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Contents

Investing in Malaysia: An Introduction for California Lawyers and Their Clients

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What comes to mind when you think of tropical destinations where a California-based lawyer and his or her clients can combine business with pleasure? Singapore? Hong Kong? Perhaps Bangalore? These days, business travelers (and their lawyers) are adding Kuala Lumpur in Malaysia to this list.

Kuala Lumpur or "KL" is the business capital and largest city in Malaysia. Even the name sounds exotic and exciting to Westerners. The heady mix of cultures, foods, religions, and historic sights found in KL, all infused with a lovely equatorial vibe, has always lured intrepid leisure travelers. Those who ventured to KL found a cosmopolitan city with friendly people, European colonial history and, of course, the famous Petronas Twin Towers – the world's tallest buildings upon their completion in 1998.

The New York Times recently said "jetsetters … are heading these days to Kuala Lumpur, the Malaysian capital that's quietly evolved into one of the area's coolest and friendliest cities."[1] Today, in addition to jet-setting, there are compelling business reasons to consider a visit to Malaysia, which boasts a modern, well-regulated economy where numerous American businesses both large and small are already operating. Adding to the incentive, it appears that Malaysia is emerging from the recent global economic slowdown in a very optimistic mood!

A nation of approximately 28 million, Malaysia has roughly 11 million people in its work force and a literacy rate of over 93%.[2] In 2009, its economy contracted by only 1.7%.[3] Thanks to economic stimulus packages and other measures implemented by the Malaysian Government, the economy has rapidly been put on the road to recovery. Indeed, in April 2010, the World Bank reported that Malaysia has already "broadly recovered from the effects of the crisis" and that its New Economic Model, which proposes to move its economy up the value chain and promote inclusive and sustainable growth led by innovation, is encouraging.[4]

Malaysia's exports reached a record high of Malaysian Ringgit (RM) 59.44 billion (US$18.5 billion)[5] in March 2010, a surge of 36.4% compared with March 2009.[6] Total trade in March 2010 was RM104.54 (US$32.7 billion), an expansion of 40.1% compared with March 2009, with a trade surplus of RM14.4 billion (US$4.5 billion) marking the 149th consecutive month of surplus.[7] The United States is one of Malaysia's top ten export destinations as well as one of the top ten suppliers of Malaysian imports.[8] Foreign Direct Investment (FDI) is also an important contributor to the economy. Malaysia enjoyed RM152 billion (US$47.5 billion) in FDI inflows from 2000 to 2009.[9] The Malaysian Government continues to promote and encourage investments by FDI, especially in certain designated sectors including financial advisory and consulting services.[10] No foreign equity restrictions are imposed on such FDI and, in addition, attractive tax incentives are likely to be granted to such companies.

At the "Invest Malaysia" conference held in March 2010, the current Prime Minister, The Honorable Dato' Sri Mohd. Najib Tun Razak, laid out the nation's focus for 2010. It includes ensuring a sustainable and robust economic recovery, enhancing competitiveness, sparking private investments and growth, building an innovative economy, and modernizing Malaysia's economic model for the future.[11] Forecasting economic growth at 5.7% for 2010, the World Bank says that by encouraging businesses beyond the high technology sector to engage in innovation, broad sectors of the Malaysian economy can gain a competitive advantage.[12]

In addition to economic progress and an optimistic outlook within Malaysia, international capital markets players and their lawyers around the globe have taken note of new policies announced in 2009 that permit increased foreign ownership of investment banking companies located in Malaysia. The Malaysian Government now allows up to 100% foreign ownership of qualified and leading wholesale fund management companies, up to 70% foreign ownership of retail unit trust management companies, and up to 70% foreign ownership of stock brokerage companies.[13] These new policies offer both Malaysian and foreign investment banks the flexibility to enter into strategic partnerships that may enhance international linkages and promote business opportunities. Among the requirements for investment banks promulgated by the Central Bank of Malaysia are that the bank must apply for and be granted two licenses (a merchant banking license and a dealers license) and that the appointment of the bank's directors and chief executive officers must follow the approval guidelines issued by the Central Bank.[14]

