



# *Doing business in Malaysia 2017*



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# Foreword

Malaysia has emerged as an attractive regional hub for services.

Malaysia has over the last 60 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, 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 31 March 2017, **unless otherwise indicated.**

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# ***Chapter 1***

# ***Investment environment***

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## ***Location and climate***

Malaysia is situated in Southeast Asia, in the area bordered by longitudes 100 degrees and 120 degrees east and latitudes formed by the equator and 7 degrees north. The landmass of Malaysia comprises Peninsula Malaysia, at the south eastern 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 Peninsula 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 peninsular, 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 Peninsula Malaysia are Penang, which is the oldest port in the country; Johor Bahru, which has a free port (Johor Port) and is linked to Singapore by two causeways; 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 Peninsula 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 peninsular 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 peninsular 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 peninsular 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) and the Dewan Negara (Senate). The Dewan Rakyat is a body of 222 members who are elected by Malaysian voters. The Dewan Negara comprises 70 members, 44 of whom are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. The 13 state legislative assemblies also elect two senators each to represent their respective states in the Dewan Negara.

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. Please refer to Chapter 2 for further details on the Malaysian court system.

## ***People, languages and social patterns***

### **Population**

Malaysia has a total population of 31.7 million in 2016. The Malaysian population has a multi-ethnic, multi-cultural composition, the dominant racial group being the Malays, who with other Bumiputra<sup>1</sup> groups, make up 69% of the population. The rest of the population is made up of Chinese (23%), Indians (7%) 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 17, 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 and international schools and institutions of higher learning that cater to the educational needs of various 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 is an upper-middle income country, and one of the most developed economies in the region, with a Gross Domestic Product (GDP) per capita of US\$9,546. It has an open economy that is highly trade dependent, with trade reaching 161% of annual GDP according to the World Trade Organization. The country has progressed from an economy dependent on agriculture and primary commodities to one that is manufacturing-based, and is now transforming into a service- and knowledge-driven economy.

Malaysia's real GDP growth has averaged 6.4% per year since 1970, outperforming most of its regional peers. During this period, the economy began to diversify into a leading exporter of electrical appliances, electronic parts and components, palm oil, and natural gas.

In 2010, Malaysia launched the New Economic Model (NEM) and the Economic Transformation Program (ETP), which aims to develop the country into a high income nation by

2020. The NEM and ETP plans to move the economy further up the value-added chain by attracting investments and focusing on a knowledge-based economy.

### **Economic sectors**

In terms of the magnitude of the various economic activities, the service sector is the largest contributor to GDP, accounting for 53.5% of GDP in 2015. Major sub-sectors within services include: finance, real estate and business services; wholesale and retail trade; and transport and communications. The government plans to develop the services sector further, which is expected to contribute 60% of GDP by 2020, through initiatives such as the Services Sector Blueprint.

The manufacturing sector is placed second only to services, accounting for about 23.0% of GDP. Other major economic activities in Malaysia include the mining and agriculture sectors, which account for about 9.0% and 8.9% of GDP respectively in 2015.

### **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. SMI contribution to GDP is 35.9% in 2015 and is expected to expand to 41% by 2020.
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 (sovereign wealth fund). For instance, Government Linked Companies (GLCs) listed on Bursa Malaysia account for approximately 40% of the total market capitalization at the end of 2016.



3. Local operations of multinationals (MNCs), most of which are majority-owned by their foreign parent corporations. They account for 28% of total approved investments in 2016, most of the investments went to the services and manufacturing sectors.

### Economic outlook

The Malaysian economy is expected to expand by 4.3% to 4.8% in 2017, supported by a gradual improvement in global growth, recovery in global commodity prices and the continued growth of domestic demand.

Domestic demand will continue to be the main driver of growth for the Malaysian economy, and is expected to grow by 4.4% in 2017, underpinned primarily by private sector activity. Private investment is expected to post a modest growth of 4.1% in 2017. While firms are likely to remain cautious due to uncertainty in the economic environment, private investment activity will continue to be catalysed by continued expansion in domestic-oriented industries and the government's ETP projects. Among the ETP initiatives is to drive business and investment opportunities in 12 key sectors<sup>2</sup> - referred to as the National Key Economic Area (NKEA) - together with the private sector.

Private consumption is projected to grow by 6% in 2017. Stable labour market conditions, continued wage growth, and the implementation of Government measures to increase household disposable income such as Bantuan Rakyat 1Malaysia (BR1M) cash transfers will help sustain consumption spending despite rising inflationary pressure.

Inflation is expected to increase to an average of 3% to 4% in 2017, reflecting the pass through impact of the increase in global oil prices and depreciated ringgit on domestic retail fuel prices.

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:

| 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          |

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).

**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 Initiatives<sup>1</sup> (SRIs)

The 12 NKEAs represent economic sectors that will drive the highest possible growth and will receive prioritized government support. As of 2014, there were 182 active entry point projects, with RM219.3 billion of investment committed as of December 2016, meeting 27% of its RM794.5 billion (US\$177 billion) target investments up to 2020.

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

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 23rd overall in ease of doing business in World Bank Doing Business 2017 report. It is also ranked the third best global services location in A.T Kearney's Global Services Location Index 2016.

### **Eleventh Malaysia Plan (11MP)**

The 11MP, called "Anchoring growth on people", is the closing chapter of the 2020 Vision Plan to make Malaysia a fully developed country by 2020. Spanning 2016 to 2020, the plan is meant to steer development efforts to ensure that the country becomes an advanced nation that is inclusive and sustainable.

The plan targets a growth rate of 5% to 6% a year for the Malaysian economy, led by sustained domestic demand, private investments and infrastructure development. Under the plan, Gross National Income (GNI) per capita is targeted to increase to US\$15,690 by 2020. In addition, average monthly household income is to increase to RM10,540 in 2020. This will entail the creation of 1.5 million jobs by 2020 under the 11MP.

As a platform for the country to make vital policy shifts and invest new approaches to address new and existing challenges, the 11MP sets out:

- Six strategic thrusts to help Malaysia stay ahead of the challenges and opportunities of the changing global and political landscape<sup>2</sup>; and
- Six game changers<sup>3</sup> representing innovative approaches to accelerate the country's development and growth.

2. The six strategic thrusts are: enhancing inclusiveness, improving wellbeing for all, accelerating human capital development, pursuing sustainable growth, strengthening infrastructure and re-engineering economic growth.
3. The six game changers are: unlocking productivity, uplifting households to middle-income, enabling technical and vocational education and training, embarking on green growth, translating innovation to wealth, and investing in competitive cities.

## ***International trade***

Trade policy is fundamentally 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 liberalization 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). Established in 2015, it aims for regional economic and trade integration, supporting free flow of goods, services, investment and capital among the ASEAN member countries. The AEC gives Malaysia access to ASEAN's US\$2.6 trillion market, collectively the third largest economy in Asia and seventh largest in the world in 2014.

Negotiations for the Regional Comprehensive Economic Partnership (RCEP), of which Malaysia is party to, were officially launched at the 21st ASEAN Summit in November 2012, with negotiations expected to be substantially concluded by the end of 2017. The China-led RCEP is anticipated to bolster trade between its 16 member countries which collectively cover 30% of the world's economy with a market of 3.4 billion people and a combined GDP of US\$21.4 trillion in 2016.

### **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 Trade In Goods Agreement
- ASEAN-China Free Trade Agreement
- ASEAN-Korea Free Trade Agreement
- ASEAN-Australia-New Zealand Free Trade Agreement
- ASEAN-Japan Comprehensive Economic Partnership Agreement
- ASEAN-India Trade in Goods Agreement
- Preferential Trade Agreement Amongst D-8 Member States
- Malaysia-Pakistan Closer Economic Partnership
- Malaysia-Japan Economic Partnering Agreement
- Malaysia-Chile Free Trade Agreement
- Malaysia-India Comprehensive Economic Cooperation Agreement



- Malaysia-New Zealand Free Trade Agreement
- Trade Preferential System Organisation of Islamic Conference (TPS OIC)
- Malaysia-Australia Free Trade Agreement
- Malaysia-Turkey Free Trade Agreement

Free trade agreements under negotiation are as follows:

- Malaysia-European Union Free Trade Agreement
- European Free Trade Association (EFTA)
- Regional Comprehensive Economic Partnership (RCEP)
- Hong Kong
- Iran
- Sri Lanka

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 Petroliaam 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 technology-intensive and involve high technology.

In line with the government's plan for the implementation of the NEM, the Prime Minister has liberalized major sectors of the economy through the years, namely, the services sector, the financial services sector as well

as the capital market. One significant step taken was the deregulation of the Foreign Investment Committee's investment guidelines from 30 June 2009.

Some of the liberalizations initiated by the Malaysian government include:

### **Manufacturing sector**

Equity holdings in manufacturing companies licensed by MITI are allowed 100% foreign participation.

### **Financial sector**

The limit on foreign equity ownership of investment banks, Islamic banks, insurance companies and takaful operators is up to 70%. Additionally, 100% foreign ownership was allowed for fund management companies and up to 70% foreign ownership for unit trust management companies and stockbrokers.

100% foreign equity ownership is allowed for unit trust management companies and new foreign unit trust management companies may also enter Malaysia. For credit rating agencies, equity shareholdings will be liberalized from 1 January 2017.

Fully foreign owned international credit rating agencies may also enter Malaysia from that date.

### **Services sub-sectors**

27 services sub-sectors were liberalized in 2009 with no equity conditions imposed. These sub-sectors were in the areas of ICT, education and training, healthcare, welfare, logistics, tourism and business services.

There was further liberalization (in phases) in 2012 of 18 services Subsectors including telecommunications, departmental and specialty stores, private hospital services, medical and dental specialist services, accounting and taxation, legal services, courier services; education and training services.

In addition to relaxation for foreign equity interest, the government has also relaxed the requirements for Bumiputra equity interest. With the repeal of the Guidelines for the Acquisition of Interest, Mergers and Takeovers by Local and Foreign Interest with effect from 2009, the Foreign Investment Committee (FIC)

no longer imposes the requirement of at least 30% Bumiputra equity in an acquired Malaysian company.

Notwithstanding the above, strategic sectors of national interest will continue to be safeguarded through sector regulators. Companies in sectors such as water, telecommunications, ports and energy continue to be subject to equity conditions as imposed by their respective sector regulator.

Such 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 capitalizing on this platform of liberal market-friendly policies. Malaysia is now better placed alongside its regional peers in attracting foreign investments and providing a business friendly environment for high technology, creative and value add sectors.

### **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 nationalization and expropriation
- Ensure prompt and adequate compensation in the event of nationalization 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(1.1) for list of countries with which Malaysia has signed IGAs.

### **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 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.

### **Taxation policy**

The current corporate tax rate is 24%.

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.

## Tax incentives

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. Tax incentives to promote investments in Malaysia are generally in the form of tax exemptions on profit, capital based incentives in the form of allowances or deductions based on the quantum of capital expenditure incurred.

Examples of tax incentives available are as follows:

### **Pioneer status (PS) and investment tax allowance (ITA)**

PS incentive is an exemption from income tax on 70% of statutory income (adjusted income after deducting depreciation allowances) for a period of five years. ITA is an allowance of 60% of qualifying capital expenditure (QCE) incurred on a building or plant and machinery for a period of five years. ITA is an alternative incentive to PS.

