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COUNTRY

Doing Business in **Malaysia**

Preface

This guide has been prepared by Baker Tilly Monteiro Heng, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Malaysia.

Baker Tilly International is the world's 8th largest accountancy and business advisory network by combined fee income, and is represented by 145 firms in 110 countries and over 25,000 personnel worldwide. Its member firms are high quality, independent accountancy and business advisory firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and across the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be obtained from Baker Tilly Monteiro Heng or any of our independent member firms.

Doing Business in Malaysia has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Malaysian matters can be obtained from Baker Tilly Monteiro Heng; contact details can be found at the end of this guide.

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1 Fact Sheet

Geography

Location	South East Asia
Area	The country occupies two distinct regions – Peninsular West Malaysia and East Malaysia, covering areas of 131,587km² and 198,847km² respectively.
Land boundaries	Brunei, Indonesia and Thailand
Coastline	4,675km (Peninsular West Malaysia 2,068km, East Malaysia 2,607km)
Climate	Tropical; annual southwest (April to October) and northeast (October to February) monsoons
Terrain	Coastal plains rising to hills and mountains
Time zone	GMT +8

People

Population	23.7 million
Religion	Islam is the official religion but freedom of worship for other religious groups is guaranteed by the constitution
Language	Bahasa Malaysia is the national and official language. English is widely used in commerce and industry

Government

Country name	Malaysia
Government type	Constitutional monarchy
Capital	Kuala Lumpur
Administrative divisions	13 states and one federal territory with three components – city of Kuala Lumpur, Labuan and Putrajaya

Economy

GDP – per capita	US$15,300 (2008 est.)
GDP – real growth rate	5.1% (2008 est.)
Labour force	11.2 million (2008 est.)
Unemployment	3.7% (2008 est.)
Currency (code)	Malaysia ringgit (MYR)

2 Business Entities and Accounting

2.1 Types of Business Entity

A business may be carried on in any one of the following forms:

- By an individual operating as a sole proprietorship
- By two or more (but not more than 20) persons in partnership
- By a locally incorporated company or by a foreign company registered under the provisions of the Companies Act 1965.

All sole proprietorships and partnerships must be registered with the Companies Commission of Malaysia. Only resident Malaysians or foreigners who are permanent residents in Malaysia may register a sole proprietorship or a partnership.

Companies are governed by the Companies Act which provides for three forms of company:

- A company limited by shares
- A company limited by guarantee
- An unlimited company.

The most common business form is a company limited by shares. Companies incorporated or registered pursuant to the Companies Act must comply with the requirements of the Companies Act.

All foreign companies must within one month of establishing their place of business or commencing business in Malaysia, lodge with the Companies Commission of Malaysia (CCM) notice of the location of their registered Malaysian office (using the prescribed form).

Every foreign company registering a branch in Malaysia must appoint a local agent who is answerable for the performance of all acts required to be done by the foreign company under the Companies Act. Any change in agent must be reported to the CCM.

A foreign company may apply to the Ministry of International Trade and Industry (MITI) to set-up a representative office. A representative office has no legal status nor can it engage in any profit-making or trading activities. It serves only as a promotional and liaison office of the foreign company, and its activities are restricted to promotion, market research, liaison and co-ordination of activities on behalf of its head office.

2.2 Company Administration

Directors must be natural persons. A company must have at least two directors whose principal or sole place of residence is in Malaysia. The number of directors is not limited by statute, but companies usually specify a maximum number of directors in their Articles of Association. Directors' meetings may be held in or outside Malaysia. The duties and responsibilities of the directors are set out in the Companies Act and the Articles of Association. An undischarged bankrupt person cannot act as a director.

Under the Companies Act, a company must appoint a company secretary who is a natural person and a member of a professional body approved under the Companies Act or a person licensed by the CCM.

A company must have a registered office in Malaysia and keep, at that office, all books, registers and documents required by the Companies Act.

Every company must appoint an approved auditor to report to the shareholders on the company's accounts.

Companies must hold an annual general meeting in each calendar year, not more than 15 months after the previous annual general meeting. A newly-incorporated company must hold its first annual general meeting within 18 months of its date of incorporation.

Companies must lodge an annual return with the CCM within one month of the date of the annual general meeting. Unless the company is an exempt private company, the audited accounts and directors' report must be lodged with the annual return.

Accounts must be prepared in accordance with the Companies Act, which includes compliance with approved accounting standards. Accounts also have to be prepared for the Inland Revenue Board for the purpose of assessment of income tax.

2.3 Accounting and Reporting Requirements

Accounting records of companies incorporated in Malaysia must be kept in a manner that will sufficiently explain their transactions and facilitate an audit. Records must be retained for at least seven years. Records relating to operations outside Malaysia may be kept outside Malaysia provided that all such statements sent to and returns with respect to the business dealt with are sent to and kept in Malaysia.

Companies are required to present audited financial statements to shareholders annually. There is no specific date to which the financial statements must be drawn-up, but many companies choose 31 December to coincide with the tax year.

