APPENDIX E (6.1)

Rates of personal tax

Rates of Personal Tax

Resident individuals

	Chargeable Income	YA 2012 Rate %	Tax Payable RM
On the first	2,500	0	0
On the next	2,500	1	25
On the first	5,000		25
On the next	15,000	3	450
On the first	20,000		475
On the next	15,000	7	1,050
On the first	35,000		1,525
On the next	15,000	12	1,800
On the first	50,000		3,325
On the next	20,000	19	3,800
On the first	70,000		7,125
On the next	30,000	24	7,200
On the first	100,000		14,325
Above	100,000	26	

	Chargeable Income	YA 2013 Rate %	Tax Payable RM
On the first	5,000		0
On the next	15,000	2	300
On the first	20,000		300
On the next	15,000	6	900
On the first	35,000		1,200
On the next	15,000	11	1,650
On the first	50,000		2,850
On the next	20,000	19	3,800
On the first	70,000		6,650
On the next	30,000	24	7,200
On the first	100,000		13,850
Above	100,000	26	

Non-resident individuals

Types of income	YA 2013 Rate %
Interest	15
Royalty	10
Special classes of income: <ul style="list-style-type: none">• rental of moveable property• technical or management services fees*• payment for services rendered in connection with use of property or installation or operation of any plant, machinery or other apparatus purchased from a non-resident person	10 10 10
Dividends (single tier)	Exempt
Dividends (franked)	26
Business and employment income	26
Income other than the above	10

* Only fees for technical or management services rendered in Malaysia are liable to tax.

Knowledge workers in a specified region

A qualified person (defined by legislation) who is a knowledge worker residing in Iskandar Malaysia is taxed at the rate of 15% on income from an employment with a designated company engaged in a qualified activity in that specified region. The employment must have commenced on or after 24 October 2009 but not later than 31 December 2015.

Approved individuals under the Returning Expert Programme

An approved individual under the Returning Expert Programme who is a resident is taxed at the rate of 15% on income in respect of having or exercising employment with a person in Malaysia for 5 consecutive years of assessment. This applies to Malaysian citizens only.

APPENDIX E (6.2)

*Value of
perquisites from
employment and
benefits-in-kind*

Value of perquisites from employment and benefits-in-kind

Value of perquisites from employment

Perquisites from an employment means benefits received by an employee in cash or in kind that are convertible into money in respect of having or exercising the employment. The value of some common perquisites are as follows:

Type of perquisite	Value to employee
Allowances (e.g. entertainment, housing, etc.)	Total amount paid by employer
Petrol card/petrol/travel allowances <ul style="list-style-type: none"> • between home and work place • for official duties 	Total amount paid by employer Total amount paid by employer (tax exemption up to RM2,400 per annum is only from YA 2008 to YA 2010) Exempted up to RM6,000 per annum*
Childcare subsidies/allowances	Exempted up to RM2,400 per annum*
Parking fees/allowances	Fully exempted*
Meal allowances	Fully exempted*
Subsidies on interest on loans totalling RM300,000 for housing/passenger motor vehicles and education	Fully exempted*
Income tax	Amount paid by employer

* The above exemptions are not extended to directors of controlled companies, sole proprietors and employees who are partners of the employer.

Valuation of benefits-in-kind

Under Public Ruling 3/2013 issued by the IRB, two methods may be used to determine the value of benefits-in-kind (BIK) provided to the employee by the employer:

- The formula method; and
- The prescribed value method

Whichever method is used in determining the value of the benefit provided, the basis of computing the benefit (whether the formula method or the prescribed value method) must be consistently applied throughout the period of the provision of the benefit.

Formula method

The value of BIK is calculated based on the following prescribed formula.

$$\frac{\text{Cost of asset provided as an benefit}}{\text{Prescribed average life span of asset}} = \text{Annual value of benefit}$$

The prescribed average life span of certain common assets is as follows.

Asset	Years
Motorcar	8
Curtains, carpets	5
Furniture, sewing machine	15
Air conditioner	8
Refrigerator	10
Kitchen equipment/utensils	6
Piano	20
Organ	10
Stereo set, TV, video recorder, CD/DVD player	7
Swimming pool (detachable), sauna	15
Miscellaneous	5

Prescribed value method

The following are some values of BIK prescribed in the Ruling:

	Value per year
Household furnishings, apparatus & appliances	
• Semi-furnished with furniture in the lounge, dining room and bedroom	RM840
• Semi-furnished as above and with air-conditioners or carpets or curtains	RM1,680
• Fully furnished	RM3,360
• Service charges and other bills (e.g. water, electricity)	Charges and bills paid by employer
Other benefits	
• Telephone (including mobile telephone, telephone bills, pager, personal data assistant (PDA), broadband subscription)	Fully exempted *
• Domestic servants	RM4,800 per servant
• Gardeners	RM3,600 per gardener
• Recreational club membership	Membership subscription paid by employer
Employers' goods provided free or at a discount	Discount up to RM1,000 is tax exempt *
Employers' own services provided full or at a discount	Fully exempted*
Maternity expenses & traditional medicines	Fully exempted*

*Exemption is not extended to directors of controlled companies, sole proprietors and partnerships.