Companies in the manufacturing, agricultural, hotel and tourism sectors or any other industrial or commercial sector that participates in a promoted activity of producing a promoted product may be eligible for the PS or ITA incentive when qualifying conditions are met.

There are also enhanced PS and ITA incentives available for companies undertaking projects in promoted products or activities where the government intends to further expedite growth. Enhanced PS usually takes the form of a full tax exemption whilst ITA is given on 100% of QCE. Currently, eligible projects range from projects of national and strategic importance, high technology, research & development, healthcare, education, to those undertaking green technology activities such as energy conservation and generation of energy using renewable resources.

Enhanced PS and ITA incentives are also given to MSC (Multimedia Super Corridor) status companies. MSC 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. MSC status companies are situated in special zoned areas in Malaysia.



### Islamic financial services sector

There are also an array of incentives available in furtherance of the government's objective of developing Malaysia into a leading international Islamic Financial Centre. These range from tax deduction given for issuance costs of various Islamic securities to tax exemptions granted for fees earned from management of funds in accordance to syariah principles.

### Principal hub

The Malaysian government has redefined the incentives available for regional operations with the introduction of the customised principal hub incentive. It replaces the existing incentive schemes for International Procurement Centres, Regional Distribution Centres and Operational Headquarters which was officially terminated on 30 April 2015.

A principal hub is a locally incorporated company which uses Malaysia as a base for conducting its regional and global businesses and

operations through management, control and support of key functions. These include management of risks, decision making and strategic business activities such as trading, finance, management and human resource.

Income tax at tiered rates (0%, 5%, or 10%) is given for a period of up to ten years, subject to conditions being met (for applications from 1 May 2015 to 30 April 2018). Other available non-fiscal incentives available include:

- No equity/ownership conditions.
- Foreign exchange administration flexibilities and expatriate positions.
- Customs duty exemption for raw materials, components, or finished products brought into free zones, licensed and bonded warehouses for production or repackaging, cargo consolidation, and integration before distribution to its final customers for goods-based companies.

### “Pre-packaged” incentives

As part of the Government's efforts to attract high quality investments, specially “pre-packaged” incentives are available to companies resident in Malaysia carrying on an “approved business”. An “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.

**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 established:

| Economic Region   | Location  |
|---|---|
| 1. Iskandar Malaysia<br>( <a href="http://www.iskandarmalaysia.com.my">www.iskandarmalaysia.com.my</a> )                  | Southern Johor  |
| 2. Northern Corridor Economic Region<br>( <a href="http://www.koridorutara.com.my/">http://www.koridorutara.com.my/</a> ) | States of Perlis, Kedah, Penang and northern Perak                      |
| 3. East Coast Economic Region<br>( <a href="http://www.ecerdc.com.my">www.ecerdc.com.my</a> )                             | States of Kelantan, Terengganu, Pahang and district of Mersing in Johor |
| 4. Sabah Development Corridor<br>( <a href="http://www.sedia.com.my/">www.sedia.com.my/</a> )                             | Western, central and eastern regions of Sabah                           |
| 5. Sarawak Corridor of Renewable Energy<br>( <a href="http://www.sarawakcore.com.my">www.sarawakcore.com.my</a> )         | Central Sarawak   |

There is also the Greater Kuala Lumpur (KL) region, a 2,793 sq km area encompassing KL city and the surrounding metropolitan areas, which has been earmarked as one of the 12 NKEAs under the ETP. The overall aim for this NKEA is to transform Greater KL into a world class metropolis that will boast top standards in all areas, from business infrastructure to liveability.

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 (PS, ITA, etc.) and the Income Tax Act 1967, special incentives which are customized for the purpose of each development region have been (or will be) developed. To date, special legislation has been enacted for Iskandar Malaysia and the East Coast Economic Region.

## ***Principal government agencies***

See Appendix A(1.2) 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

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## ***Business formation: types of business entities***

### **Types of entity**

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

#### **Company**

Effective 31 January 2017, companies are governed by the new Companies Act 2016, which provides for three types of companies:

1. Company limited by shares;
2. Company limited by guarantee; or
3. 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)**

LLP is an alternative business vehicle regulated under the Limited Liability Partnerships Act 2012, which combines the characteristics of a company and a conventional partnership.

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. An 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.

An 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 Companies Commission Malaysia (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.

**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 that 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 a Representative / Regional Office.

**Representative/Regional office**

The representative regional office does not undertake any commercial activities and only represents its head office/principal to undertake designated functions. The representative/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 2016. 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 Initiatives<sup>1</sup> (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 the 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
- Liberalization of the services sector which opens markets to foreign investment while encouraging competition.

The Government also introduced the new Companies Act 2016. This replaces the 1965 Act, which had been in place for over 50 years. The new Act will facilitate and modernise the legal framework on how companies are incorporated, organised and managed in Malaysia. It will be implemented in stages, beginning from 31 January 2017.

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 liberalization; 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;
- Approving 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.

In striking a regulatory balance between under and over-regulation, SC's regulatory framework will increasingly feature a more outcomes-based design, favouring broad-based standards over prescriptive, detailed rules.

Wherever possible, SC is also simplifying and streamlining regulation to foster an innovative and vibrant capital market environment.

The SC together with the national stock exchange, Bursa Malaysia, continues to undertake regulatory reforms to enhance market efficiency, encourage innovation to broaden the market while emphasising good governance and conduct. Amongst its recent initiatives include:

- Introduction of the Peer-to-Peer (P2P) Lending and Equity Crowdfunding Framework
- Launch of new Corporate Governance (CG) Code
- Development of a new private market, a platform specially designed for SMEs to access to capital on the local bourse

## 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 two 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 the fund-raising framework launched by the SC and Bursa Malaysia on 8 May 2009, "rules and processes for equity", fund-raising has been streamlined in order to provide

greater certainty, shorter time-to-market and lower regulatory costs. Under the 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 raisings.”<sup>2</sup>

### Bursa Malaysia Derivatives Berhad

Exchange of financial and commodities futures in Malaysia is conducted through Bursa Malaysia Derivatives Bhd, a futures 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 competition, 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). The Malaysian Competition Commission, an independent body established under the CCA is tasked with enforcing the CA. The commission is responsible for investigating complaints on anti-competition behaviours, carrying out market reviews and imposing penalties on offenders.

## ***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.

## ***Price control and anti-profiteering***

The Price Control and Anti-Profiteering Act 2011 (PCAPA) was enacted to curb profiteering by penalizing businesses that make “unreasonably high profits” as a result of the implementation of goods and services tax (GST). The act came into force when GST was implemented on 1 April 2015.

Subsequent to the implementation of GST, a new Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 (PCAP 2016) was introduced to replace all earlier regulations, with effective from 1 January 2017.

PCAP 2016 applies only to food and beverages, and household goods. It also implements a formula-based approach to determine unreasonably high profits. This measure was taken to curb exorbitant price hikes in household items by unscrupulous businesses.

The method of determining high profit is done using either the mark-up percentage or the margin percentage of the goods sold or offered using the prescribed formulas.



## ***Mergers and acquisitions***

The regulatory framework for take overs and mergers in Malaysia was revised on 15 August 2016 with the revocation of the Malaysian Code on Take-Overs and Mergers 2010 (Old Code). In its place, the Minister of Finance prescribed the Malaysian Code on Take-Overs and Mergers 2016 (New Code), a legislative supplement issued under the Malaysian Capital Markets and Services Act. The Rules on Take-Overs, Mergers and Compulsory Acquisition 2016 (Rules) was also issued contemporaneously by the SC.

The New Code consists of 12 overarching general principles which must be observed and complied with by all persons engaged in any take-over or merger transaction. The Rules are the equivalent of the superseded practice notes that set out the operative provisions for take-overs.

The SC stated that the New Code and Rules are intended to “facilitate market activities in a fast changing environment, whilst ensuring appropriate shareholder protection” and to ensure that the take-over framework “will be facilitative to commercial realities while providing protection to shareholders where required”.

Some of the key changes under the Rules and New Code are as follows:

- Removal of the requirement of a minimum 50% shareholding for parties intending to initiate a take-over scheme (e.g. arrangement, compromise, amalgamations and selective capital reductions). Previously, any person intending to initiate a takeover scheme must hold at least 50% of the voting share or right in the target company in order to do so.
- In the case of unlisted public companies, the take-over framework will only apply to sizeable unlisted public companies having more than 50 shareholders and net assets of RM15 million or more. Business trusts listed in Malaysia are also subject to the framework.
- In respect of an offeree with primary listing on both a stock exchange in Malaysia and outside of Malaysia, and which as a result may be subject to dual jurisdiction of the SC and the foreign take-over regulator, early consultation with the SC is required so that guidance may be given on how to resolve any conflicts between the relevant regulatory frameworks. Where the offeree has a primary

listing on a foreign stock exchange and a secondary listing in Malaysia, the Rules provide that the SC may consider disapplying the Rules, provided that the applicant is able to demonstrate that the relevant foreign take-over regulation accords an equivalent level of protection to offeree shareholders as provided under the Rules.

- In mandatory take-overs arising from an arrangement, agreement or understanding to control between offeror and persons acting in concert (PACs), the offer price shall be the higher of the highest purchase price paid by the offeror and PACs, or the volume weighted average traded price (VWAP) of the offeree for the last 20 market days prior to the triggering of the mandatory take-over offer. The SC has the discretion to disregard any unusually high or low traded prices within the relevant period for the VWAP.

For more information on the Rules and to view the details of the 12 general principles outlined in the New Code, visit [www.sc.com.my/legislation-guidelines/take-overs-code/](http://www.sc.com.my/legislation-guidelines/take-overs-code/)

## 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 Court and Sessions Court have jurisdiction in both civil and criminal matters. The former hears all civil matters where the claim does not exceed RM100,000. The latter has jurisdiction to try all civil actions or suits where the claim does not exceed RM1,000,000, 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 Court in civil and criminal matters. They have unlimited civil jurisdiction, however they generally confine themselves to matters on which the Magistrates and Sessions Courts have no jurisdictions, i.e. civil actions where the claim exceeds RM1,000,000 (other than actions involving motor vehicle accidents, landlord and tenant disputes and distress) and criminal cases where the offences carry the death penalty.

The Court of Appeal generally hears all civil appeals against decisions of the High Courts except where it is 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).

Besides the ordinary courts of law, there are also scores of specialized statutory tribunals, for example the Industrial Court, Labour Court and the Tribunal for Consumer Claims. These quasi-judicial bodies serve to provide an alternative, inexpensive and expedited means to settle disputes between parties within their specialised jurisdictions.

### 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 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organization (WTO), and a signatory to the Paris Convention and Berne Convention which govern 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 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<br>Patents Regulations 1986  | Patents  |
| Trade Marks Act 1976<br>Trade Marks Regulations 1997<br>Trade Descriptions Act 2011 | Trade marks  |
| Industrial Designs Act 1996<br>Industrial Designs Regulations 1999                  | Industrial designs   |
| Copyright (Amended) Act 2012<br>Various regulations                                 | Copyrights   |
| Geographical Indications Act<br>2000 Geographical Indications<br>Regulations 2001   | (Upon registration) protection of 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. |
| Layout Designs and Integrated Circuit Act 2000                                      | Layout designs of integrated circuits  |

## 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 Financial Services Act 2013 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) embody the general permissions and directions of the Controller of Foreign Exchange (the Controller).

