

2015/2016



Engaging locally



Malaysia Investment Guide
Framework for investments

Engaging locally

„Malaysia is considered one of the most stable countries in Southeast Asia. Formerly an agriculture-oriented country, it completed its transformation into an exemplary market economy, with significant growth opportunities. Owing to our own experience, we advise companies in all legal, tax as well as commercial matters, developing in turn a robust foundation for your local engagement.“

Rödl & Partner

„In our homeland, traditional values are an important part of our identity. In order for the tradition to live on, we do our utmost to complement our human towers also with modern elements. The cultural heritage always stays in mind and, at the same time, we strive to integrate new generations in the groups.“

Castellers de Barcelona



Malaysia Investment Guide

Framework for investments

Content

About us	6
Our services in Malaysia	8
Why invest in Malaysia	9
Facts & Figures	10
Business structures	15
Sole proprietorship	15
Partnership	15
Limited Liability Partnership	16
Private limited company	16
Representative Office / Regional Office	17
Branch Office	17
Labuan	18
Tax	19
1. Goods and Services Tax	19
2. Corporate taxation	20
3. Personal taxation	24
4. Other taxes	25
Employment	27
1. The Employment Act at a glance	27
2. Other Statutory Requirements	29
3. Foreign employees' dependants	32

Intellectual property	33
1. Copyrights	33
2. Trade Marks	34
3. Patents	34
4. Industrial designs	35
	P
Personal Data Protection	36
Competition	37
1. Prohibitions	37
2. Exemptions	38
3. Administration and enforcement of the competition law	39
Arbitration	40
1. Enforcement of arbitral awards	40
2. Kuala Lumpur Regional Centre for Arbitration	40
3. Drafting arbitration clauses	41
Contact	42

About us

As an integrated professional services firm, Rödl & Partner is active at 102 wholly-owned locations in 46 countries. We owe our dynamic success in the service lines audit, legal, management and IT consulting, tax consulting as well as tax declaration and BPO to our approx. 4,000 entrepreneurial minded partners and colleagues.

The history of Rödl & Partner goes back to its foundation as a solo practice in 1977 in Nuremberg. Our aspiration to be on hand wherever our internationally-active clients are led to the establishment of our first, own offices, commencing with Central and Eastern Europe in 1989. Alongside market entry in Asia in 1994, the opening of offices in further strategic locations followed, in Western and Northern Europe in 1998, USA in 2000, South America in 2005 and Africa in 2008.

Our success has always been based on the success of our German clients: Rödl & Partner is always there where its clients see the potential for their business engagement. Rather than create an artificial network of franchises or affiliates, we have chosen to set up our own offices and rely on close, multidisciplinary and cross-border collaboration among our colleagues. As a result, Rödl & Partner stands for international expertise from a single source.

Our conviction is driven by our entrepreneurial spirit that we share with many, but especially German family-owned companies. They appreciate personal service and value an advisor they see eye to eye with.

Our 'one face to the client' approach sets us apart from the rest. Our clients have a designated contact person who ensures that the complete range of Rödl & Partner services is optimally employed to the client's benefit. The 'caretaker' is always close at hand; they identify the client's needs and points to be resolved. The 'caretaker' is naturally also the main contact person in critical situations.

We also stand out through our corporate philosophy and client care, which is based on mutual trust and long-term orientation. We rely on renowned specialists who think in an interdisciplinary manner, since the needs and projects of our clients cannot be separated into individual professional disciplines. Our one-stop-shop concept is based on a balance of expertise across the individual service lines, combining them seamlessly in multidisciplinary teams.

What sets us apart

Rödl & Partner is not a collection of accountants, auditors, lawyers, management and tax consultants working in parallel. We work together, closely interlinked across all service lines. We think from a market perspective, from a client's perspective, where a project team possesses all the capabilities to be successful and to realise the client's goals.

Our interdisciplinary approach is not unique, nor is our global reach or our particularly strong presence among family businesses. It is the combination that cannot be found anywhere else – a firm that is devoted to comprehensively supporting German businesses, wherever in the world they might be.



Our services in Malaysia

Rödl & Partner has been present in Malaysia since 2012. Rödl & Partner in Malaysia is a wholly-owned office. Our team of experienced local and European professionals offers a wide range of services from international tax planning and optimisation of regional holding structures to legal services and accounting for Malaysia subsidiaries and holdings. Our clients benefit from our wealth of experience combines with the high standards and expert knowledge of an international organisation.

- › Incorporation of a Company in Malaysia/registration of a representative office
- › Joint ventures structures
- › Supply agreements, terms & Conditions, agency agreements
- › Employment agreements, Terms & Conditions, agency agreements
- › M&A advice, legal, financial and tax due diligence
- › Cross-border tax structuring and tax optimisation
- › Tax compliance (GST – reporting, tax filings)
- › Corporate Secretarial Services
- › Payroll Administration
- › Accounting/Financial Reporting
- › Preparation of HB II reporting package
- › Audit services



Why invest in Malaysia

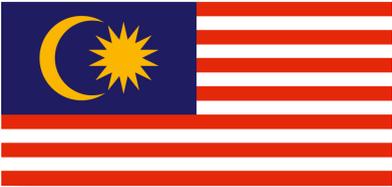
Malaysia, a multi-ethnic, multicultural and multilingual society, strategically located in the heart of South East Asia with easy access to all of its neighbours, offers a cost-competitive location for investors intending to set up offshore operations for regional and international markets.

Malaysia is in its most radical transformation as it battles to achieve the Vision 2020. As one of the five founding members of the Association of South East Asian Nations ("ASEAN"), a geo-political and economic organization whose aims include accelerating economic growth, social progress and cultural development among its members, the country is a strong supporter of the ASEAN Free Trade Area and the ASEAN Investment Area.