Where a company is a subsidiary of another corporation incorporated in Malaysia, its accounting year end must be co-terminous with that of the holding company.

Public companies listed on the Kuala Lumpur Stock Exchange (KLSE) have additional disclosure requirements in the annual report over and above those required by the Companies Act.

Financial reporting is governed by both public sector legislation and private sector regulatory bodies. Public sector legislation principally consists of statutes promulgated by parliament. Compliance with the provisions of these statutes is legally enforceable. Statutes that have a significant impact on financial reporting are:

- The Companies Act, 1965
- The Income Tax Act, 1967
- The Securities Commission Act, 1993
- The Financial Reporting Act, 1997.

Private sector regulatory bodies comprise professional bodies, statutory bodies and authoritative bodies. These bodies do not have legal power to enforce compliance. However, professional sanctions and public reprimand are often strong deterrents against deviations from accepted practices. The principal private sources of regulation on financial reporting are:

- The KLSE listing requirements
- The accounting pronouncements issued by the Malaysian Institute of Accountants (MIA).

The extent of influence of each of the regulatory bodies and acts depends on the form or type of company:

- The requirements of the Companies Act are applicable only to companies incorporated under the Companies Act
- The requirements of the KLSE Listing Manual are applicable only to companies listed on the KLSE
- The Approved Accounting Standards of the Financial Reporting Act are applicable to all reporting entities, regardless of whether they are incorporated or listed

- The requirements of the Income Tax Act are applicable to every business organisation and individual with assessable income.

The Financial Reporting Act, 1997 provides that the accounting pronouncements issued by the MASB and the Approved Accounting Standards are to be regarded as opinions on best practice in financial reporting in Malaysia. These pronouncements are modelled primarily on accounting standards issued by the International Accounting Standards Board.

3 Finance and Investment

3.1 Exchange Controls

Foreign investments are an important factor in the growth of Malaysia's economy. There are capital exchange controls on external accounts, trade settlements and currency. However, there are no restrictions on direct investment and repatriation of interest and dividends and capital.

The ringgit is not freely convertible and can only be transacted through authorised depository institutions within Malaysia. Current account transactions continue to be convertible.

All settlements of exports and imports must be made in foreign currency.

With the exception of the purchase of ringgit assets, withdrawals from external accounts require approval from Bank Negara Malaysia. Travellers are allowed to import or export local currency of not more than MYR1,000 per person. There are no limits on the import of foreign currencies. The export of foreign currencies by residents is permitted to a maximum of MYR50,000 equivalent. The export of foreign currencies by non-residents is permitted up to the amount of foreign currency brought into Malaysia by the non-resident.

Residents are required to obtain approval before they can borrow in foreign currency of more than the equivalent of MYR5m from non-residents. Non-resident controlled companies operating in Malaysia are required to obtain permission for credit facilities exceeding MYR100m and are required to obtain at least 60% of their domestic credit facilities from Malaysian owned financial institutions.

3.2 Banking and Finance

Bank Negara Malaysia is the central bank and is responsible for supervising the banking system to promote monetary stability and to develop a sound financial structure. It also issues the Malaysian currency, acts as banker and financial adviser to the government, administers foreign exchange control regulations and is the lender of last resort to the banking system.

3.3 International Investment

Malaysia welcomes foreign investment, particularly in the manufacturing sector, and does not discriminate against investors from any country. To encourage foreign investments, Malaysia offers numerous incentives and other advantages to foreign investors and has entered into double taxation agreements with more than 40 countries. Malaysia has investment guarantee agreements with most major industrialised countries which generally guarantee that, except for public purposes, Malaysia will not expropriate or nationalise property without prompt and adequate compensation.

3.4 Government Incentives

The main incentives are:

- Pioneer status
- Investment tax allowances
- Reinvestment allowances
- Double deduction of expenses (given in respect of certain expenses if conditions imposed are satisfied)
- Approved agricultural projects incentives
- Research and development incentives
- Industrial building allowances
- In-bound tour operators incentives
- Incentive for approved overseas investments
- Incentives for overseas construction projects
- Operational headquarters incentives
- Labuan International Offshore Finance Centre (see 3.5).

Applications are approved on a case-by-case basis at the discretion of the relevant authorities administering the various conditions.

3.5 Labaun International Offshore Financial Centre

The Federal Territory of Labuan was launched as an International Offshore Financial Centre (IOFC) in 1990 to further enhance the attractiveness of Malaysia as an investment centre. The IOFC complements the onshore financial system in Kuala Lumpur.

Activities which are promoted and accorded preferential tax treatment in Labuan include:

- Offshore banking operations
- Trust and fund management
- Offshore insurance and offshore insurance related business
- Offshore investment holding companies.

The IOFC offers a range of benefits, including 3% tax on net audited results or a flat rate of MYR20,000 to trading companies, low operational costs, liberal exchange controls and readily available, experienced and professional service providers.