Some of the controls put into place include:

### Remittances abroad by a resident

A resident is freely permitted:

- To pay in Ringgit (to be converted when remitting abroad) to a non-resident for settlement of domestic or 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 (other than derivatives), including settlement of import of goods and services.

### Investments abroad by a resident

Investment assets in foreign currency assets are subject to the following:

- A resident without domestic Ringgit credit facilities is free to invest any amount abroad.
- A resident entity with domestic Ringgit borrowing is able to invest any amount abroad from conversion of Ringgit up to RM50 million per annum (based on aggregate borrowing of entities within its group of entities or direct shareholder). 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.
- An individual with domestic credit facilities is able to invest any amount abroad from conversion of Ringgit up to RM1 million per annum.

### Borrowings in foreign currency by a resident

A resident company is free to:

- borrow any amount in foreign currency from its resident and non-resident entities within its group of entities or direct shareholder or licensed onshore banks. However, where a non-resident special purpose vehicle is set up solely to obtain borrowings from any person which is not part of the resident entity's group of entities, the borrowings are 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.

### Borrowings in Ringgit by non-residents

Non-residents are permitted to borrow any amount of Ringgit credit facilities from residents 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 is allowed to open foreign currency accounts with licensed onshore banks, or non-resident financial institutions for any purpose. For resident exporters, export proceeds must be credited into foreign currency accounts maintained with licensed onshore banks only and where the proceeds is from export of goods, only up to 25% of the proceeds can be retained in foreign currency with the balance converted into Ringgit. 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.







# *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 (Employment Act) 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 (the 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 (the Act) and the Industrial Relations Regulations 1980, form the legal framework within which the industrial relations system in Malaysia operates. The objective of the 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 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 Employees 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;
- *Occupational 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 Organization.

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 1959. This 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](http://www.mida.gov.my) a guide on the 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 60 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:

|  |  |  |                |                 |
|--|--|--|----------------|-----------------|
|  | Malaysian citizens and permanent residents (mandatory) | Expatriates and foreign workers <sup>2</sup> |                |                 |
|  | % of contribution of employee's wages (minimum)        |  |                |                 |
| Contribution by                                | Employer   | Employee                                     | Employer       | Employee        |
| Till age 60 (Income ≤ RM5,000) <sup>3</sup>    | 13%  | 8% <sup>1</sup>                              | RM5 per person | 8% <sup>1</sup> |
| Till age 60 (Income > RM5,000)                 | 12%  | 8% <sup>1</sup>                              | RM5 per person | 8% <sup>1</sup> |
| Age 60 till 75                                 | 6%   | 4% <sup>1</sup>                              | RM5 per person | 4% <sup>1</sup> |
| Age 60 till 75 (Income ≤ RM5,000) <sup>3</sup> | 6.5%   | 4% <sup>1</sup>                              | RM5 per person | 4% <sup>1</sup> |

1. From 1st March 2016 to December 2017 the EPF contribution for employee portion is 8% / 4% with option to contribute at 11% / 5.5%. The EPF rate will revert back to 11% / 5.5% effective January 2018.
2. Not required to contribute to EPF, but can elect to contribute.
3. 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 Organization (SOCSO)**

The Social Security Organization is an insurance scheme that cover Employment Injury and Invalidity Pension Scheme. All employees are covered by the Employment Injury Insurance Scheme (EIIS) and the Invalidity Pension Schemes (IPS), which are administered by the Social Security Organization (SOCSO). Employees falling within the schemes will continue to remain within the schemes. 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 RM69.05 and RM19.75 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 RM49.40 .

### **Human Resources Development Fund (HRDF)**

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

The employer that fall under the industries listed by HRDF are required to register with the HRDF and contribute in respect of employees who are Malaysian citizens.

Currently there are 63 sub sectors covered by HRDF under Manufacturing, Services Mining and Quarrying.

HRDF has standardized the minimum number of local employees to register with HRDF to 10 for all employers under the existing coverage of 63 sub sectors. The contribution rate will be at 1%.

HRDF will allow voluntary registration to all employers under the existing 63 subsectors that employ 5 to nine local employee to contribute HRDF at 0.5% of their monthly wages.

List of Industry covered under HRDF

#### **1. Manufacturing Sector**

- Electrical and Electronic
- Metal Product
- Mineral Product
- Food and Beverages
- Transport Equipment
- Plastic
- Wood & Wood based and Cork
- Machinery
- Industrial Chemicals
- Paper and Pulp
- Iron and Steel
- Rubber Product
- Furniture and Fixtures
- Printing and Publishing
- Textile and Apparel
- Petroleum and Coal
- Optical and Photography
- Glass and Glass Product
- Petroleum Refinery
- Footwear
- Ceramic
- Tobacco
- Leather

#### **2. Mining & Quarrying Sector**

- Petroleum and gas extraction
- Mineral and stone quarrying

### 3. Service Sector

- Energy
- Hypermarket/Supermarket/Departmental Store
- Direct Selling
- Commercial Land Transport and Railway Transport Services
- Warehousing Services
- Port Services
- Hotel Industry
- Freight Forwarding
- Shipping
- Air Transport
- Tour Operating Business (In-bound only)
- Postal or Courier
- Telecommunication
- Research & Development
- Engineering Support & Maintenance Services
- Security Services
- Computer Services
- Advertising
- Private Hospital Services
- Higher Education
- Training
- Gas, steam and air-conditioning supply
- Water treatment and supply
- Sewerage
- Waste management and material recovery services
- Food and beverage services
- Production of motion picture, video and television programme, sound recording and music publishing
- Information service
- Tourism enterprise
- Building and landscape services
- Event management services
- Early childhood education
- Health support services
- Franchise
- Sale and repair of motor vehicles
- Private broadcasting services
- Driving school
- Veterinary services



## 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.
- Department of Immigration Malaysia (the expatriate committee) – employment in sectors other than the above.

The following minimum paid-up share capital requirements must be fulfilled before an application for an expatriate position can be processed by the expatriate committee:

100% Malaysian owned company:  
**RM250,000**

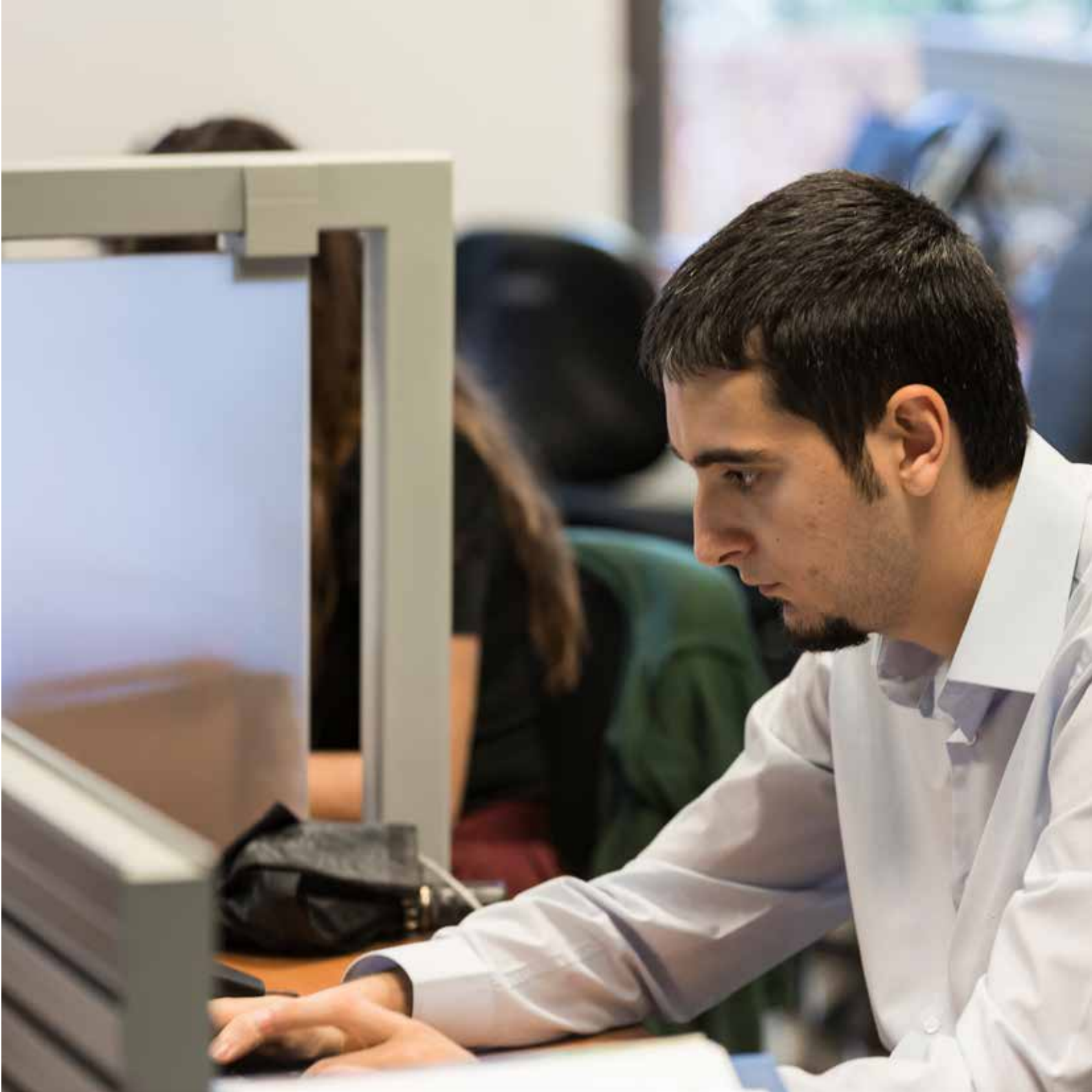
Malaysian and foreign owned company:  
**RM350,000**


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 eventually. The Malaysian government is desirous that Malaysians are eventually trained and employed at all levels of employment.





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# ***Chapter 4***

# ***Audit requirements and accounting practices***

Statutory requirements for Malaysian  
incorporated companies

Statutory requirements for foreign companies  
carrying on business within Malaysia

Financial Reporting Framework in Malaysia

Auditing requirements

## ***Statutory requirements for Malaysian-incorporated companies***

### **Accounting and other records**

Every company incorporated under the Companies Act 2016 is required to keep 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 are the responsibility of the company's directors.

These accounting and other records must be kept at the company's registered office (which must be in Malaysia) or such other place as the directors think fit. Accounting and other records relating to operations outside Malaysia may be kept at a place outside Malaysia, provided such accounting and other records are sent to and kept at a place in Malaysia. The accounting and other records must be made available for inspection by the directors at all times.

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

### **System of Internal Control**

The directors of a public company or a subsidiary of a public company shall have in place a system of internal control that will provide reasonable assurance that the assets of the company are safeguarded against loss from unauthorised use or disposition, to give a proper account of assets and all transactions are properly authorised and that the transactions are recorded as necessary to enable the preparation of true and fair view of the financial statements of the company.

### **Financial statements**

The directors must present a set of financial statements in accordance with the approved accounting standards issued or adopted by Malaysian Accounting Standards Board (MASB) and the requirements of the Companies Act.

