ASIA
A Legal Guide for Business Investment and Expansion
Fifth Edition

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We are experiencing a rapid change in the global economic landscape. Many of the rapid-growth markets are found in Asia and specifically, in South East Asia. The recent 2017 Q3 Growth Domestic Product (GDP) Growth numbers were released and using China as a benchmark at 6.8%, several of the Association of Southeast Asian Nations (ASEAN) countries such as, Malaysia, Singapore, Vietnam, Philippines and Indonesia, performed at a comparable rate. Vietnam and Philippines outpaced China’s GDP Growth at 7.46% and 6.9% respectively. Malaysia’s GDP Growth numbers are close by at 6.2% while Indonesia and Singapore are at 5.06% and 4.6% respectively. It should come as no surprise that ASEAN countries are leading the “Asian Century”.

The establishment of the ASEAN Economic Community (AEC) creates a single market of 622 million people. With the successful implementation of the AEC Blueprint 2015, there has been a freer flow of trade and investment. The AEC Blueprint 2025 was introduced when Malaysia took over the chairmanship at the 27th ASEAN Summit in 2015. The vision was to have an AEC by 2025 that is highly integrated and cohesive; competitive, innovative and dynamic; with enhanced connectivity and sectorial cooperation; and a more resilient, inclusive, and people-oriented, people-centered community, integrated with the global economy.

Malaysia is geographically well positioned at the center with its robust trade and domestic demand. Malaysia offers investors a cost-competitive economy that is increasingly innovation-driven. It is proud to provide strong investor protection, good talent availability, a high quality of living, and an affordable and business-friendly environment. Doing business in Malaysia is relatively straightforward. Challenges faced by foreign investors arise primarily out of administrative processes and policies adopted by the ruling government that focus on certain strategic sectors. Malaysia subscribes to the principle of progressive liberalization within the context of overall development strategy. With the abolition of the Foreign Investment Committee in 2009, the process for foreign direct investment was simplified substantially.

The central bank, Bank Negara Malaysia, continuously implements measures to strengthen the regulatory and supervisory framework to maintain a sound and strong banking system. The Securities Commission Malaysia is responsible for regulating and systematically developing the capital markets in Malaysia with the objective of protecting all investors. Malaysia was ranked 24th in the latest “Ease of Doing Business” report by the World Bank and 24th out of 63 countries in the IMD’s World Competitiveness Yearbook 2017, ahead of Thailand, Japan and Korea. Malaysia is a safe haven for investment: according to the World Bank, Malaysia’s investor protection regime is ranked 4th in the world.

It is significant in the Global Competitiveness Report 2017-2018 (released by the World Economic Forum (WEF) in 2017), Malaysia ranks 23rd out of 137 economies, as compared to 25th out of 138 countries in 2016-2017. With the objective of increasing significant private-sector investment, the Malaysian government launched the Iskandar Malaysia Development Region in 2006, which was designed with the investor in mind. The region will enjoy state-of-the-art facilities, infrastructure, and a one-stop business centre to ensure business transactions are fast, seamless and convenient. There are many incentives available for foreign investors, including tax incentives for certain promoted activities. Iskandar Malaysia secured RM32.15 billion in new investments in 2016, bringing the total cumulative committed amount to RM237.36 billion since 2006. As of June 2017, local investors contributed 60% or RM143 billion of the total cumulative committed investments while balance of RM94 billion came from foreign investors.

In line with the Malaysia International Islamic Financial Centre (MIFC) initiative launched in 2006 to develop Malaysia as the international hub of Islamic finance, Malaysia was recognized as the world’s most important Islamic-finance centre by The Economist in 2013.

The nation’s New Economic Model (launched on 30 March 2010) seeks to transform the nation into a high-income economy that is both sustainable and inclusive and will position the nation on the right path toward attaining developed nation status by 2020.

What role will the government of Malaysia play in approving and regulating foreign direct investment?