The Securities Commission of Malaysia, the agency responsible for the granting of new licenses to capital markets intermediaries (stock brokerage and fund management companies) has released guidelines stating that the new equity ownership framework is available for companies that have a strong value proposition and can demonstrate the ability to add value to Malaysian capital markets. The foreign company seeking to open shop in Malaysia must exhibit a good track record in its international operations, including its financial position, reputation and expertise. To be eligible for a license, the company needs to provide a viable business plan and specific deliverables that will be monitored on a regular basis.[15] Companies granted such licenses must be comprised of at least 30% *Bumiputera* (generally, Malay individuals or aborigines as defined in the Malaysian Federal Constitution) employees, licensed representatives, and directors.[16]

The new policies led global investment banking firm Goldman Sachs to announce the opening of a Malaysian operation sometime in 2010, after being granted licenses by the Securities Commission in December 2009. These licenses allow the financial giant to establish fund management and corporate financial advisory services in Malaysia. The co-president of Goldman Sachs for Southeast Asia says that the "future outlook for Malaysia's capital markets and its asset management industry is very positive and through our local presence, we look forward to playing a larger role in their development."[17] Given that the new investment policies are primarily intended to attract foreign capital, the Chair of the Securities Commission called Goldman Sachs' decision a "significant" one that demonstrates "confidence in the growth opportunities available in the Malaysian capital market."[18]

Along with increased ownership levels for investment banks, an even greater change has been made to guidelines covering the acquisition of equity stakes by foreign investors. On June 30, 2009, as part of the Malaysian Government's roll-out of its comprehensive deregulation of investment guidelines, the Prime Minister announced that the Foreign Investment Committee guidelines previously governing acquisitions, mergers, and takeovers were being repealed with no new guidelines put in place.[19] Therefore, with certain exceptions, it is no longer necessary to seek government approval for the acquisition by a foreign entity of an equity interest in a Malaysian entity.[20]

In April 2009, the Malaysian Government liberalized 27 services sub-sectors, including computer and related services, health and social services, tourism, transport, sporting and other recreational services, business services (including regional distribution centers and international procurement centers), technical testing and analysis, and management consulting. No equity conditions will be imposed for conforming investments made within certain parameters in these designated sectors.[21] The Government also announced a liberalization plan for the financial services sector to be implemented by 2012, including issuing commercial banking and Islamic banking licenses to foreign players and enhancing operational flexibilities to foreign institutions operating in Malaysia.[22]

Along with private equity investments, mergers and acquisitions, and investment banking activities, foreign companies are increasingly considering publicly listing on Malaysia's stock market. The Bursa Malaysia Berhad,[23] an exchange holding company approved under Section 15 of the Capital Markets and Services Act 2007, operates a fully integrated exchange with trading, clearing, settlement, and depository capabilities that serves investors in over 60 countries.[24] Nearly 1000 companies are currently listed on the exchange, comprised of the Main Market and the ACE Market.[25] Bursa Malaysia offers a range of products and services covering equities, derivatives, bonds, REITs, and offshore listings. It is the world's biggest palm oil futures trading hub and a global leader in Islamic capital market products and services, with over 80% of its listed companies being Shari'ah compliant. Bursa Malaysia recently launched the largest-ever initial public offering (IPO) in Southeast Asia – that of Maxis Berhad, the Malaysian telecom operator, at RM11.2 billion (US$3.31 billion).[26]

The CEO of Bursa Malaysia is cautiously optimistic about 2010. He says that signs of the global market recovery include better trading activity and a resurgence in local investor participation in the Malaysian stock market, and he predicts that more IPOs will occur in 2010 than in the prior year.[27] Bolstering such optimism, market capitalization of the Bursa Malaysia increased 50% during 2009 and stood at RM999 billion (over US$31 billion) at year end.[28] With the Malaysian Government's relaxation of foreign ownership restrictions, this only stands to increase in the future. Giving confidence to investors and issuers alike, Bursa Malaysia places a high emphasis on corporate governance and on improving the quality of disclosure by listed companies, while promoting the adoption of best practices in the business conduct of all market participants.[29]

These new laws and policies, combined with the beginnings of recovery from the global financial crisis and an increasingly positive economic outlook, may find international banking and capital markets talent moving to Malaysia from more traditional Asian markets such as Singapore and Hong Kong. One Malaysian investment bank, ECM Libra Financial Group Berhad, views the recent market liberalization as positive and is confident that market recovery has begun. Its CEO says the easing of ownership rules combined with global and regional economic factors will allow Malaysian investment banks "to hire experienced bankers who were previously keen to work only in more sophisticated financial markets like New York, London or Hong Kong. Now, these new recruits should help create more innovative products…."[30]

As with all investments, caution is advised when weighing the risks versus rewards of investing in Malaysia. Its stock market – like markets around the globe at the present time – remains volatile. While Malaysian stocks experienced in April 2010 their longest winning streak in almost 16 years, closing at record highs, by the end of May 2010, the market was headed to a five-month closing low.[31] Nonetheless, for adventurous and enterprising business people and their lawyers in California and elsewhere, there may be no better time to investigate making an investment in Malaysia than right now!