The financial statements or where applicable consolidated financial statements for a financial year shall give a true and fair view of the financial position as at the end of the financial year and the financial performance for the financial year of the company or where applicable of the company and all its subsidiaries which are dealt with in the consolidated financial statements as a whole.

The financial statements shall contain, in the notes to the statements, the information as the Registrar may determine and may include but not limited to the directors' remuneration, the directors' retirement benefits, compensation to directors for loss of office, loans, quasi-loans and other dealings in favour of directors, auditors' remuneration for their service as auditors given by or from the company or from any subsidiary of the company.



### **Directors' report**

The matters required to be covered in the directors' report are set out in Section 253 and Fifth Schedule of the Companies Act 2016. A directors' report must be attached to every financial statements.

A directors' report may include a business review.

### **Duty of Circulation and Lodgement of Financial Statements and Directors' reports**

The directors of every company must prepare financial statements within 18 months from the date of incorporation and, subsequently within 6 months of the company's financial year end. Every company must circulate a copy of its financial statements and directors' report for each financial year to shareholders, auditors, debenture holders and every person who is entitled to receive notice of general meetings.

For a private company, the financial statements and directors' report must be circulated within 6 months of the company's financial year end and must be lodged with the Registrar within 30 days from the date the financial statements and the directors' reports are circulated to its members.

For a public company, the financial statements and directors' report must be circulated at least 21 days before the annual general meeting and must be lodged with the Registrar within 30 days from its annual general meeting.

All amounts shown in the financial statements and directors' reports lodged with the Companies Commission of Malaysia (CCM) shall be presented in Malaysian currency.

### **Statement by directors on the financial statements**

A statement signed by at least two directors and in the case of a sole director, by that director in accordance with the resolution of the Board of director(s) stating whether in their or his opinion the financial statements or where applicable the consolidated

financial statements is or are drawn up, in accordance with the applicable accounting standards, to give a true and fair view of the financial position and financial performance of the company and of the group.

### **Statutory declaration by the director or person responsible for financial management**

In addition, a statutory declaration by a director or where the director is not primarily responsible for the financial management of the company, by the person responsible for the financial management of the company, setting forth that director's or person's opinion as to the correctness of the financial statements and attested by the Commissioner for Oaths, must also be attached to the financial statements.

## ***Statutory requirements for foreign companies carrying on business within Malaysia***

### **Auditors' report**

The financial statements should be duly audited by an approved auditor.

The auditors' report shall state whether the financial statements have been properly drawn up in accordance with the applicable approved standards and the Companies Act 2016 so as to give a true and fair view of the group's and the company's affairs.

### **Additional disclosure requirements for public listed companies**

Public listed companies are also required to comply with the disclosures required by the Listing Requirements of Bursa Malaysia Securities Berhad in their annual reports. The timeline for filing annual reports with the exchange is within 4 months from close of financial year.

Public listed companies are also required to provide quarterly report on the statement of profit and loss and other comprehensive income, statement of financial position, statement of cash flows and explanatory notes to their shareholders within 2 months after the end of each quarter. Guidelines for disseminating material information on public listed companies are set out in the Listing Requirements of Bursa Malaysia Securities Berhad.

### **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 2016 to register itself with the CCM.

The Companies Act 2016 requires the accounting and other records of a foreign company's operations in Malaysia to be kept in Malaysia that will sufficiently explain the transactions and financial position of the foreign company arising out of its operations in Malaysia and shall cause these records to be kept in such a manner as to enable them to be

conveniently and properly audited. All transactions must be recorded within 60 days of completion.

### **Filing requirements**

A foreign company with operations in Malaysia is required to lodge with the CCM within two months of its annual general meeting a copy of its financial statements and other documents required to be attached to its financial statements 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 financial statements by the law of the place of its incorporation, the company is required to prepare a financial statements containing such particulars as if it were a public company incorporated in Malaysia.

In addition, a foreign company is required to lodge with the CCM a duly audited financial statements and other documents required to be attached with the financial statements and a duly audited statement showing its assets used in Malaysia and its liabilities arising out of its operations

in Malaysia as at the date to which its financial statements was made up, so far as is practicable, complies with the applicable approved accounting standards and which gives a true and fair view of the foreign company's operations in Malaysia.

### **Financial statements**

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

Foreign companies that are listed in Malaysia are required to comply with the disclosures required by the Listing Requirements of Bursa Malaysia Securities Berhad in their annual reports, timeline for filing annual reports and quarterly reports similar to a Malaysian-incorporated company listed in Malaysia.



## Financial Reporting Framework in Malaysia

The MASB has been established as the sole authority for issuing accounting standards and other financial reporting pronouncements in Malaysia. All financial statements prepared pursuant to any law administered by the Securities Commission Malaysia (SC), Bank Negara Malaysia (BNM) and the CCM have to comply with approved accounting standards issued by the MASB.

### MASB Approved Accounting Standards for Entities other than Private Entities

Entities other than Private Entities shall apply the Malaysian Financial Reporting Standards (MFRS) Framework which is identical to the International Financial Reporting Standards (IFRS), with the exception of Transitioning Entities (TEs). TEs are entities subject to the application of MFRS 141 Agriculture and/or IC Interpretation 15 Agreements for the Construction of Real Estate.

TEs shall comply with the MFRS Framework for annual periods beginning on or after 1 January 2018. They may apply the older Malaysian national GAAP (known as Financial Reporting Standards (FRS) Framework) for annual periods beginning before 1 January 2018. An entity that consolidates or equity accounts the TEs are also granted similar exception.

### MASB Approved Accounting Standards for Private Entities

A private entity is a private company as defined in section 2 of the Companies Act 2016 that:

- (a) is not itself required to prepare or lodge any financial statements under any law administered by the SC or BNM; and
- (b) is not a subsidiary or associate of, or jointly controlled by an entity which is required to prepare or lodge any financial statements under any law administered by the SC or BNM.

Notwithstanding the above, a private company that is itself, or is a subsidiary or associate of, or jointly controlled

by, an entity that is a management company as defined in section 2 of the Interest Schemes Act 2016 is not a private entity.

An entity may only be treated as a private entity in relation to such annual periods or interim periods throughout which it is a private entity.

Private entities shall comply with either:

1. Malaysian Private Entities Reporting Standards (MPERS) in their entirety for financial statements with annual periods beginning on or after 1 January 2016. The MPERS is based on the International Financial Reporting Standard for Small and Medium-sized Entities (IFRS for SMEs) issued by the International Accounting Standards Board (IASB) in 2009 and IASB's 2015 Amendments to the IFRS for SME issued in May 2015 except for property development activities; or
2. MFRS in their entirety.
3. FRS in their entirety for financial statements with annual periods beginning before 1 January 2018, only for TEs.

## **Auditing requirements**

### **Auditors**

A company must appoint an auditor for each financial year. The Registrar have the power to exempt any private company from the requirement to appoint an auditor according to the conditions as determined by the Registrar.

The directors of a private company must appoint an auditor at least 30 days before the end of the period for the submission of the first financial statements to the Registrar (for newly incorporated companies) or to fill a casual vacancy the office of auditor. If the directors fail to appoint an auditor, the shareholders must appoint an auditor by ordinary resolution. Auditor must be appointed 30 days before the expiry of the period allowed for lodgement of the previous year's financial statements with the Registrar. If a private company fails to appoint an auditor, the Registrar has the power to appoint one or more auditors upon application in writing from any shareholder of the company.

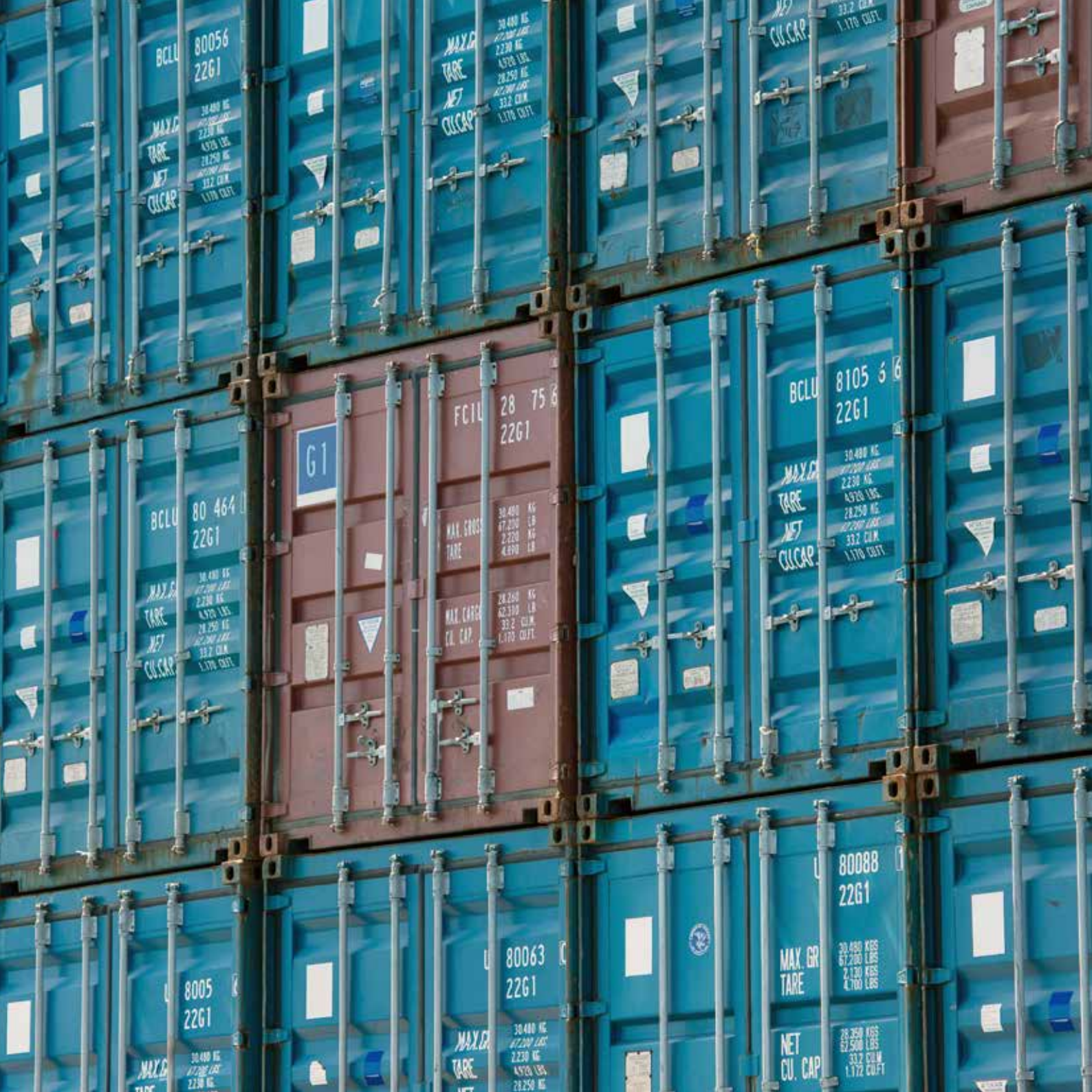
The directors of a public company must appoint an auditor at any time before the first annual general meeting of the company or to fill a casual vacancy the office of auditor. If the directors fail to appoint an auditor, the shareholders must appoint an auditor by ordinary resolution. After the first annual general meeting, the shareholders have the right to appoint an auditor by ordinary resolution at the annual general meeting or when the company fails to appoint an auditor at an annual general meeting. If a public company fails to appoint an auditor, the Registrar has the power to appoint one or more auditors upon application in writing from any shareholder of the company.