Malaysia's political and economic stability with a well-developed legal system, prudent and pragmatic investor friendly business policies, cost-productive workforce, developed infrastructure comparable to that of any western country and a host of other amenities makes this country an enticing place for investors. Other points for foreign investors to consider when looking at Malaysia as a potential place for investment include various forms of business set up (e.g. representative office, branch office, companies etc.), tax-free zones, growth corridors and Labuan International Business and Financial Centre.

Malaysia today is one of the world's top locations for offshore manufacturing and service based operations. Multinational corporations from more than 40 countries have invested in over 5,000 companies in Malaysia's manufacturing and related services sectors. Many of them have also expanded and diversified their operations in the country, reflecting their confidence in Malaysia as a site for their business ventures.

Facts & Figures



<p>Background</p>	<p>During the late 18th and 19th centuries, Great Britain established colonies and protectorates in the area of current Malaysia. These were occupied by Japan from 1942 to 1945. In 1948, the British-ruled territories on the Malay Peninsula except Singapore formed the Federation of Malaya, which became independent in 1957.</p> <p>Malaysia was formed in 1963 when the former British colonies of Singapore, as well as Sabah and Sarawak on the northern coast of Borneo joined the Federation.</p> <p>The first several years of the country's independence were marred by a communist insurgency, Indonesian confrontation with Malaysia, Philippine claims to Sabah and Singapore's withdrawal in 1965.</p> <p>During the 22-year term of Prime Minister Mahathir bin Mohamad (1981-2003), Malaysia was successful in diversifying its economy from dependence on exports of raw materials to the development of manufacturing, services and tourism. Prime Minister Haji Mohammad Najib bin Tun Haji Abdul Razak (in office since April 2009) has continued these pro-business policies and has introduced some civil reforms.</p>
<p>Location</p>	<p>South-eastern Asia, peninsula bordering Thailand and northern one-third of the island of Borneo bordering Indonesia, Brunei and the South China Sea, south of Vietnam.</p>
<p>Area</p>	<p>329,847 sq. km (about the area of Germany without the federal state of Brandenburg)</p>

<p>Ethnic groups</p>	<p>Malay 50.1%, Chinese 22.6%, Indigenous 11.8%, Indian 6.7%, other 0.7%, Non-citizens 8.2% (2010 est.)</p>
<p>Language</p>	<p>Bahasa Malaysia (official), English, Chinese (Cantonese, Mandarin, Hokkien, Hakka, Hainan, Foochow), Tamil, Telugu, Malayalam, Panjabi, Thai</p> <p>Note: In East Malaysia there are several indigenous languages; most widely spoken are Iban and Kadazan</p>
<p>Population</p>	<p>30,073,353 (July 2014 est.)</p>
<p>Government type</p>	<p>Constitutional Monarchy</p> <p>Note: Nominally headed by paramount ruler (commonly referred to as the king) and a bicameral Parliament consisting of a non-elected upper house and an elected lower house;</p> <p>All Peninsular Malaysian states have hereditary rulers (commonly referred to as Sultans) except Melaka (Malacca) and Pulau Pinang (Penang); those two states along with Sabah and Sarawak in East Malaysia have Governors appointed by the government;</p> <p>Powers of state governments are limited by federal constitution;</p> <p>Under the terms of federation, Sabah and Sarawak retain certain constitutional prerogatives (e.g. right to maintain their own immigration controls).</p>

<p>GDP</p>	<p>Purchasing Power Parity: USD525 billion (2013 est.) (Germany: USD3.227 trillion) (2013 est.)</p> <p>Real Growth Rate: 4.7% (2013 est.) (Germany: 0.5%) (2013 est.)</p> <p>Per Capita (PPP): USD17,500 (2013 est.) (Germany: USD39,500) (2013 est.)</p>
<p>Labor force by occupation</p>	<p>Agriculture: 11.1% Industry: 36% Services: 53.5% (2012 est.)</p>
<p>Unemployment rate</p>	<p>3.1 % (2013 est.)</p>
<p>Inflation rate (consumer prices)</p>	<p>2.2% (2013 est.)</p> <p>Note: Approximately 30% of goods are price-controlled</p>
<p>Industries</p>	<p>Peninsular Malaysia Rubber and oil palm processing and manufacturing, petroleum and natural gas, light manufacturing, pharmaceuticals, medical technology, electronics and semi-conductors, timber processing;</p> <p>Sabah Logging, petroleum and natural gas production;</p> <p>Sarawak Agriculture processing, petroleum and natural gas production, logging</p>

Exports	USD 230.7 billion (2013 est.)
Export commodities	<ul style="list-style-type: none"> > Semiconductors and Electronic Equipment > Palm Oil > Petroleum and Liquefied Natural Gas > Wood and Wood Products > Rubber > Textiles > Chemicals > Solar Panels
Imports	USD 192.9 billion (2013 est.)
Import commodities	<ul style="list-style-type: none"> > Electronics > Machinery > Petroleum Products > Plastics > Vehicles > Iron and Steel Products > Chemicals

The World Factbook 2014. Washington, DC: Central Intelligence Agency, 2014

Business structures

Foreign investors wishing to set up their business in Malaysia can choose from a variety of business structures. A description of the key business structures is set out below. It should be noted that private limited companies are the most popular form of vehicle for doing business in Malaysia.

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

Sole proprietorship

A sole proprietorship is a business wholly owned by a single owner using personal name as per identity card or trade name. The sole proprietor will be personally liable for all the debts and obligations of the business. The income generated by the business is the income of the sole proprietor. Therefore, the sole proprietor is taxed on an individual basis.

All sole proprietorships in Malaysia must be registered with CCM. Generally, only Malaysian citizen or Permanent Resident of Malaysia can register as a sole proprietor.