4 Employment Regulation and Social Security

Employment is regulated by the Employment Act, 1955 which covers the operation of the labour market in general and the employment relationship between employers and employees.

4.1 Employment and Industrial Relations

Though labour costs in Malaysia are low relative to industrialised countries, labour productivity and quality standards are high. There is no national minimum wage law applicable to the manufacturing sector in Malaysia; basic wage rates vary according to locations and industrial sectors.

The government's policy is to promote a cordial employer-employee relationship and industrial peace based on social justice, equity and good conscience.

4.2 Employment of Expatriate Personnel

It is the government's policy to ensure that Malaysians are trained and employed at all levels of employment. Notwithstanding this, foreign companies are permitted to bring required foreign personnel into those areas where there is a shortage of trained Malaysians to fulfil the position. Foreign companies are also allowed certain key posts to be permanently filled by foreigners. The Malaysian Immigration Department is the central body that issues work permits and visas for the employment of expatriates.

4.3 Social Security Organisation (Socso)

Employees employed under a contract of service must register and contribute to Socso, the social security organisation set up to administer the provision of social security protection for Malaysian workers. This scheme generally provides the benefits of invalidity pension.

4.4 Employees Provident Fund (EPF)

EPF is a compulsory saving scheme in Malaysia. Its primary aim is to provide a measure of security for retirement to its members. All employees employed under a contract of service must be registered as a member of the scheme. Employers contribute 12% of an employee's wages; employees contribute 11% of their monthly wage.

5 Taxation

5.1 Capital Gains Tax

A capital gain on the disposal of a chargeable asset is subject to real property gain tax (RPGT). Chargeable assets include:

- Real properties situated in Malaysia
- Shares held in a real property company (RPC).

A RPC refers to a controlled company which owns real property or shares or both, the market value of which is more than 75% of the value of its tangible assets.

A "controlled company" is a company with no more than 50 members and controlled by not more than five persons.

The rates of RPGT range from 5%-30% depending on the period during which the chargeable assets have been held before disposal.

Under RPGT Exemption (No. 2) Order 2007, RPGT is not assessable on gains from disposal of chargeable assets made after 31 March 2007.

5.2 Other Taxes/Charges

Stamp duty is payable on instruments executed in Malaysia or those executed outside the county but which pertain to property in Malaysia. There are two types of duties – fixed duties and ad valorem duties.

5.3 Company Taxation

Malaysia adopts a territorial basis of taxation, except for resident companies in the businesses of banking, insurance and sea or air transportation which are taxed on a global income basis. Foreign income received in Malaysia by a resident company is exempt from Malaysian income tax.

Malaysia adopts the imputation system of taxing corporate income. The income tax paid by a company on its profits is utilised to frank dividends paid to shareholders.

Effective from the 2008 year of assessment (YA), a single tier tax system will be implemented. Under this system, tax on company's profit is a final tax and dividends distributed to shareholders will be exempted from tax.

Income accruing in or derived from Malaysia is subject to income tax.

A company is resident in Malaysia for tax purpose if its management and control are exercised in Malaysia. Generally, a company is considered resident in Malaysia if the meetings of its board of directors are held in Malaysia even if the company is not incorporated in Malaysia.

The rate of income tax of companies, whether resident or non-resident, is 25% (YA2009). However, a resident company with paid up capital of MYR2.5m and below at the beginning of the basis period would be taxed at the following rates:

Chargeable Income (CI)	**Rate (%)**
On the first MYR500,000	20*
On subsequent CI	25

* Effective from YA2009, certain specified conditions must be fulfilled in order to enjoy the preferential rate.

A foreign branch is taxed at the rate of 25% on its income derived from Malaysia.

5.4 Individual Taxation

For tax purposes, an individual is treated as a resident if they are physically present in Malaysia in a calendar year for 182 days or more. However, if their period of stay is less they may still be considered resident if certain conditions are satisfied.

For residents, the rate of tax is levied on a graduated scale on the chargeable income after deduction of reliefs, with the maximum rate being 27%. Effective from YA2004, foreign income received in Malaysia by a resident individual is not subject to Malaysian income tax.

For non-residents, the rate of tax is 27% (effective from YA2009) on gross income. No reliefs are available to non-residents.

Income from employment exercised in Malaysia for a period not exceeding 60 days in a calendar year is tax exempt provided the employee is not resident in Malaysia for tax purposes for the basis year concerned. This provision does not apply to professional entertainers and non-resident directors.

5.5 Withholding Taxes

Withholding tax is required to be withheld and remitted to the Inland Revenue within 30 days after payment or crediting payment to a non-resident person at the following rates:

	Rate (%)
Interest	15
Royalties	10
Technical fee and management fee	
– Service in Malaysia	10
– Service outside Malaysia	Nil
Installation fee and rental of moveable property	10
Remuneration of public entertainer	15
Service portion of contract payments	10/3
Others – eg commission, guarantee fee and introducer's fee	10

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

Certain tax rates may be reduced if the recipient is a resident of a country with which Malaysia has a tax treaty.

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