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).

### **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

Income tax

Corporate tax system

Tax administration

Transfer pricing

Business reorganizations

## Principal taxes

The principal taxes are shown below:

### Taxes on income

Income tax  
Petroleum income tax

### Taxes on transactions

Customs and excise duties  
Goods and Services 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, a Limited Liability Partnership, which is given 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.
- 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, YA 2017 is the year ending 31 December 2017. The basis period for a business source is normally the financial year ending in that particular YA. For example the basis period for YA 2017 for a

business which closes its accounts on 30 June 2017, is the financial year ending 30 June 2017. All non-business sources of income of a company are also assessed on the basis of the financial year.

### **Taxation of shareholders**

Malaysia is on a single-tier system. 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.

### **Foreign corporations – liability to tax**

Foreign corporations (similar to 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 24%. 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 (%) (YA 2017) |
|-------------------|---------|--------------------|
| On the first      | 500,000 | 18                 |
| In excess of      | 500,000 | 24                 |

**Non-resident companies** are taxed at the rate of 24% on their business income.

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 (%) |
|-------------------------------------|----------|
| Royalty                             | 10       |
| Rental of moveable property         | 10       |
| Technical or management service fee | 10       |
| Interest                            | 15       |
| Dividends                           | Exempt   |
| Income other than the above         | 10       |

**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 exempted 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)

IB 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 IB. However, an office may qualify for CA if it forms part of an IB 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; 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 IB allowances.

Where more than one-tenth of the floor space of a special industrial building is used for letting of property, only the part of the building not used for purposes of letting of property qualifies as industrial building.

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

#### **Rates of IB allowance**

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 include:

- 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 RM1,300 each are eligible for 100% capital allowance, subject to a cap of RM13,000 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.

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 CA 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.

### **Disposals within 2 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. 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

Group relief is available to all locally incorporated, resident companies that fulfilled certain conditions. Companies that qualify were allowed to surrender a maximum of 70 % of its adjusted loss for a YA to one or more related companies. 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 (RPGT), no tax is imposed on capital gains. For more details on 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 YA not later than 30 days before the beginning of the basis period. However, 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).

A company commencing operations in a YA, is not required to furnish estimates of tax payable or make instalment payments if the basis period for the YA 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 public ruling may still appeal against an assessment which is based on the public ruling. All public rulings may be downloaded from the IRB's website at [www.hasil.gov.my](http://www.hasil.gov.my).

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 (TP) legislation**

The basis for determining proper compensation is, almost universally, the arm's length principle which has also been accepted by the IRB.

The arm's length principle was 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 IRB have issued the TP Rules 2012 and the revised TP Guidelines 2012 to give guidance on the arm's length standard that is acceptable to the 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.

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 2017.

### **Advance pricing arrangements (APA)**

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 IRB has issued the APA Rules 2012 and APA Guidelines 2012 to give guidance on the matter.

## ***Business reorganizations***

### **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 of 24% as from the date of transfer, as opposed to being taxed at graduated rates for personal tax. Unutilized business losses and CA 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 % 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.

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% or more of the other company or where a third company owns 90% 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

Exemptions and concessional tax treatment for foreign nationals

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***

Income is assessed to tax on a current year basis. All income of persons other than a company, cooperative, limited liability partnership or trust body, are assessed on a calendar year basis. The year of assessment (YA) is the year coinciding with the calendar year, for example, the YA 2016 is the year ending 31 December 2016.

## ***Residence status of individuals***

An individual is regarded as a 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 the following reasons forms part of the shorter or longer period if he is in Malaysia immediately prior to and after that temporary absence:
  - i) absence connected with his service in Malaysia and owing to service matters or attending conferences or seminars or study abroad;
  - ii) absence owing to ill-health involving himself or any immediate member of the family; and
  - iii) absence in respect of social visits not exceeding 14 days in the aggregate;
- 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 the following:

- a) wages, salary, leave pay, fees, commissions, bonuses, gratuities, perquisites (Appendix E(6.2)) or allowances (whether in money or otherwise),
- b) benefits in kind (Appendix E(6.2)),
- c) value of living accommodation provided by the employer for the employee,
- d) receipts from unapproved pension or provident fund arising from contributions made by the employer in respect of that employee, and
- e) compensation for loss of employment

Restricted exemptions are available in respect of some perquisites and benefits-in-kind (Appendix E(6.2)).

## ***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 the aggregate period(s) of employment in a calendar year do not exceed 60 days or a continuous period of employment overlapping two calendar years does not exceed 60 days. If a 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 YA 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. We understand that the commencement criteria has been extended to 2020. The reduced tax rate is only applicable in respect of employment income from that designated company beginning from 1 January 2010.

## ***Deductions***

- 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 with the employment income attributable to the number of days the employment is exercised in Malaysia.

### **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). 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 deductible but limited to 7% of aggregate income.

### **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.

The above rebate granted is deducted from tax charged and any excess is not refundable.

## ***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 YA (year ended 31 December) is due for submission not later than 30 April following the year of assessment for individuals without business income, and 30 June following the year of assessment for individuals with business income. Taxpayers now have the option of submitting their returns manually or by “e-filing” through the Inland Revenue Board’s website.

Upon submission of the Return Form, the taxpayer is deemed to have been 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 or bi-monthly instalment plan issued by the Inland Revenue Board (IRB). Under the SAS, the balance of tax for a year of assessment is due and payable on the following dates (the due dates) following that YA:

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

## ***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.







# *Chapter 7*

## *Other taxes*

Sales tax

Service tax

Goods and services tax

Import duties

Export duties

Excise 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 has been repealed and replaced with a single broad based Goods and Services Tax (GST) on 1 April 2015.

## ***Service tax***

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

Service tax has been repealed and replaced with a single broad based Goods and Services Tax (GST) on 1 April 2015.



## Goods and Services Tax

The Goods and Services Tax (GST) was implemented in Malaysia effective 1 April 2015 at the current prevailing standard rate of 6%.

### Scope of tax

GST shall be charged on all the taxable supply of goods and services made in the course or furtherance of any business in Malaysia by a taxable person unless the supply qualifies for zero-rating (GST is at 0%), exempt (not subject to GST) or supply is granted relief. GST is also charged on importation of goods at the point of entry into the Country. All imported services acquired for the purpose of business (except exempt supply of services) that are consumed in Malaysia will be subject to GST based on a self-accounting mechanism

### GST registration

Businesses making taxable supplies (i.e standard rated and zero rated supplies) in Malaysia must register for GST where the annual sales turnover exceeds RM500,000. Businesses who make taxable supplies below the

threshold is not required to register but may register on a voluntary basis.

On the other hand, a person who makes wholly zero-rated supplies may request for approval from the Director General of the Royal Malaysian Customs to be exempted from GST registration.

Where an overseas company has liability to register for GST in Malaysia, it has to appoint an agent in Malaysia for GST registration purposes.

### Types of supply

#### *Standard rated supplies*

Taxable supply of goods or services that are subject to GST at 6%. Example of standard rated supplies are sale of commercial properties, construction services, and supply of professional consultancy services.

#### *Zero-rated supply*

Taxable supply of goods or services that are subject to GST at 0%. Example of zero rated supplies

are exported goods, international transportation of passengers, medicines in the National Essential Medicines List (NEML) and international services. The detailed list of zero rated supplies are provided in the GST (Zero Rated Supply) Order 2014.

#### *Exempt supply*

Supply of goods that are not subject to GST would be regarded as exempt supplies. Example of exempt supplies are sale of residential properties, private healthcare services, and private education. The detailed list of exempt supplies are provided in the GST (Exempt Supply) Order 2014.

#### *Supply granted relief*

GST relief is granted by way of relief from payment of GST or relief from charging GST. Such supplies granted relief are prescribed in the GST (Relief Supply) Order 2014. In certain particular cases where the Order does not provide for, taxable persons may apply to the Minister for relief from payment or charging of tax.

**Place of supply**

In determining if a business makes taxable supplies in Malaysia, the place of supply rules is relied upon. Supply of goods is regarded as made in Malaysia if the goods are in Malaysia when the supply takes place. This applies to goods that remain in Malaysia and goods that are exported out of Malaysia. For supply of services, it is regarded as made in Malaysia if the supplier has a business establishment or fixed establishment in Malaysia.

**Time of supply**

The general time of supply rules would be the earlier of when:

- (i) Goods removed / made available or services performed;
- (ii) Tax invoice is issued; or
- (iii) Payment is received.

Effective 1 January 2017, the time of supply for imported services has been revised to be the earlier of when:

- (a) Payment is made by the recipient; or

- (b) Date when any invoice is received (previously was the date of invoice) from the overseas supplier.

**Value of supply**

Where the supply is for a consideration in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the consideration. However, if the supply is for a consideration not in money, the value of supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that consideration.

**Issuance of tax invoice**

A taxable person is required to issue valid tax invoices which includes all the particulars prescribed under Regulation 22 of the GST Regulations 2014 for all the standard-rated supplies made by him. A tax invoice is not required to be issued for zero rated supplied.

**Input tax claim**

Input tax credit can only be claimed by a GST registered person when he holds a valid tax invoice and the following conditions are satisfied –

- It is in the course or furtherance of business;
- It is attributable to the making of taxable supplies; and
- It is not disallowed under the GST Regulations.

Some examples of disallowed input tax purchases are purchase, importation, hiring, repair, maintenance and refurbishment of passenger motor car, club subscription, benefits for employee's family members, entertainment to non-employees or non-customer, etc.

A GST registered person who makes both taxable and exempt supplies is only allowed to claim input tax credit attributable to its taxable supplies. Input tax that is attributable to both taxable and exempt supplies has to be apportioned using the prescribed formula (or other formula as approved by the Royal Malaysian Customs Department).

### **Special schemes**

There are special schemes available for selected businesses such as manufacturing, toll-manufacturing, second-hand car trading, jewellery manufacturing, farming and warehousing that can help relieve cash flow problems arising from charging or paying GST. However, these schemes are subject to qualifying conditions.

### **Filing of GST returns and payment of taxes**

#### *Taxable period*

A taxable person making annual taxable supplies of RM5 million or more would be on a monthly taxable period whilst a taxable person making annual taxable supplies of less than RM5 million would be on a quarterly taxable period.

#### *Filing of GST return*

GST returns can be filed manually using the GST-03 form or online at the Taxpayers Access Point (TAP) portal.

#### *Due date*

The due date for filing of GST return and GST payment (if any) is by the last day of the month following the end of the taxable period.

#### *Refund*

For taxable persons that are on a refund position, the refund is to be made within:

- 14 working days from the date of the online submission of the GST return; or
- 28 days from the date of the manual submission of the GST return.

However, the refunds are generally subject to verification which may prolong the period in which the fund is granted.

### **Records keeping**

The records for all transactions which affect or may affect the tax liability must be retained by all the taxable persons. This includes –

- All records of goods and services supplied by or to that taxable person including tax invoices, invoices, receipts, debit notes, credit notes and export declaration forms
- All records of importations of goods
- All other records as the Director General may determine

The records above must be kept for a period of 7 years in either Malay or English language.