Partnership

A partnership is defined as a relationship which subsists between persons carrying on a business in common with a view to profit. The Partnership Act will apply to all partnerships unless a formal agreement has been drawn up setting out the rights or obligations of the partners. A partnership cannot have more than 20 partners. The partnership does not have a separate legal existence. Partners are both jointly and severally liable for the debts and obligations of the partnership should its assets be insufficient. The profits of the partnership are attributed to the partners who are taxed on an individual basis.

All partnerships in Malaysia must be registered with CCM. Generally, only Malaysian citizens or Permanent Residents of Malaysia may register as a partnership

Limited Liability Partnership

A limited liability partnership (“LLP”) offers a business structure that combines the operational flexibility of a partnership with the limited liability features of a company.

An LLP is a body corporate that has a legal personality separate from that of its partners. It is capable of suing or being sued. The LLP can own property in its own name. Every LLP must have at least two partners. The partner in an LLP can be an individual or a body corporate. The Limited Liability Partnerships Act will apply to an LLP unless a formal agreement has been drawn up setting out the rights or obligations of the partners.

An obligation of the LLP, whether arising in contract, tort or otherwise, is solely the obligation of the LLP. A partner is not personally liable for an obligation of the LLP. A partner will be personally liable in tort for his wrongful act or omission but will not be personally liable for the wrongful act or omission of any other partner of the LLP.

An LLP must appoint at least one compliance officer who is a Malaysian Citizen or Permanent Resident of Malaysia.

Private limited company

A private limited company (Sendirian Berhad or Sdn. Bhd.) is a legal entity separate and distinct from its members. A private limited company can sue or be sued and can own property in its own name. A private limited company must have less than 50 members. Its members have limited liability and are not personally liable for the debts and losses of the company.

There must be a minimum of two directors, who must both have their principal or only place of residence in Malaysia. Further, a minimum of two shareholders are required. Although foreign shareholders are allowed to hold all the shares in a

Malaysian company, certain business areas are regulated through licences which may be subjected to certain equity requirements. However, there are requirements of minimum paid up share capital in order to apply for certain licenses, tenders or to conduct businesses in regulated business areas.

Representative Office / Regional Office

A foreign company wishing to explore the viability of doing business in Malaysia may set up a Representative Office ("RE") / Regional Office ("RO").

An RE/RO has the benefit of allowing a foreign entity to assess the business environment in Malaysia before deciding to set up a permanent structure. An RE/RO does not undertake any commercial activities and only represents its head office/principal to undertake designated functions.

An RE collects relevant information on investment and business opportunities to develop bilateral trade relations and promote the export of Malaysian goods and products and carry out research and development.

An RO serves as the coordination centre for its affiliates, subsidiaries and agents within the South-East Asia and Asia Pacific region. It is responsible for conducting designated activities within the region it operates.

The RE's/RO's operation is completely funded from sources outside Malaysia. The RE/RO is not required to be incorporated under the Companies Act. The setting up of a RE/RO requires the approval by the Government of Malaysia. Approval for the RE/RO is usually for a period of two or three years and any extension of the period thereafter would be subjected to justifications submitted before the expiry of the approved period.

Branch Office

A foreign company wishing to establish a place of business or carry on business in Malaysia may set up a branch office. A Malaysian branch is considered an extension of the foreign company and not a separate legal entity. Therefore, the parent

company of a branch office is liable for all the debts and liability of the branch office. A branch office is considered a non-resident entity because the control and management of a branch office is vested with the parent company. Generally, a branch office will not be regarded as resident in Malaysia for tax purposes. The branch will not be eligible for any tax exemptions and incentives which are available to local companies. The branch must register with CCM before commencing business or establishing a place of business within Malaysia. A branch office must appoint at least one agent who is ordinarily resident in Malaysia.

Labuan

Labuan is a Federal Territory of Malaysia off the coast of Borneo in East Malaysia. It is made up of the homonymous Labuan Island and six smaller islands and is located off the coast of the state of Sabah. Labuan's capital is Victoria.

Labuan International Business and Financial Centre (Labuan IBFC) has been established as an international financial business centre to provide for the development of offshore activities in the areas of banking and insurance, trust and fund management, investment holding and other activities carried on by multinational companies.

The incorporation, registration and administration of Labuan and foreign Labuan companies in Labuan are governed by the Labuan Companies Act (LCA). Generally, Labuan entities conducting Labuan business activities i.e. trading or non-trading activity carried on, in, from or through Labuan in a currency other than the Malaysian Ringgit by a Labuan entity with non-residents or another Labuan entity are accorded with a preferential tax treatment under the Labuan Business Activity Tax Act (LBATA) and subject to nil or low income tax depending on the type of activity conducted in Labuan.

Tax

1. Goods and Services Tax

The Goods and Services Tax (GST) will be implemented in Malaysia with effect from 1 April 2015 at the rate of 6% and will replace the current sales and service tax regime. GST is a consumption tax which is based on the value-added concept. The GST regime has slight similarities with the Value-Added Tax currently imposed in Germany.

GST is imposed on goods and services at every production and distribution stage in the supply chain including importation of goods and services. Only businesses registered under GST can charge and collect GST.

Input tax, output tax and input tax credit

Input tax is the GST charged on the purchase of goods and services used in the business activity. Output tax on the other hand, is GST charged and collected on sales/supplies of goods and services. GST collected on output must be remitted to the government. Input tax credit means tax input claimable by businesses registered under GST. Input tax credit can be claimed through several mechanisms.

Standard rated, zero rated and exempt supplies

Standard rated supplies are taxable supplies of goods and services which are subject to the standard rate of 6%. Zero rated supplies are taxable supplies which are subject to a zero rate that is not liable to GST at the output or input stage. Exempt supplies are non-taxable supplies which are not subject to GST at the output stage that is, when supplied to the consumer. However, the GST paid on input by the businesses cannot be claimed as tax credit.