Regulation of foreign investment in Malaysia is achieved through legislation as well as governmental policies. Specific licenses and permits are required for the conduct of certain strategic activities and businesses.
The Malaysian government offers many incentives to encourage business growth and development. Through economic reform initiatives, such as the Economic Transformation Program, the government seeks to provide opportunities for business to expand and stay competitive. Various incentives and initiatives have been introduced to deregulate foreign direct investment and to attract foreign direct investment into Malaysia. This includes the liberalization of foreign equity requirements imposed on a total of 45 services subsectors to date and the development of five economic growth corridors within Malaysia to leverage on the competitive advantage of different states and develop high impact industry clusters in these areas. Attractive investment packages are provided in the form of income tax exemptions, liberal policies on foreign equity participation, and employment of expatriates.

Although the Malaysian government continues to play an active role in approving and regulating foreign direct investment in certain strategic sectors, liberalization measures have been progressively adopted by the government to remove restrictions on foreign direct investment. We look forward to more governmental policies and measures which are market-friendly, merit-based, needs-based and transparent, and will improve Malaysia’s competitiveness as a foreign investment destination and meet the country’s goal of becoming a high-income economy by 2020.

2. Is it possible for foreign investors to conduct business in Malaysia without a local partner? What corporate structure is most commonly used and best for foreign investors?

Foreign investors can conduct business in Malaysia without a local partner by (most commonly) incorporating a company under the newly enacted Companies Act 2016 (CA) or by setting up branches of foreign companies in Malaysia. However, local partners are still required in certain regulated activities such as petroleum and telecommunications.

Under the CA, the following types of companies may be incorporated in Malaysia:

- A private limited company, which has liability limited by shares (commonly used)
- A public limited company, which has liability limited by shares (commonly used)

Prior to the incorporation of a company in Malaysia, an application must be made to determine if the proposed name of the intended company is available. The CA now permits the company incorporated in Malaysia to have only one director (as opposed to the minimum of two directors in the previous Companies Act 1965) who is a resident in Malaysia. A resident need not be a Malaysian citizen. In addition, all companies are also now permitted to have just one initial subscriber (as opposed to the minimum requirement of two initial subscribers in the Companies Act 1965).

In addition, the Limited Liability Partnerships Act 2012 (LLPA) came into operation on 26 December 2012. With the coming into force of the LLPA, any two or more persons, consisting of, wholly or partly, individuals or bodies corporate, associated for carrying on any lawful business with a view to profit may form a limited liability partnership in accordance with the terms of the limited liability partnership agreement. On 5 February 2013, the Companies Commission of Malaysia published the General Guidelines for Registration for Limited Liability Partnerships and Related Matters.

3. How does the Malaysian government regulate commercial joint ventures composed of foreign investors and local companies or individuals?

Commercial ventures between foreign investors and local firms or individuals in regulated sectors are regulated by the Malaysian government through applicable laws, regulations, policies and guidelines, including the imposition of foreign equity participation requirements in the granting of the licenses necessary for conducting business in the regulated sectors.

Specific licenses and permits are required for the conduct of certain strategic activities and businesses, such as manufacturing activities, petroleum-related activities and telecommunications, and equity participation requirements are sometimes imposed by the Malaysian regulatory authorities in granting these licenses and permits. Such equity participation conditions are commonly formulated and imposed by the respective Malaysian sector regulators which are based on the specific requirements and strategic nature of the relevant sector.

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As these regulatory requirements, guidelines and policies vary across each industry, Malaysia has put in place the Malaysian Investment Development Authority (MIDA), a governing authority, to assist both foreign and local investors alike in achieving successful joint ventures. Today, MIDA provides a broad range of services ranging from providing information on the opportunities for investments, to facilitating companies which are looking for joint venture partners.

4. What specific laws will influence the commercial relationship between local agents/distributors and foreign companies?