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ENDNOTES

1. Naomi Lindt, *The 31 Places To Go In 2010*, N.Y. Times, Jan. 10, 2010, available at http://www.nytimes.com/2010/01/10/travel/10places.html?pagewanted=3.
2. U.S. Department of State, Background Note: Malaysia, Jan. 28, 2010, available on the website of the U.S. Department of State at http://www.state.gov/r/pa/ei/bgn/2777.htm.
3. Central Bank of Malaysia (*Bank Negara Malaysia*), Annual Report 2009, p. 7, available on the website of Bank Negara Malaysia at http://www.bnm.gov.my/files/publication/ar/en/2009/ar2009_book.pdf (hereafter "BNM Annual Report").
4. Danny Yap, *World Bank sees 5.7% GDP growth for Malaysia*, The Star Online, April 20, 2010, http://biz.thestar.com.my/news/story.asp?file=/2010/4/20/business/6089127&sec=business.
5. All conversions from Malaysian Ringgit (RM) to U.S. dollars are approximate.
6. Malaysia External Trade Statistics March 2010 (Updated: May 11, 2010), Department of Statistics, Malaysia, available on the website of Department of Statistics Malaysia at http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=442%3Amalaysia-external-trade-statistics-march-2010-updated-11052010-&catid=36%3Amalaysia-external-trade-statistics-&Itemid=61&lang=en.
7. Id. Major export products include electrical and electronic products, palm oil, liquefied natural gas, crude petroleum, and timber. Major import products include machinery and transport equipment, manufactured goods, chemicals, mineral fuels, and food. Id.
8. Id.
9. BNM Annual Report at p. 36.
10. FDI has increasingly focused on the higher value-added services sectors, such as financial services, outsourcing, communications, transportation, hotels, and retail. Investments in upstream activities in the oil and gas sector are also significant. New growth areas in the manufacturing sector include renewable energy and medical equipment. Id. at pp. 36-37. FDI in services located within designated "cybercities" and other targeted geographic areas is also encouraged. Id. at p. 14. *See also* http://www.iskandarmalaysia.com.my (Government promotion of FDI in the Iskandar development region, located at the southern tip of peninsular Malaysia just across the Johor Strait from Singapore).
11. Keynote Address by The Hon. Dato' Sri Mohd Najib Tun Razak, Prime Minister of Malaysia, at Invest Malaysia 2010, March 30, 2010, available on the website of 1Malaysia at http://www.1malaysia.com.my/index.php?option=com_content&view=article&id=6458&Itemid=99&lang=en.
12. Yap, *supra* note 4.

13. Keynote Address by The Hon. Yab Dato' Sri Mohd Najib Tun Abdul Razak, Prime Minister of Malaysia, at Invest Malaysia 2009, June 30, 2009 (hereafter "2009 Keynote Address"), available on the website of The Malaysian National News Agency (*Bernama*) at http://www.bernama.com/bernama/v5/pdf/InvestMsia-speech-Final91.pdf; *see also Malaysia relaxes foreign ownership of investment funds*, THE EDGE SINGAPORE, June 30, 2009, available at http://www.theedgesingapore.com/component/content/5572.html?task=view.

14. Guidelines on Investment Banks, Bank Negara Malaysia, July 1, 2005, para. 4.1, 6.6.1.1, available on the website of Bank Negara Malaysia at http://www.bnm.gov.my/guidelines/01_banking/04_prudential_stds/12_investmentbank_guideline.pdf. Banks must have minimum capital funds, unimpaired by losses, of RM2 billion on a banking group basis or RM500 million on a non-group basis (US$620 or US$155 million). Id. para. 5.1.

15. Liberalisation of Equity Holdings in Capital Market Intermediaries (measures announced by the Prime Minister of Malaysia at Invest Malaysia 2009, June 30, 2009), para. 4, available on the website of the Securities Commission Malaysia (*Suruhanjaya Sekuriti*) at http://www.sc.com.my/main.asp?pageid=751.