In principle, GST is imposed on all goods and services produced in the country including imports. However, certain basic foodstuff like rice, sugar, flour, cooking oil, vegetable, fish and meat, eggs and essential services such as health and private

education, public transportation, residential property and agricultural land are not subject to GST to ensure that the lower income group is not burdened by GST.

Tax invoice

A tax invoice is a special type of invoice which contains specified items of information. Tax invoices are important as they record creditable acquisitions for which input tax credit can be claimed.

The requirement of tax invoice issuance depends on the type of supplies. Failure to issue tax invoices when required is an offence. Further, it is also an offence if tax invoices are issued without all particulars required e.g. discounts, type of supply, currency conversions.

2. Corporate taxation

> (i) Territorial basis of taxation

Malaysia operates a unitary tax system on territorial basis. A company, regardless of whether it is a local or foreign company is liable to pay tax on income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. A non-resident company is also liable to pay tax on income accruing in or derived from Malaysia. However, foreign-sourced income derived from outside Malaysia is not taxable in Malaysia.

> (ii) Tax residency status

A company is tax resident in Malaysia for a basis year if the management and control is exercised in Malaysia at any time during that basis year. Management and control is normally considered to be exercised at the place where directors' meetings are held concerning the management and control of the company.

> (iii) Tax rate

Resident companies with paid up capital of RM2.5 million or less are taxed at the rate of 20% on chargeable income up to RM500,000 and 25% on the remaining chargeable income.

However, for the Year of Assessment (YA) 2016, the rates will be reduced to

19% on chargeable income up to RM500,000 and 24% on the remaining chargeable income.

The corporate tax rate for YA 2015 is 25% for companies with paid-up capital of more than RM2.5 million. For YA 2016, the corporate tax rate will be reduced to 24%.

› **(iv) Single tier corporate tax system**

The Malaysian Inland Revenue Board introduced the single tier tax system in 2008 with full implementation since January 2014 whereby tax collected from profits of a resident company is final and its dividends are exempted from further taxation.

› **(v) Tax deductions**

Generally, tax deductions are allowed for outgoings and expenses that are incurred wholly and exclusively in generating the company's taxable income.

› **(vi) Tax incentives**

Malaysia offers a wide range of tax incentives for the promotion of investments in selected industry sectors. These tax incentives appear in various forms such as exemption on income, extra allowances on capital expenditure, double deduction of expenses, special deduction of expenses, preferential tax treatments, exemption from import duty, sales tax and excise duty etc. Where income is exempted, tax exempt dividends may be paid out of the exempted income. For incentives by way of allowances, any unutilised allowances can generally be carried forward until fully utilised. These tax incentives are generally available for tax resident companies.

Subject to the qualifying criteria applicable to the type of incentives, the incentives available include the following:

- » Pioneer status
- » Investment tax allowance
- » Reinvestment allowance
- » Special incentive scheme

- » Green incentives
- » Incentives for high technology and strategic projects
- » Double deduction of expenses incurred for promotion of exports
- » Incentives for training
- » Incentives for approved international procurement centre and regional distribution centre
- » Incentives for agricultural projects
- » Incentives for research and development
- » Incentives for in-bound tour operators
- » Incentives for approved overseas investments
- » Incentives for overseas construction projects
- » Incentives for exports of products manufactured in Malaysia and export of approved services
- » Incentives for healthcare and wellness
- » Operational Headquarters incentives
- » Labuan International Offshore Finance Centre
- » Special economic corridors

The major tax incentives are the Pioneer Status and Investment Tax Allowance:

Pioneer status

A company that satisfies the qualifying conditions may claim for partial exemption of up to 70% of statutory income for 5 years from production day.

Investment tax allowance

A company that satisfies the qualifying conditions may apply for 60% of qualifying capital expenditure (QCE) incurred within 5 years of approval date to be offset against 70% of statutory income for each Year of Assessment until fully utilised.

Transfer pricing

Transfer pricing (TP) generally relates to the system of pricing the cross-border transfer of goods, services and intangibles between entities in a group of

Multinational Enterprise (MNE). Transfer pricing also applies if such transactions were to take place between associated companies within the country.

The transfer pricing guidelines were first introduced in Malaysia in 2003. Given the growing focus on transfer pricing matters, the Income Tax (Transfer Pricing) Rules 2012 (TP Rules) were introduced on 11 May 2012 with retrospective effect from 1st January 2009. Further, the Transfer Pricing Guidelines 2012 (TP Guidelines) were introduced on 20 July 2012 to replace the transfer pricing guidelines of 2003.

These TP Guidelines are largely based on the governing standard for transfer pricing which is the arm's length principle under the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines. Although some parts of the Guidelines have been adopted directly from the OECD Transfer Pricing Guidelines, there are areas which differ to ensure adherence to Malaysia's Income Tax Act 1967 (ITA), the procedures of the Inland Revenue Board of Malaysia (IRBM) as well as domestic circumstances.

The preparation and maintenance of contemporaneous transfer pricing documentation (TPD) is mandatory for:

- › business with gross income exceeding RM25 million and the total amount of related party transactions exceeding RM15 million; or
- › persons providing financial assistance exceeding RM50 million.

Taxpayers falling outside the above are required to comply with limited documentation requirements.

TPD need not be submitted but should be made available to IRBM within 30 days upon request.

Tax adjustments arising from a TP audit are subject to the following penalty rate:

- › 35% where no contemporaneous transfer pricing documentation was prepared.
- › 25% where transfer pricing documentation was not prepared according to the requirements in the TP Guidelines.