## ***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.



## ***Export duties***

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

## ***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.

# 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.

## 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 RM1,000 or any fraction thereof based on consideration or value, whichever is greater. The Stamp Office generally adopts one of the 3 methods for valuation of ordinary shares for purposes of stamp duty:

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

**Loan, services and equipment lease agreement**

Stamp duty of 0.5% on the value of the loan/services/lease. However stamp duty may be exempted or stamp duty in excess of 0.1% may be remitted for the following instruments:

**(i) Service agreement (executed on and after 1 January 2011):**

| Stamp duty  |                     |                         |
|---|---------------------|-------------------------|
| All service agreement (one tier)  |                     | Ad valorem rate of 0.1% |
| Multi-tier service agreement  |                     |                         |
| (a) Non-government contract (i.e. between private entity and service providers)   | First level         | Ad valorem rate of 0.1% |
|   | Subsequent level(s) | Up to RM50              |
| (b) Government contract (i.e. between Federal /State Government of Malaysia or State / local authority and service providers) | First level         | Exempted                |
|   | Second level        | Ad valorem rate of 0.1% |
|   | Subsequent level(s) | Up to RM50              |

**(ii) Loan agreement / loan instrument:**

Ringgit Malaysia loan agreements generally attract stamp duty at 0.5%. However, a reduced stamp duty liability of 0.1% is available for loan agreements or loan instrument without security and repayable on demand or in single bullet repayment.

**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.

# Real Property Gains Tax (RPGT)

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 | Companies and other bodies | Individuals (citizens & permanent residents) | Individuals (non-citizens) |
|------------------------------------|----------------------------|--|----------------------------|
| Within 3 years                     | 30                         | 30   | 30                         |
| In the 4th year                    | 20                         | 20   | 30                         |
| In the 5th year                    | 15                         | 15   | 30                         |
| In the 6th year onwards            | 5                          | Nil  | 5                          |

### ***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).

### ***Human Resource Development Fund (HRDF) levy***

Employers engaged in the manufacturing and services sectors that employ more than a specified number of employees must contribute to the HRDF. 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 50 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 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.





# *About PwC*



## *Delivering the value you're looking for*

### **PwC's global network**

PwC firms provide industry-focused assurance, tax and advisory services to enhance value for their clients. More than 195,000 people in 157 countries in firms across the PwC network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

### **PwC in Malaysia**

We have played an integral part in the growth and progress of Malaysia since 1900. Today, we work with many large multinationals, public sector entities and Malaysian companies, delivering solutions to them through our assurance, tax and advisory services.

Our aim is to deliver value to you at all times. How we use our knowledge and experience to deliver that value, depends on what you want to achieve. We'll start by asking questions. Are you looking to build trust? Give your shareholders more value? Or do you want to do something new with your business?

You can expect, when working with anyone of our team of more than 2,200 people in Kuala Lumpur, Pulau Pinang, Ipoh, Melaka, Johor Bahru and Labuan, that we'll get to know you, your business and your goals. That's how we'll help you get there.

### **Assurance**

Our Assurance Group provides assurance on your business' financial performance and operations in these areas:

- Statutory audit
- Internal audit
- Financial accounting
- Non-financial performance and reporting
- Regulatory compliance
- Independent systems and process assurance
- Risk advisory services
- Financial Reporting Standards readiness and conversion

We can also help you improve your external financial reporting and adapt to new regulatory requirements. Our clients are both big and small – but we always tailor our audit approach to meet your needs.

### Tax

Addressing your tax needs is a way of improving your overall business or financial health. Our solution sets include:

- Corporate tax compliance & planning
- International assignments and personal tax compliance
- Corporate services
- Indirect tax
- Transfer pricing and investigations

We work with both organisations and individuals to optimise their tax efficiencies, implement innovative tax planning and maintain compliance.

### Deals services

Our Deals team helps you do better deals and create value through mergers, acquisitions, disposals and restructuring. We help you develop the right strategy before the deal, execute the deal seamlessly, identify issues and points of negotiation and value, and implement changes for improvements after the deal.

### Consulting services

In Consulting, we aim to help you build effective organisations, innovate and grow, reduce costs, manage risk and regulation, and manage talent better. At the end of the day, you work smarter and grow faster.

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# *Appendices*

- A (1.1) Investment guarantee agreements
- (1.2) 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

# APPENDIX A (1.1)

## *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)

## Countries

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

Source: Ministry of International Trade and Industry website at 19 December 2016

# APPENDIX A (1.2)

## *Government departments and agencies*

## Government departments and agencies

**Ministry of International Trade and Industry (MITI)**  
(Kementerian Perdagangan Antarabangsa dan Industri)  
Menara MITI, No. 7,  
Jalan Sultan Haji Ahmad Shah,  
50480 Kuala Lumpur, Malaysia

T: +60 (3) 8000 8000  
F: +60 (3) 6202 3446  
E: [webmiti@miti.gov.my](mailto:webmiti@miti.gov.my)  
W: [www.miti.gov.my/](http://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, Koperasi dan Kepenggunaan)  
No 13, Persiaran Perdana, Presint 2,  
62623 Putrajaya, Malaysia

Hotline: 1800 886 800  
T: +60 (3) 8000 8000  
F: +60 (3) 8882 5762  
W: [www.kpdnkk.gov.my](http://www.kpdnkk.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. This Ministry is the main reference for any query/application relating to foreign participation in wholesale and retail trade.

**Immigration Department**  
(Jabatan Imigresen Malaysia)  
Level 1-7 (Podium) No 15,  
Persiaran Perdana, Precint 2  
62550 Putrajaya.

T: +60 (3) 8000 8000  
W: [www.imi.gov.my/](http://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.

### Ministry of Science, Technology and Innovation

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

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

Malaysian Science and Technology Information Centre:

W: <http://mastic.gov.my/>

This ministry is responsible for promoting awareness, research and development in science and technology

### Ministry of Agriculture and Agro-Based Industry

(Kementerian Pertanian & Industri Asas Tani)  
Blok 4G1 Wisma Tani,  
No.28 Persiaran Perdana  
Presint 4, Pusat Pentadbiran  
Kerajaan Persekutuan  
62624 Putrajaya Malaysia

T: +60 (3) 8870 1000/1400  
F: +60 (3) 8888 6906  
W: [www.moa.gov.my](http://www.moa.gov.my)

The Ministry of Agriculture and Agro-based Industry is responsible for improving the incomes of farmers, livestock breeders and fishermen 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)  
Wisma Sumber Asli, No.25  
Persiaran Perdana, Presint 4,  
62574 Putrajaya, Malaysia

T: +60 (3) 8000 8000  
F: +60 (3) 8889 2672  
W: [www.nre.gov.my/](http://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)

Jalan Sultan Haji Ahmad Shah,  
50480 Kuala Lumpur, Malaysia

T: +60 (3) 6207 7077  
F: +60 (3) 6203 7037  
E: [info@matrade.gov.my](mailto:info@matrade.gov.my)  
W: [www.matrade.gov.my/](http://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 advice. MATRADE is supported by 40 overseas offices around the world.

### Malaysia Productivity Corporation (MPC)

(Perbadanan Produktiviti Malaysia)  
Lorong Produktiviti, Jalan Sultan  
46200 Petaling Jaya, Selangor

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

Ground Floor, 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](mailto:comms@mtdc.com.my)  
W: [www.mtdc.com.my](http://www.mtdc.com.my)

MTDC was set up to promote the commercialization of research and innovation for application and be an Integrated Venture Capital Solutions Provider to encourage 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](mailto:investmalaysia@mida.gov.my)  
W: [www.mida.gov.my/](http://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 19, Menara MIDF, 82,  
Jalan Raja Chulan,  
50200 Kuala Lumpur, Malaysia

T: +60 (3) 2173 8888  
F: +60 (3) 2173 8877  
W: [www.midf.com.my/](http://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)  
Level 1, 3, 4 & 5 Block D4, Complex D,  
Federal Government Administrative  
Centre, 62530 Putrajaya

T: +60 (3) 8000 8000  
F: +60 (3) 8889 2443  
E: [jkkp@mohr.gov.my](mailto:jkkp@mohr.gov.my)  
W: [www.dosh.gov.my/](http://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)  
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 4400  
E: [enquiry@ssm.com.my](mailto:enquiry@ssm.com.my)  
W: [www.ssm.com.my/](http://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](mailto:cau@seccom.com.my)  
W: [www.sc.com.my/](http://www.sc.com.my/)

This statutory body is entrusted with the responsibility of regulating and systematically developing the Malaysia's capital markets. It has direct responsibility in supervising and monitoring the activities of market institutions and regulating all persons licensed under the Capital Markets and Services Act 2007. 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)  
Menara Hasil, Persiaran Rimba Permai, Cyber 8,  
63000 Cyberjaya Selangor

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

(Jabatan Kastam Diraja Malaysia)  
Kompleks Kementerian  
Kewangan No 3,  
Persiaran Perdana,  
Presint 2,  
62596, Putrajaya

T: +60 (3) 8882 2100/2300  
E: [ccc@customs.gov.my](mailto:ccc@customs.gov.my)  
W: [www.customs.gov.my/](http://www.customs.gov.my/)

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

#### **Ministry of Human Resources**

(Kementerian Sumber Manusia)  
Block D3 & D4, Complex D,  
62502, Putrajaya

T: +60 (3) 8000 8000  
E: [akpukk@mohr.gov.my](mailto:akpukk@mohr.gov.my)  
W: [www.mohr.gov.my/](http://www.mohr.gov.my/)

The Labour Department of this ministry is responsible for the enforcement of the Employment Act 1955.

#### **Labuan Financial Services Authority (Labuan FSA)**

Level 17, Main Office Tower,  
Financial Park Complex,  
Jalan Merdeka,  
87000 Labuan, Malaysia

T: +60 (87) 591 200  
F: +60 (87) 453 442  
E: [communication@labuanfsa.gov.my](mailto:communication@labuanfsa.gov.my)  
W: [www.labuanibfc.com/about/2-2/the-regulator.html](http://www.labuanibfc.com/about/2-2/the-regulator.html)

This authority was established as the statutory body responsible for spearheading and coordinating 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

T: +60 (3) 8315 3000  
F: +60 (3) 8315 3115  
E: [cllc@mdec.com.my](mailto:cllc@mdec.com.my)  
W: [www.mdec.my/](http://www.mdec.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.

#### **Talent Corporation Malaysia**

Level 6, Surian Tower  
1, Jalan PJU 7/3, Mutiara Damansara  
47810 Petaling Jaya  
Selangor

T: +60 (3) 7839 7000  
W: [www.talentcorp.com.my](http://www.talentcorp.com.my)

TalentCorp was established on 1 January 2011 under the Prime Minister's Department to formulate and facilitate initiatives to address the availability of talent in line with the needs of the country's economic transformation.