16. Id. at para. 5.

17. *Goldman Sachs to Open Operations in Malaysia*, JAKARTA GLOBE, Dec. 8, 2009, available at http://www.thejakartaglobe.com/finance/goldman-sachs-to-open-operations-in-malaysia/346303.

18. K.P. Lee, *Goldman to Start in Malaysia*, WALL STREET JOURNAL, Dec. 8, 2009, available at http://online.wsj.com/article/SB10001424052748703558004574583114019997936.html.

19. 2009 Keynote Address, *supra* note 13. One exception is for certain acquisitions of immovable property, where prior approval of the Economic Planning Unit is still required for direct acquisition of immovable property valued at RM20 million (US $6 million) and above if it would result in the dilution of ownership of property held by *Bumiputera* interest and/or government agency, and for indirect acquisition of immovable property by other than *Bumiputera* interest through acquisition of shares resulting in a change of control of the company owned by *Bumiputera* interests and/or government agency having immovable property more than 50% of its total assets and valued more than RM20 million. Guideline on the Acquisition of Properties, Economic Planning Unit, Prime Minister's Department, para. 2.1, available on the website of the Economic Planning Unit at http://www.epu.gov.my/c/document_library/get_file?p_l_id=10370&folderId=31146&name=DLFE-2501.pdf

20. Acquisition requirements will continue to be imposed by the applicable sector regulator, such as the Energy Commission, the Commercial Vehicles Licensing Board, the National Water Services Commission, and the Malaysian Communications and Multimedia Commission. 2009 Keynote Address, *supra* note 13. For example, the Communications and Multimedia Commission in considering an application for a license under the Communications and Multimedia Act 1998 will take into consideration the Government policy of promoting local small and medium industry (*SMI*) participation in the applications market, or specific policies in relation to equity ownership of Content Applications Service Providers (companies providing traditional broadcast services as well as newer services such as online publishing and information services). Information Paper: Licence Application Procedure and Licensing Criteria, Malaysian Communications and Multimedia Commission (*Suruhanjaya Komunikasi Multimedia Malaysia*), Aug. 8, 2003, paras. 2.3(d), 6.1(d), available at http://www.skmm.gov.my/link_file/what_we_do/licensing/cma/pdf/Licence%20ApplicationCriteriaPaper.pdf.

21. Press Statement: Liberalisation of the Services Sector, Office of the Prime Minister, April 22, 2009, available on the website of the Office of the Prime Minister of Malaysia at http://www.pmo.gov.my/?menu=news&page=1729&news_id=39&news_cat=4.

22. Press Statement: Liberalisation of the Financial Sector, Office of the Prime Minister, April 27, 2009, available on the website of the Office of the Prime Minister of Malaysia at http://www.pmo.gov.my/?menu=news&page=1729&news_id=44&news_cat=4.

23. For the history of Bursa Malaysia, *see* http://www/klse.com.my/website/bm/about_us/the_orgainisation/history.html.

24. Bursa Malaysia Annual Report 2009 (hereafter "Bursa Malaysia Annual Report"), p. 2, available on the website of Bursa Malaysia at http://bursa.listedcompany.com/misc/ar2009.pdf.

25. Id. at p. 3.

26. James Hookway and Elffie Chew, *Maxis IPO Offers Hope for Malaysian Market*, WALL STREET JOURNAL, Nov. 11, 2009, p. A23, available at http://online.wsj.com/article/SB125783680704240739.html.

27. Darlene Liew, *Bursa Malaysia expects "flattish" performance in 2010*, THE EDGE MALAYSIA, Feb. 5, 2010, available at http://www.theedgemalaysia.com/in-the-financial-daily/159196-bursa-malaysia-expects-flattish-performance-in-2010.html.

28. *Bursa Malaysia At A Glance*, Bursa Malaysia Annual Report, *supra* note 23, at p. 3; *Market Highlights*, id. at p. 8.

29. *Chairman's Message,* id at p. 18.

30. Chong Pooi Koon, *Foreign Interest in Malaysian Investment Banks: ECM Libra*, BUSINESS TIMES MALAYSIA, May 21, 2009, http://www.btimes.com.my/Current_News/BTIMES/articles/ecml/Article/.

31. *KL stocks in longest rally since 1994*, BUSINESS TIMES MALAYSIA, April 5, 2010, available at http://www.btimes.com.my/articles/20100405103225/Article/; *No Relief Yet for Malaysian Stocks*, RTTNEWS, May 26, 2010, available at http://www.rttnews.com/ArticleView.aspx?Id=1317567.