The introduction of Advance Pricing Arrangement (APA) via Income Tax (Advance Pricing Arrangement) Rules 2012 allows taxpayers to apply for APAs to reach an agreement with IRBM on prices of goods and services that would be transacted in the future with associated persons for a specified period of time. This enables taxpayers to achieve certainty on their transfer prices rather than wait for an audit.

As IRBM is intensifying its efforts on transfer pricing through audits, taxpayers ought to allocated resources and revise their workflows and expectations to ensure their transfer prices meet the arm's length test backed up with the relevant transfer pricing policy and documentation as required by local rules.

3. Personal taxation

All individuals are liable to tax on income accrued in and derived from Malaysia or received in Malaysia from outside Malaysia. Income remitted to Malaysia by a resident individual is exempted from tax. A non-resident individual will be taxed only on income earned in Malaysia.

› (i) Tax residency status

The amount of tax an individual has to pay depends on his tax residency status in Malaysia.

An individual will be considered a tax resident if he is:

(i) a Malaysian;

(ii) a Malaysian Permanent Resident; or

(iii) a foreigner who:

- » has stayed or worked in Malaysia for at least 182 days in a calendar year; or
- » has stayed or worked in Malaysia for at least 182 days for a continuous period over two years; or
- » has stayed or worked in Malaysia for not less than 90 days in the basis year and is resident or has been in Malaysia for 90 days or more in 3 out of the 4 preceding years of assessment; or
- » has not been in Malaysia in the relevant basis year but he is deemed to be resident in Malaysia in the relevant basis year if he is resident in Malaysia for the year immediately following that year and for each of the 3 immediately preceding years.

Otherwise, the individual will be considered a non-resident for tax purposes.

› **(ii) Tax rate**

Malaysia personal tax rates start at 0% and are capped at 25% (reduced to 24% with effect from YA 2016) for residents. Non-residents are taxed at a flat rate of 25% (reduced to 24% with effect from YA 2016).

› **(iii) Tax reliefs and tax deductions**

Tax reliefs available to tax residents include:

- » Self
- » Spouse/Alimony payments
- » Insurance premiums and EPF contributions
- » Private retirement schemes
- » Medical expenses
- » Cost incurred for purchases for enhancing knowledge
- » Fee for further education
- » Relief for purchase of personal computer
- » Relief on housing loan

Deductions of up to 7% of a tax resident's taxable income for gifts to charities and institutions which are approved by the government.

4. Other taxes

Other key types of taxes in Malaysia include:

- (i) withholding tax;
- (ii) import and excise duties;
- (iii) real property gains tax; and
- (iv) stamp duty.

Withholding tax is a tax charged to non-resident companies or individuals that derive income from a Malaysia source for services provided or work done in Malaysia. Import duty is mostly imposed ad valorem although some specific duties are

imposed on a number of items. Nevertheless, in line with trade liberalisation, import duties on a wide range of raw materials, components and machinery have been abolished, reduced or exempted. Furthermore, Malaysia is committed to the ASEAN Common Effective Preferential Tariffs (CEPT) scheme under which all industrial goods traded within ASEAN are imposed import duties of 0% to 5%.

Excise duties are levied on selected products manufactured in Malaysia, namely cigarettes, tobacco products, alcoholic beverages, playing cards, mah-jong tiles and motor vehicles.

Real property gains tax is a tax imposed on gains arising from the disposal of all types of properties such as residential and commercial buildings, land and shares of real property companies.

Stamp duty is a tax that is levied for the legal recognition on documents principally relating to immovable properties, stocks or shares.

Employment

The principal laws regulating employment in Malaysia are contained in the Employment Act (“EA”). Other significant laws influencing employment practices include the Industrial Relations Act, Trade Unions Act, Employees Provident Fund Act, Employees Social Security Act, Occupational Safety and Health Act, Employment (Part-Time Employees) Regulations, Factories and Machinery Act and Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace.

The basis of the employment relationship in Malaysia is the contract of employment between the employer and the employee.

1. The Employment Act at a glance

The EA prescribes minimum terms and conditions of employment for certain categories of employees and provides a process that employees may use to make claims for breach of contract or non-compliance with the provisions of the EA. The entire EA is equally applicable to foreign workers and local employees. However, there are certain provisions that may be applicable only to certain categories of employees.

Who is covered?

The EA covers any person or class of persons who has entered into a contract of service with an employer and whose monthly wages do not exceed RM 2,000 or specific categories of employees. Employees who earn between RM 2,000 and RM 5,000 a month may also seek redress at the Labour Court on terms and conditions in their individual contracts of service.

The Sabah and Sarawak Labour Ordinance 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. Common law relating to employment will apply to persons not covered by the EA and the ordinances.

Working hours, overtime, rest days and annual leave

Part XII of the EA provides for working hours, overtime, rest days and annual leave.

An employee covered by the EA:

- (i) is not required to work for more than 8 hours a day or more than 48 hours a week;
- (ii) is permitted to work up to a limit of 104 hours of overtime in a month;
- (iii) must be paid no less than 1.5 times the hourly basic rate of pay for overtime on normal working days, 2 times the hourly basic rate of pay for overtime on rest days and 3 times the hourly basic rate of pay for overtime on public holidays; and
- (iv) is entitled to one rest day per week.

The number of days of paid annual leave an employee is entitled to depends on his service period.

Public holidays

All employees covered by the EA are entitled to a minimum of eleven (11) paid gazetted public holidays in a year, five (5) of which are fixed and compulsory.

Leaves (other than annual leave)

> (i) Sick leave

- An employee covered by the EA is entitled to paid sick leave if the employee
- (i) has informed or attempted to inform the employer of his absence within 48 hours;
 - (ii) the sick leave is certified by the company's doctor or a government doctor. The number of days of paid sick leave an employee is entitled to depends on his service period.

› **(ii) Maternity leave**

A female employee covered by the EA is entitled to a minimum of 60 days of maternity leave if she has served her employer for at least 3 months before the birth of her child.