## ***Investment corridors and agencies***

### **Greater Kuala Lumpur (GKL)**

InvestKL

16th Floor, Menara SSM@Sentral,  
No. 7, Jalan Stesen Sentral 5,  
Kuala Lumpur Sentral,  
50623 Kuala Lumpur, Malaysia

T: +60 (3) 2260 2270  
F: +60 (3) 2260 2292  
E: [info@investkl.gov.my](mailto:info@investkl.gov.my)  
W: [www.investkl.com](http://www.investkl.com)

### **Iskandar Malaysia Iskandar Regional**

Iskandar Regional Development  
Authority (IRDA)  
#G-01, Block 8  
Danga Bay, Jalan Skudai  
80200 Johor Bahru

T: +60 (7) 233 3000  
F: +60 (7) 233 3001  
E: [enquiries@irda.com.my](mailto:enquiries@irda.com.my)  
W: [www.iskandarmalaysia.com.my](http://www.iskandarmalaysia.com.my)

### **Malaysia Petroleum Resources Corporation (MPRC)**

Unit 20-11, Level 20, G-Tower,  
199 Jalan Tun Razak,  
50400 Kuala Lumpur

T: +60 (3) 2858 8555  
W: [www.mprc.gov.my](http://www.mprc.gov.my)

### **Northern Corridor Economic Region (NCER)**

Northern Corridor Implementation  
Authority (NCIR)  
Level 20 & 21, Menara KWSP, No.  
38 Jalan Sultan Ahmad Shah, 10050  
George Town, Pulau Pinang

T: + 60 (4) 238 2888  
F: + 60 (4) 238 2998

### **East Coast Economic Region (ECER)**

East Coast Economic Region  
Development Council (ECERDC)  
Kuala Lumpur Office  
Level 22, Menara 3 PETRONAS  
Kuala Lumpur City Centre  
50088 Kuala Lumpur

T: +60 (3) 2035 0021 / 22  
F: +60 (3) 2035 0020  
E: [secretariat@ecerdc.com.my](mailto:secretariat@ecerdc.com.my)  
W: [www.eцерdc.com.my](http://www.eцерdc.com.my)

### **Sarawak Corridor of Renewable Energy (SCORE)**

Regional Corridor Development  
Authority (RECODA)  
6th Floor,  
Wisma Bapa Malaysia,  
Petra Jaya,  
93050 Kuching Sarawak

T: +60 (82) 444 851/ 852  
W: [www.recoda.com.my](http://www.recoda.com.my)

### **Sabah Development Corridor (SDC)**

Sabah Economic Development and  
Investment Authority (SEDIA)  
Lot 1, Wisma SEDIA,  
Off Jalan Pintas-Penampang  
P.O.Box 17251  
88873 Kota Kinabalu, Sabah,

T: +60 (8) 8 450650  
F: +60 (8) 8 450699  
W: [www.sedia.com.my](http://www.sedia.com.my)

## State Economic Development Corporations

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

Level 11, Menara KOMTAR,  
Johor Bahru City Centre,  
80000, Johor Bahru,  
Johor, Malaysia

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

### Kedah

#### Kedah State Development Corporation (STDC)

(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: aduan@pknk.gov.my  
W: www.pknk.gov.my/

### Kelantan

#### Kelantan State Economic Development Corporation

(Perbadanan Kemajuan Iktisad Negeri Kelantan)  
Tingkat 4-11, Bangunan PKINK,  
Jalan Tengku Maharani,  
15710 Kota Bharu,  
Kelantan

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)  
Aras 4-11, Menara MITC, Jalan  
Konvensyen, Kompleks MITC, Ayer  
Keroh, 75450 Melaka

T: +60 (6) 232 4455  
F: +60 (6) 232 4434  
E: info@pknm.gov.my  
W: www.pknm.gov.my/en/

### Negeri Sembilan

#### Negeri Sembilan State Development Corporation

(Perbadanan Kemajuan Negeri, Negeri Sembilan) Peti Surat 158, Jalan  
Yam Tuan, 70710 Seremban, Negeri  
Sembilan Darul Khusus, Malaysia

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

### Pahang

#### Pahang State Development Corporation

(Perbadanan Kemajuan Negeri Pahang)  
16th Floor, Kompleks Teruntum,  
25000 Kuantan, Pahang

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

**Perak**

**Perak State Development Corporation**  
(Perbadanan Kemajuan Negeri Perak)  
No. 1-A, Blok A, Menara PKNP,  
Jalan Meru Casuarina,  
Bandar Meru Raya,  
30020 Ipoh,  
Perak Darul Ridzuan, Malaysia

T: +60 (5) 501 9888  
F: +60 (5) 501 9999  
E: [info@pknpgroup.com.my](mailto:info@pknpgroup.com.my)  
W: [www.pknpp-perak.gov.my/](http://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, Malaysia

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

**Pulau Pinang (Penang)**

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

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

**Sabah**

**Sabah Economic Development Corporation (SEDCO)**  
(Perbadanan Pembangunan Ekonomi Sabah)  
8th, 9th & 10th Floor, Wisma SEDCO,  
Lorong Wawasan Plaza, Off Coastal  
Highway, 88823 Kota Kinabalu, Sabah

T: +60 (88) 266 777  
F: +60 (88) 219 623  
E: [info@sedco.com.my](mailto:info@sedco.com.my)  
W: [www.sedco.com.my](http://www.sedco.com.my)

**Sarawak**

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

T: +60 (82) 416 777  
F: +60 (82) 424 330  
E: [info@sedc.my](mailto:info@sedc.my)  
W: [www.sedc.com.my/](http://www.sedc.com.my/)

**Selangor**

**Selangor State Development Corporation (SSIC)**  
(Perbadanan Kemajuan Negeri Selangor)  
Ibu Pejabat, Laman PKNS,  
No. 2, Jalan Indah 14/8,  
Seksyen 14,  
40000 Shah Alam,  
Selangor Darul Ehsan

T: +60 (3) 5525 0300  
F: +60 (3) 5525 0040  
E: [general@pkns.gov.my](mailto:general@pkns.gov.my)  
W: [www.pkns.gov.my](http://www.pkns.gov.my)

**Terengganu**

**Terengganu State Economic Development Corporation**  
(Perbadanan Memajukan Iktisad Negeri Terengganu)  
Tingkat 14, Menara PMINT,  
Jalan Sultan Ismail,  
20200 Kuala Terengganu

T: +60 (9) 627 8000  
F: +60 (9) 623 3880  
E: [admin@pmint.gov.my](mailto:admin@pmint.gov.my)  
W: [www.pmint.gov.my/](http://www.pmint.gov.my/)

## 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, Malaysia

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

### Malaysian International Chamber of Commerce and Industry (MICCI)

C -08-08, Plaza Mont' Kiara, 2 Jalan  
Kiara, Mont' Kiara, 50480 Kuala  
Lumpur, Malaysia

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

### American Malaysian Chamber of Commerce (AMCHAM)

Suite 6-1A, Level 6  
Menara CIMB  
Jalan Stesen Sentral 2  
KL Sentral, 50470 Kuala Lumpur,  
Malaysia

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

### EU-Malaysia Chamber of Commerce and Industry (EMCCI)

Address: Suite 10.01, Level 10, Menara  
Atlas, 161B Jalan Ampang, 50450  
Kuala Lumpur, Malaysia

T: +60(3) 2162 6298  
F: +60(3) 2162 6198  
E-mail: eumcci@eumcci.com  
W: www.eumcci.com/contact-us

### Japanese Chamber of Trade & Industry, Malaysia (JACTIM)

Suite 6.01, 6th Floor,  
Millennium Office Block, Peti #4,  
160, Jalan Bukit Bintang 55100 Kuala  
Lumpur, Malaysia

T: +60(3) 2142 7106  
F: +60(3) 2142 0483  
E: jactim@jcci.com.my  
W: jactim.org.my

### Federation of Malaysian Manufacturers (FMM)

Wisma FMM  
No. 3 Persiaran Dagang, PJU 9,  
Bandar Sri Damansara,  
52200 Kuala Lumpur

T: +60(3) 6286 7200  
F: +60(3) 6274 1266/7288  
E: webmaster@fmm.org.my  
W: www.fmm.org.my

### Malay Chamber of Commerce Malaysia (MCCM)

(Dewan Perniagaan Melayu Malaysia  
(DPMM))  
No. 33 & 35, Jalan Medan Setia  
1, Plaza Damansara, Bukit Damansara,  
50490 Kuala Lumpur

T: +60 (3) 2096 2233  
F: +60 (3) 2096 2533  
W: www.dpmm.org.my

### The Associated Chinese Chambers 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 Chambers of Commerce and Industry (MAICCI)

JKR 3190, Jalan Ledang,  
Off Jalan Duta,  
50480 Kuala Lumpur

T: +60 (3) 2011 0478  
F: +60 (3) 2011 0477  
E: info@maicci.org.my  
W: www.maicci.org.my/

**The Sabah United Chinese Chambers  
of Commerce (SUCC)**

Gabungan Dewan Perniagaan  
Tionghua Sabah  
Lot A, 9th Floor,  
Wisma Pendidikan,  
Jalan Padang Merdeka,  
88000 Kota Kinabalu,  
Sabah, Malaysia

T: +60 (88) 225 460/255 471

F: +60 (88) 218 185

E: [succc01@gmail.com](mailto:succc01@gmail.com)

W: [www.succc.org](http://www.succc.org)

**Sarawak Chamber of Commerce &  
Industry (SCCI)**

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

T: +60 (82) 237 148

F: +60 (82) 237 186

E: [admin@scci.org.my](mailto:admin@scci.org.my)

W: [www.scci.org.my](http://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. There have been measures taken to open up the Malaysian capital market. Please refer to Chapter 1 ("Foreign Investment") for more details of these measures.

#### Founder shareholders

- Only one founder shareholder is required, individual or body corporate, who need not be Malaysian.
- One resident director is required, who need not be Malaysian but must have valid work permits and a principal residential address within 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                      |
| 24%  | - YA 2016 and subsequent years |

Small and medium scale companies with paid-up capital not exceeding RM2.5 million are subject to income tax at the rate of 18% on chargeable income up to RM500,000. The remaining chargeable income will continue to be taxed at 24%.

- 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 who are registered with the Companies Commission of Malaysia (CCM) can provide assistance with the incorporation and other requirements.
- Incorporation must be submitted to the CCM through an online portal.
- Registration fee is payable, depending on the type of company incorporated.
- With the deregulation of the FIC guidelines announced by the Prime Minister on 30 June 2009, the FIC 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 solvency requirements to be fulfilled. Malaysia has moved 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 in 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 and registered office in Malaysia is required.
- Non-refundable registration fee is payable depending on the amount of share capital of the foreign corporation which will be converted to the equivalent of local currency to determine the registration fee.
- A maximum registration fee of RM70,000 is payable by a foreign company
- Documentation of the foreign company in the country of origin 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 24%.
- 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 either a partner or a person qualified to act as secretaries under the Companies Act 2016 and ordinarily reside in Malaysia.

### Advantages of a LLP

- Limited liability status for partnership type of business.
- Provides flexibility of organization arrangement through a partnership agreement.
- Compliance requirements are less onerous than a company.
- The accounts of a LLP need not be audited unless it is a condition in the LLP agreement.
- 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 24%
- Professional advice should be obtained on tax-planning opportunities.

*\* The LLP requires the appointment of at least one compliance officer whose 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.
- **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; and
- 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 2016.