Motor car and fuel provided		
Cost of car (when new)	Annual prescribed benefit of motorcar	Annual prescribed benefit of fuel*
Up to 50,000	1,200	600
50,001 – 75,000	2,400	900
75,001 – 100,000	3,600	1,200
100,001 –150,000	5,000	1,500
150,001 – 200,000	7,000	1,800
200,001– 250,000	9,000	2,100
250,001 – 350,000	15,000	2,400
350,001 – 500,000	21,250	2,700
500,001 and above	25,000	3,000

*Employee is given a choice to determine fuel benefit based on annual prescribed rates or exemption available for petrol usage.

Annual value of driver provided – RM7,200.

APPENDIX E (6.3)

Personal reliefs

Personal reliefs (for resident individuals)

Relief for	YA 2010 (RM)
Self	9,000
Disabled individual - additional relief for self	6,000
Spouse	3,000
Disabled spouse - additional spouse relief	3,500
Child	
• per child (below 18 years old)	1,000
• per child (over 18 years old) receiving full-time instruction of higher education in respect of: diploma level and above in Malaysia	6,000
degree level and above outside Malaysia	6,000
• per child over 18 years old) serving under articles of indentures in a trade or profession	6,000
• Per physically / mentally disabled child	5,000
• Physically / mentally disabled child (over 18 years of age) receiving full-time instruction in an institution of higher education or serving under articles of indentures in a trade or profession	6,000
Life insurance premiums and EPF contributions	6,000*
Private Retirement Scheme contributions	} 3,000*
Deferred annuity scheme premium	
Insurance premiums for education or medical benefits	3,000*
Expenses on medical treatment, special needs or career expenses for parents (evidenced by medical certification)	5,000*
Medical expenses for self, spouse or child suffering from a serious disease (including fees of up to RM500 incurred by self, spouse or child for complete medical examination)	5,000*
Purchase of sports equipment	300*
Fee expended for any course of study up to tertiary level other than a degree at Masters or Doctorate level, undertaken for the purpose of acquiring law, accounting, Islamic financing, technical, vocational, industrial, scientific or technological skills or qualifications or any course of study for a degree at Masters or Doctorate level undertaken for the purpose of acquiring any skill or qualification	5,000*
Purchase of supporting equipment for self (if a disabled person) or for disabled spouse, child or parent	5,000*
Cost incurred for the purchase of books, journals, magazines and other similar publications for the purpose of enhancing knowledge	1,000*
Relief for purchase of personal computer (once every 3 years)	3,000*
Deposit for child into the Skim Simpanan Pendidikan Nasional account established under Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997	6,000*
Relief on housing loan interest for the purchase of one unit residential property where the Sale and Purchase Agreement is executed between 10 March 2009 and 31 December 2010 (given for 3 consecutive years)	10,000*

* Maximum relief

APPENDIX F (7.1)

*Service tax –
list of taxable
persons*

Service tax – List of taxable persons

Annual sales
turnover (RM)

Operators of hotels with more than 25 rooms (subject to some exclusions)	*
Operators of restaurants, bars, snack-bars, coffee houses or places located in hotels with more than 25 rooms, providing food, drinks and tobacco products wholly eat-in or partly take-away	*
Operators of restaurants, bars, snack-bars, coffee houses or places located in hotels with 25 rooms or less, providing food, drinks and tobacco products wholly eat-in or partly take-away	300,000
Operators of restaurants, bars, snack-bars, coffee houses or places located outside hotels, providing food, drinks and tobacco products wholly eat-in or partly take-away (subject to 3 million some exclusion)	3 million
Operators of food courts	3 million
Operators of night-clubs, dance halls and cabarets	*
Operators of approved health-centres and massage parlour	*
Operators of 1st, 2nd or 3rd Class Public House and 1st or 2nd Class Beer House	*
Operators of private clubs	300,000
Operators of golf course or golf driving range (including operators of private clubs having total annual sales turnover of RM300,000 or less or any hotel having 25 or less rooms)	*
Licensed private hospitals	300,000
Insurance companies	*
Any person providing communication services who is registered under the Communications And Multimedia Act 1998 or licensed under the Communications and Multimedia (Licensing) Regulations 2000	*
Any person who is given permission to act as agent for transacting business relating to the import or export of any goods or luggage under section 90 of the Customs Act 1967	*
Any person who is licensed under section 65 or 65E of the Customs Act 1967 and who is also given permission to act as an agent for transacting business relating to the import or export of any goods or luggage that is stored in the licensed warehouse or inland clearance depot	*
Operators of parking space for motor vehicles	150,000
Courier-services companies	150,000
Operators of motor vehicles service and/or repair centres	150,000
Licensed private agencies	150,000
Employment agencies	150,000
Hire-and-drive car and hire-car service companies	300,000
Advertising companies	300,000
Public Accountants	**
Advocates and Solicitors	**
Professional Engineers	**
Architects	**
Licensed or Registered Surveyors/Registered Valuers, Appraisers and Estate Agents	**
Consultants (subject to some exclusions)	**
Management companies	**
Any person who is regulated by the Central Bank of Malaysia and provides credit card or charge card services through the issuance of a credit card or a charge card	*

* No threshold

** No threshold effective 1 January 2008