2. Other Statutory Requirements

Employees Provident Fund Act (EPFA)

The EPFA provides for mandatory monthly contributions on the amount of wages to be made by both the employer and the employee to a government-managed retirement fund on a 13:11 percentage-of-income ratio if the monthly wage is RM 5,000 and below i.e. the employer contributes 13 per cent of the income and the employee contributes 11 per cent. A ratio of 12:11 is applicable if the monthly wage is more than RM 5,000.

The contributions for employees who are 60 to 75 years of age is at a lower ratio of 6.5:5.5 if the monthly wage is less than RM 5,000. A ratio of 6:5.5 if the monthly wage is more than RM 5,000.

Failure to make contributions in accordance with the provisions of the EPFA is an offence.

All foreign workers, expatriates and their employers are exempted from compulsory contributions. However, the employer may choose to contribute at the applicable rates of RM5 per employee per month whilst the employees are to contribute 11 percent of their monthly wages if below 60 years of age and 5.5 percent if 60 years of age or above.

Employees Social Security Act (SOCSO Act)

The SOCSO Act provides for two schemes, namely the Invalidity Pension Scheme ("IPS") & Employment Injury Scheme ("EIS"). Mandatory contributions are to be made by both the employee and the employer to this government-managed programme which is akin to an insurance scheme. This is mandatory for any

employee who has ever earned less than RM 3,000 per month. All Malaysian employees including permanent residence whom have been employed by an employer under a contract of service or apprenticeship are liable under SOCSO Act. Once covered, employees remain covered irrespective of their wages.

The EIS is funded solely by the employer with the contribution of 1.25% and the IPS is funded with the contribution of 1% which is shared equally by employers and employees. The maximum contribution is based on wages of RM 3,000 per month.

Human Resources Development Fund (HRDF)

HRDF operates on the basis of a levy/grant system for the purpose of promoting, developing and upgrading the skills of employees. Employers in certain manufacturing and retail sector and selected industries in the service sector are required to register with HRDF and contribute in respect of employees who are Malaysian citizens. Employers who have paid the levy will qualify for training grants from the HRDF to defray or subsidise training costs for their Malaysian employees.

Minimum Wages Order 2012

The Minimum Wages Order prescribes a minimum wage of RM 900 a month or RM 4.33 an hour for employees in Peninsular Malaysia and RM 800 a month or RM 3.85 an hour for employees in Sabah, Sarawak and the Federal Territory of Labuan. Employers and probationers may agree to a reduction of up to 30 percent of the minimum wage rate for a maximum of six months from commencement of employment.

3. Hiring foreign employees

Foreigners must hold a valid work pass in order to work in Malaysia. Below are the main types of work passes for foreigners. Please note that this list is not exhaustive.

Employment Pass

The Employment Pass (“EP”) is a type of work permit that enables employment under a contract of service with an organization in Malaysia. The Immigration

Department of Malaysia issues EPs upon approval by the Expatriate Committee (EC) or the relevant regulatory agencies.

The validity of the EP varies with initial validity of 2 years being the norm. The EP may be renewed, depending on the nature of employment and need of such employment by the hiring company. The application shall be made through the hiring company and is only valid in Peninsular Malaysia. EP holders may only engage in the employment with the company specified in the EP.

The application will be based on a set of criteria such as:

- (i) registration and recommendations from regulatory agencies (if relevant, depending on the core business of the hiring company);
- (ii) minimum paid-up capital (amount depends on equity ownership of hiring company);
- (iii) hiring company's activities;
- (iv) monthly income; and
- (v) age and working experience.

Professional Visit Pass

A Professional Visit Pass ("PVP") is a temporary pass issued to a foreigner with desirable professional qualifications or specialist skills, who is entering Malaysia for business and professional visits under a contract of service with an organization in Malaysia for a short term period not exceeding twelve (12) months. The PVP may be issued for up to a maximum period of 12 months only. PVP may only work for the company as stated in the PVP.

Residence Pass – Talent

The Residence Pass – Talent (RP-T) is a 10-year multiple entry visa which is employer-independent for any foreign talent who has been living and working in Malaysia for at least 3 years on a continuous basis in any of the 11 industries which form part of the National Key Economic Areas. The Applicant should be earning a minimum gross annual salary (inclusive of all taxable components) of RM 144,000 in order to be eligible for RP-T. RP-T is only valid in Peninsular Malaysia.

RP-T holder's spouse and children below 18 years old will be given Residence Pass. The spouse will be able to work in Malaysia. Dependents over 18-years old, parents and parents-in-law would be eligible for a 5-year Social Visit Pass.

3. Foreign employees' dependants

Dependant Pass

EP holder or RP-T holder may apply for Dependant Pass ("DP") for their dependants. Generally, dependants include the Applicant's spouse, children, adopted children, stepchildren, parents and parents-in-law.

If a DP holder wishes to work in Malaysia, the employer of the DP holder will be required to apply for Permission to Work endorsement from the Immigration Department of Malaysia.

Social Visit Pass (Long Term)

EP holders and RP-T holders may apply for Social Visit Passes (Long Term) for their:

- (i) parents;
- (ii) parent in laws;
- (iii) children/step-child/legally adopted child age 18 and above (yet to be married and still under the Applicant's care).

Intellectual property

Intellectual property protection in Malaysia comprises of patents, trademarks, industrial designs, copyright, geographical indications and layout designs of integrated circuits. The administration of Intellectual Property Rights in Malaysia is undertaken by the Intellectual Property Corporation of Malaysia (MyIPO).

Malaysia is a member of the World Intellectual Property Organisation (WIPO), a signatory to the Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organisation (WTO), a signatory to the Paris Convention and Berne Convention which govern these intellectual property rights. Malaysia has also acceded to the Patents Cooperation Treaty (PCT) in 2006.