### **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.

### **Ministry of Domestic Trade, Co-operative and Consumerism**

This ministry formulates policies, strategies and reviews matters pertaining to domestic trade. The scope of the ministry covers wholesalers and retailers, co-operatives, franchise, direct-selling, hawkers and petty traders as well as downstream sectors of petroleum.

### **Ministry of Communication and Multimedia Malaysia**

The ministry is primarily responsible for communications, multimedia, broadcasting, and personal data protection. It also oversees the media industry, film industry, domain name, postal, courier, mobile service, fixed line service and broadband services.

The regulation of the communication and multimedia sector is undertaken by the Malaysian Communications and Multimedia Commission (MCMC).

### **Ministry of Natural Resources and Environment**

The ministry is responsible for the natural resources management, environmental conservation and land management and administration.

The Department of Environment (DOE) of Malaysia under the ministry is responsible for the prevention, control and abatement of pollution in the country.

### **Bank Negara Malaysia**

The central bank of Malaysia regulates the country's financial institutions and credit system as well as the conduct of monetary policy. This include supervising the banking industry, insurance industry, payment systems and foreign exchange market.

### **Securities Commission Malaysia**

The statutory body is responsible for regulating and developing the capital markets in Malaysia. This include supervision of exchanges, listed companies, bond issuers, take over and mergers, and fund managers.

### **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 hospitalization 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](http://www.mida.gov.my)

# APPENDIX D (5.1)

## *Business Taxation*

## Business taxation

### 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, 15 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             |

### Rate of withholding tax %

| Treaty countries              | Interest  | Royalties | Technical Fees |
|-------------------------------|-----------|-----------|----------------|
| Ireland                       | 10 or Nil | 8         | 10             |
| 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             |
| Poland (new)*                 | 10 or Nil | 8         | 8              |
| 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             |



### Rate of withholding tax %

| Treaty countries     | Interest  | Royalties | Technical Fees |
|----------------------|-----------|-----------|----------------|
| Singapore            | 10 or Nil | 8         | 5              |
| Slovakia             | 10 or Nil | 10        | 5              |
| Sri Lanka            | 10 or Nil | 10        | 10             |
| South Africa         | 10 or Nil | 5         | 5              |
| 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.

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 2016 Rate % | Tax Payable RM |
|--------------|-------------------|----------------|----------------|
| On the first | 5,000             |                | 0              |
| On the next  | 15,000            | 1              | 150            |
| On the first | 20,000            |                | 150            |
| On the next  | 15,000            | 5              | 750            |
| On the first | 35,000            |                | 900            |
| On the next  | 15,000            | 10             | 1,500          |
| On the first | 50,000            |                | 2,400          |
| On the next  | 20,000            | 16             | 3,200          |
| On the first | 70,000            |                | 5,600          |
| On the next  | 30,000            | 21             | 6,300          |
| On the first | 100,000           |                | 11,900         |
| On the next  | 150,000           | 24             | 36,000         |
| On the first | 250,000           |                | 47,900         |
| On the next  | 150,000           | 24.5           | 36,750         |
| On the first | 400,000           |                | 84,650         |
| On the next  | 200,000           | 25             | 50,000         |
| On the first | 600,000           |                | 134,650        |
| On the next  | 400,000           | 26             | 104,000        |
| On the first | 1,000,000         |                | 238,650        |
| Above        | 1,000,000         | 28             |                |

|              | Chargeable Income | YA 2017 Rate % | Tax Payable RM |
|--------------|-------------------|----------------|----------------|
| On the first | 5,000             |                | 0              |
| On the next  | 15,000            | 1              | 150            |
| On the first | 20,000            |                | 150            |
| On the next  | 15,000            | 5              | 750            |
| On the first | 35,000            |                | 900            |
| On the next  | 15,000            | 10             | 1,500          |
| On the first | 50,000            |                | 2,400          |
| On the next  | 20,000            | 16             | 3,200          |
| On the first | 70,000            |                | 5,600          |
| On the next  | 30,000            | 21             | 6,300          |
| On the first | 100,000           |                | 11,900         |
| On the next  | 150,000           | 24             | 36,000         |
| On the first | 250,000           |                | 47,900         |
| On the next  | 150,000           | 24.5           | 36,750         |
| On the first | 400,000           |                | 84,650         |
| On the next  | 200,000           | 25             | 50,000         |
| On the first | 600,000           |                | 134,650        |
| On the next  | 400,000           | 26             | 104,000        |
| On the first | 1,000,000         |                | 238,650        |
| Above        | 1,000,000         | 28             |                |

### Non-resident individuals

| Types of income   | Rate % |
|---|--------|
| Public Entertainer's professional income  | 15     |
| Interest  | 15     |
| Royalty   | 10     |
| Special classes of income:  |        |
| • rental of moveable property   | 10     |
| • technical or management services fees   | 10     |
| • 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     |
| Dividends (single tier)   | Exempt |
| Business and employment income  | 28**   |
| Income other than the above   | 10     |

\*\* Increased to 28% w.e.f YA2016 (25% for YA 2015)

### 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 2020.

### 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)

## *Valuation of perquisites and benefits-in-kind from employment*

# Valuation of perquisites and benefits-in-kind from employment

## Valuation of perquisites

The IRB has issued Public Ruling 2/2013 for the valuation of perquisites from an employment. Below are some common perquisites:

| Perquisites to employee                                | Taxable value to employee  |
|--|--|
| Petrol card/petrol or travel allowances and toll rates | Total amount paid by employer.<br>Exemption available up to RM6,000 per annum if the allowances/perquisites are for official duties**  |
| Childcare subsidies /allowances                        | Total amount paid by employer.<br>Exemption available up to RM2,400 per annum**  |
| Parking fees/allowances                                | Fully exempted**   |
| Meal allowances  | Fully exempted**   |
| Interest on loan subsidies                             | Loans totalling RM300,000 for housing/passenger motor vehicles and education**   |
| Income tax borne by employer                           | Total amount paid by employer  |
| Award  | Total amount paid by employer. Exemption available up to RM2,000 per annum for the following types of award:** <ul style="list-style-type: none"><li>• long service (more than 10 years of employment with the same employer)</li><li>• past achievement</li><li>• service excellence, innovation, or productivity award</li></ul> |

\*\* Exemptions are not extended to directors of controlled companies, sole proprietors and partnerships.



**Valuation of benefits-in-kind (BIK)**

The IRB has issued Public Ruling 3/2013 for the valuation of BIK provided to employees.

There are two methods which can be used to determine the value of 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.

Cost of asset provided as a benefit

Prescribed average life span of asset

=

Annual value of benefit

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

| Items   | Prescribed average life span (Years) |
|---|--------------------------------------|
| Motorcar  | 8                                    |
| Furnishings:                                    |                                      |
| • Air conditioner                               | 8                                    |
| • Curtains & carpets                            | 5                                    |
| • Furniture                                     | 15                                   |
| • Refrigerator                                  | 10                                   |
| • Sewing machine                                | 15                                   |
| Kitchen utensils/equipment                      | 6                                    |
| Entertainment and recreation:                   |                                      |
| • Organ   | 10                                   |
| • Piano   | 20                                   |
| • Stereo set, TV, video recorder, CD/DVD player | 7                                    |
| • Swimming pool (detachable), sauna             | 15                                   |
| • Miscellaneous                                 | 5                                    |

**Prescribed value method**

Under the 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       |
| Prescribed value of other benefits   |  |
| • Driver   | RM7,200 per driver                       |
| • Domestic servants  | RM4,800 per servant                      |
| • Gardeners  | RM3,600 per gardener                     |
| • Corporate recreational club membership                                   | Membership subscription paid by employer |

The following are some exemptions for certain BIK:\*\*

| Exemption  |  |
|--|--|
| • Leave passages   | (i) one overseas leave passage up to a maximum of RM3,000 for fares only; or<br>(ii) 3 local leave passages including fares, meals and accommodation |
| • Employers' goods provided free or at a discount  | Exemption is available up to RM1,000 per annum. Any benefit exceeding RM1,000 will be subject to tax   |
| • Employers' own services provided full or at a discount   | Fully exempted   |
| • Maternity expenses & traditional medicines   | Fully exempted   |
| • Telephone (including mobile telephone), telephone bills, pager, personal data assistant (PDA) and broadband subscription | Fully exempted, limited to one unit for each asset   |

\*\* Exemptions are not extended to directors of controlled companies, sole proprietors and partnerships.

Standard rates for motorcar and fuel provided

| Cost of car (when new)<br>(RM) | Annual prescribed benefit of<br>motorcar (RM) | Annual prescribed benefit of<br>fuel* (RM) |
|--------------------------------|---|--|
| 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.

# APPENDIX E (6.3)

## *Personal reliefs*

## Personal reliefs (for resident individuals)

| Relief for  | YA 2016 (RM)  |
|---|---|
| Self  | 9,000   |
| Disabled individual - additional relief for self  | 6,000   |
| Spouse  | 4,000   |
| Disabled spouse - additional spouse relief  | 3,500   |
| Child <ul style="list-style-type: none"> <li>• per child (below 18 years old)</li> <li>• per child (over 18 years old) receiving full-time instruction of higher education in respect of: <ul style="list-style-type: none"> <li>diploma level and above in Malaysia</li> <li>degree level and above outside Malaysia</li> </ul> </li> <li>• per child (over 18 years old) serving under articles of indentures in a trade or profession</li> <li>• Per physically / mentally disabled child</li> <li>• 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</li> </ul> | 2,000<br>8,000<br>8,000<br>8,000<br>6,000<br>14,000 |
| Life insurance premiums and EPF contributions   | 6,000*  |
| Private Retirement Scheme contributions   | } 3,000*  |
| Deferred annuity scheme premium (YA 2012 to YA 2021)  |   |
| Insurance premiums for education or medical benefits  | 3,000*  |
| Expenses on medical treatment, special needs or career expenses for parents (evidenced by medical certification); OR<br>Parental care relief:   | 5,000*  |
| - Father  | 1,500*  |
| - Mother  | 1,500*  |
| (until YA 2020)   |   |
| 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)  | 6,000   |

\* Maximum relief

\*\* With effect from YA 2017

| Relief for  | YA 2016 (RM)  |
|---|---------------|
| Purchase of sports equipment  | 300*<br>0**   |
| 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 | 7,000*        |
| Purchase of supporting equipment for self (if a disabled person) or for disabled spouse, child or parent  | 6,000*        |
| Cost incurred for the purchase of books, journals, magazines and other similar publications for the purpose of enhancing knowledge  | 1,000*<br>0** |
| Purchase of personal computer (once every 3 years)  | 3,000*<br>0** |
| Deposit for child into the Skim Simpanan Pendidikan Nasional account established under Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 (until YA 2017)  | 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*       |
| Employee's contribution to Social Security Organisation (SOCSO)   | 250*          |
| Lifestyle relief consolidated with the following: <ul style="list-style-type: none"> <li>• Purchase of books, journals, magazines, printed newspaper and other similar publications for the purpose of enhancing knowledge</li> <li>• Purchase of personal computer, smartphone or tablet</li> <li>• Purchase of sports equipment and gym memberships, and</li> <li>• Internet subscription</li> </ul>                | 2,500**       |
| Purchase of breastfeeding equipment   | 1,000*        |
| Fees paid to childcare centre and kindergarten  | 1,000*        |

\* Maximum relief

\*\* With effect from YA 2017