1. Copyrights

The Copyright Act and the Copyright Regulations are the legislations governing copyright law in Malaysia. For a work to be protected by copyright, it must be original and expressed in tangible form.

There is no requirement of formal registration in order to get copyright protection. Copyright protection arises automatically on creation of the work. Malaysia introduced the Voluntary Notification Registration System in 2012, allowing copyright holders to notify and deposit a copy of their works with MyIPO.

The duration of protection varies according to the type of copyright work concerned. For instance, a copyright in a literary, dramatic, musical or artistic work subsists during the life of the author plus 50 years after his death.

In an action for infringement of copyright, the types of relief that the court may grant include:

- (i) an injunction;
- (ii) damages;
- (iii) an account of profits;

- (iv) statutory damages; and
- (v) other applicable remedies.

The Berne Convention for the Protection of Literary and Artistic Works requires its signatories to recognize the copyright of works of authors from other signatory countries in the same way that such signatory countries recognize the copyright of their own nationals.

2. Trade Marks

Trade mark protection in Malaysia is governed by the Trade Marks Act and the Trade Marks Regulations. A trade mark is a mark or sign capable of being represented graphically which distinguishes the goods and services of one trader from those of another.

Applicants may file a trade mark application directly with MyIPO.

Unregistered trademarks may be protected under the common law action of "passing off".

A registered trade mark will be protected for an initial period of 10 years and may be renewed every 10 years in perpetuity. In an action for infringement of a registered trade mark, the types of relief that the court may grant include:

- (i) an injunction;
- (ii) damages;
- (iii) an account for profits; and
- (iv) other applicable remedies.

3. Patents

The Patents Act and the Patents Regulations govern patent protection in Malaysia. A patentable invention must be new, involve an inventive step and be capable of industrial application.

An applicant may file a patent application directly with MyIPO if he is domicile or resident in Malaysia.

Malaysia has acceded to the PCT in 2006 and since then, PCT applications can be made at MyIPO office.

A patent will be granted a protection period of 20 years. However, the utility innovation certificate provides for an initial duration of 10 years protection from the date of filing of the application and renewable for further two consecutive terms of 5 years each subject to use.

In an action for infringement of a registered patent, the types of relief that the court may grant include:

- (i) an injunction;
- (ii) damages;
- (iii) an account for profits; and
- (iv) other applicable remedies.

4. Industrial designs

Industrial design protection in Malaysia is governed by the Industrial Designs Act and Industrial Designs Regulations. An industrial design is the ornamental or aesthetic aspect of an article which may consist of three dimension features such as the shape and configuration of an article, or two dimension features, such as pattern and ornamentation.

To be eligible for registration, the industrial design must be new and do not include a method of construction or design that is dictated solely by function. In addition, the design of the article must not be dependent upon the appearance of another article of which it forms an integral part.

Local applicants can file registrations with MyIPO individually or through a registered industrial designs agent. A registered industrial design is given an initial protection period of 5 years from the date of filing and is extendable for a further

four consecutive terms of 5 years each. The maximum protection period is 25 years. In an action for infringement of a registered industrial design, the types of relief that the court may grant include:

- (i) an injunction;
- (ii) damages;
- (iii) an account for profits; and
- (iv) other applicable remedies.

Personal Data Protection

Malaysia's Personal Data Protection Act 2010 (PDPA) came into force on 15 November 2013. The main objective of the PDPA is to regulate the processing of personal data in commercial transactions and to safeguard the interests of individuals.

Personal data refers to any information in respect of commercial transactions that relates directly or indirectly to an individual, who is identified or identifiable from that information or from that and other information, including any sensitive personal data and expression of opinion about the individual.

Various industries have been classified as data users. It is mandatory that organisations falling into these industries register themselves and comply with the PDPA. It matters not whether the organisation is established in Malaysia.

This affects the manner in which organisations interact with their employees, customers and third party service providers as well as how personal data are stored, handled and processed.

Organisations are advised to have periodic reviews of their policies, processes, contractual rights and obligations as well as standard forms and notices which relate to processing of personal data in order to ensure they are in compliance with the PDPA.

The consequences for breaching the PDPA are severe. Aside from the negative publicity, penalties for non-compliance with the PDPA include fines for organisations and/or fines and imprisonment for directors and officers of the organisation.

Competition

Competition law promotes economic development by promoting and protecting the process of competition by prohibiting anti-competitive business conducts.

Competition policy in Malaysia took a significant step forward with the enactment of the Competition Act ("CA").

The CA applies to all commercial activities within and out of Malaysia so long as the commercial activity has a negative or anti-competitive effect in any market in Malaysia.

1. Prohibitions

The CA prohibits anti-competitive agreements and abuse of dominant position.

Anti-competitive agreements

The CA prohibits horizontal or vertical agreements between enterprises which significantly prevent, restrict or distort competition in any market for goods or services.

Agreements which may be prohibited include agreements that:

- (i) constitute bid-rigging;
- (ii) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (iii) share markets or sources of supply; or
- (iv) limit or control production, markets, technical development or investment.

Abuse of a dominant position

The CA prohibits any enterprise, independently or collectively with other enterprises, from engaging in any conduct that amounts to an abuse of dominance.

A conduct may constitute such an abuse if it consists in:

- (i) price discrimination not due to any economic reason and is unfair;
- (ii) predatory behaviours towards competitors;
- (iii) taking advantage of its position in refusing to supply to a particular enterprise or group or category of enterprises;
- (iv) tied selling where the conclusion of contracts are subject to the acceptance by the other parties of supplementary obligations which have no connection with the subject of the contracts; or
- (v) buying up scarce goods or resources required by a competitor but not needed for own use.

2.Exemptions

The CA does not apply to:

- (i) Commercial Activities regulated by:
 - › Communications and Multimedia Act 1998.
 - › Energy Commission Act 2001.
- (ii) Conducts or Agreements:
 - › Conducts or Agreements that comply with any law.
 - › Collective bargaining or collective agreements on behalf of employees between employers and trade unions.
 - › Services of general economic interest which covers public utilities or having the character of a revenue producing monopoly.
- (iii) Activities:
 - › Activities that involve an exercise of governmental authority.
 - › Activities carried out pursuant to the principle of solidarity.
 - › Purchase of goods or services not intended for resale or resupply.

3. Administration and enforcement of the competition law

The Malaysia Competition Commission (“MyCC”) is an independent body established under the Competition Commission Act (“CCA”) to enforce the CA.

The CCA empowers MyCC to carry out functions such as:

- › Implement and enforce the provisions of the CA.
- › Issue guidelines in relation to the implementation and enforcement of the competition laws.
- › Act as advocate for competition matters.
- › Issue a direction as an interim measure, while an investigation is still on-going.
- › Carry out general studies in relation to issues connected with competition in the Malaysian economy or particular sectors of the Malaysian economy.
- › Inform and educate the public regarding the ways in which competition may benefit consumers in the economy of Malaysia.

The amount of penalty imposed may be up to 10 % of the worldwide turnover of the business.

Arbitration

Arbitration is a form of alternative dispute resolution whereby parties to a dispute submit to one or more neutral arbitrator(s) for a final and binding decision.

As a result of international trade and commerce, more and more disputes arise from cross-border transactions and international arbitration is increasingly becoming the preferred mode of resolving commercial disputes outside the court system.

In Malaysia, arbitration is governed by the Arbitration Act, which is based substantially on the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration.

1. Enforcement of arbitral awards

Awards issued in Malaysia, either in respect of domestic or international arbitration are binding and enforceable. In addition, as a result of Malaysia being a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958 (the New York Convention), arbitral awards issued in Malaysia will be recognized and enforceable in other signatory states. Likewise, arbitral awards issued in other signatory states will be recognized and enforceable in Malaysia. There are currently 150 signatories to the New York Convention.

2. Kuala Lumpur Regional Centre for Arbitration

The Kuala Lumpur Regional Centre for Arbitration (“KLRC”) was established in 1978 and was the first regional arbitration centre established in the Asia-Pacific region under Asian African Legal Consultative Organisation (“AALCO”), an inter-government organisation established in 1956.

KLRC has developed new rules to cater to the growing demands of the global business community such as the KLRC i-Arbitration Rules, the KLRC Fast Track Rules as well as the Mediation and Conciliation Rules. With KLRC’s Fast Track Rules, some cases could be settled in less than six months.

KLRCA is the first of its kind to adopt the UNCITRAL Arbitration Rules with provisions catering for Shariah-compliant commercial transactions.

KLRCA has a panel of over 700 experienced domestic and international arbitrators from diverse fields of expertise. Its fee structure is 20% lower than other established international arbitration centres and there is no withholding tax imposed on the fees of foreign arbitrators, who are free to practise in Malaysia.

In 2012, KLRCA received international recognition when it won the Award for Global Arbitration Review Award for 'Innovation by an Organisation or Individual' for the KLRCA i-Arbitration Rules.

3. Drafting arbitration clauses

Parties to a transaction should always include a well-drafted arbitration clause. There are a number of essential elements that should be included, such as the scope of dispute(s) covered, the number of arbitrators, seat of arbitration, venue of arbitration, adoption of arbitration rules, the choice of institutional or ad hoc arbitration, the language of arbitration.

Contact



In Kuala Lumpur

Dr. Dirk Oetterich, LL.M.

Head of Office

Phone: +60321818755

e-mail: dirk.oetterich@roedl.pro

Rödl & Partner

Roedl Consulting Sdn. Bhd.

Roedl Audit

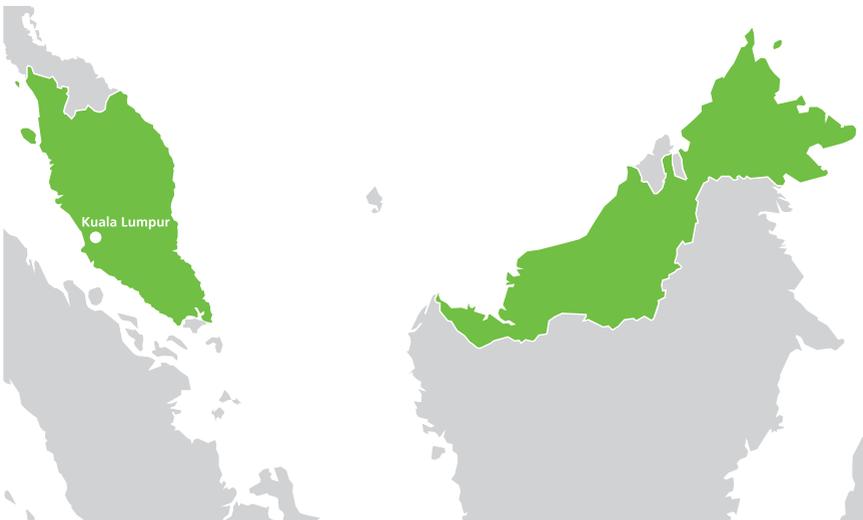
Menara Tan & Tan, Office M-03
207, Jalan Tun Razak
50400 Kuala Lumpur
Malaysia

Phone: +60321818755

Fax: +60321642012

e-mail: KualaLumpur@roedl.pro

www.roedl.com/malaysia



This booklet is a general overview of the direct foreign investment regulatory and tax system in Indonesia. This should not be considered as professional advice. Specific professional opinion should be sought for specific circumstances.



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today.

„Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.