The Guidelines on Foreign Participation in the Distributive Trade Services Malaysia 2010 (Guidelines on Foreign Participation in Distributive Trade 2010) require all proposals for foreign involvement in distributive trade to obtain the approval of the Ministry of Domestic Trade Cooperatives and Consumerism (MDTCC). These include acquisition of interest, mergers and/or takeovers by foreign participation, the opening of new branches and relocation, expansion of existing branch/outlet, buying over/taking over of outlets of other operators and the purchase of properties to operate distributive trade activities prior to any application for approval/license from the local authority to operate distributive trade activities.

All distributive trade companies with foreign equity shall:

- Appoint Bumiputera director/directors
- Hire personnel at all levels including management to reflect composition of the Malaysian population
- Formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector
- Hire at least 1% of the total hypermarket workforce from persons with disabilities (if applicable)
- Increase the utilization of local airports and ports in the export and import of goods
- Utilize local companies for legal and other professional services which are available in Malaysia
- Submit an annual financial report to the MDTCC
- Comply with all local authorities by laws and regulations

Apart from the above, the relationship of a company with foreign equity and its local agents and distributors will usually be governed through their respective contractual arrangements. Contractual arrangements are primarily governed by the Contracts Act 1950, which sets out certain provisions concerning the relationship of agency.

5. In what manner does the Malaysian government regulate proposed merger and acquisition activities by foreign investors? Are there any specific areas or industries that are heavily restricted or completely prohibited to foreign investors?

The Malaysian government regulates proposed merger and acquisition activities by foreign investors primarily through the licensing process, e.g., by the imposition of a requirement for the approval of the relevant regulatory authority to be obtained prior to any change of foreign shareholding structure of the licensee holder.

“National interest” in terms of strategic sectors will continue to be safeguarded through sector regulators. GLCs will continue to constitute a major part of the nation’s economic structure. Companies in such sectors will also continue to be subject to equity conditions as imposed by their respective sector regulators, such as the Energy Commission, Commercial Vehicles Licensing Board, National Water Services Commission, Malaysian Communications and Multimedia Commission.

In some cases, the Malaysian government takes a stake in companies within strategic sectors through GLCs or its appropriate ministries via “golden shares” and veto rights.

The Guideline on the Acquisition of Properties by foreigners at the minimum threshold of RM1 million, as proposed in the Budget 2014 has taken effect as at 1 March 2014. In states other than the Federal Territories of Kuala Lumpur, Putrajaya and Labuan, the actual enforcement date is subject to the respective state authority. The Guideline was first enforced on 30 June 2009 to replace the Foreign Investment Committee Guidelines (FIC Guidelines) which were abolished. One of the conditions set forth in the Guideline is the minimum threshold for the acquisition of a residential unit, commercial unit, industrial land and agricultural land by foreigners. On 30 June 2009, the minimum threshold imposed was RM250,000 per unit, and it was then raised to RM500,000 per unit effective 1 January 2010. The Guideline was revised in 2014 by increasing the minimum threshold for the acquisition of property by foreign interests to RM1 million per unit (although some states adopted different minimum
thresholds such as Selangor, which imposes a minimum threshold of RM300,000 per unit for commercial units and industrial land). Further, the approvals of the respective state authorities as well as approvals of the respective estate land boards for the acquisition of agricultural and estate land are usually additionally required.

6. How do local labor statutes regulate the treatment of employees and expatriate workers?

In general, parties may negotiate freely on the terms of the employment contract. However, a statutory protection under the Employment Act 1955 (EA) is afforded to manual workers or employees whose monthly wages do not exceed RM2,000 and employees under a few other specified categories in the EA. The EA provides for the minimum terms and benefits in relation to the employees’ welfare with specific reference to medical benefits and leave taking. Further, the Minimum Wages Order 2016 prescribes the minimum wages payable by an employer to its employees (whether local or foreign). Pursuant to the Minimum Wages Order 2016, an employer in Peninsular Malaysia is required to pay to its employees a minimum wage of RM1000 a month, whereas the minimum wage is RM920 a month in Sabah, Sarawak and the Federal Territory of Labuan.

The Industrial Relations Act 1967 (IRA) is applicable throughout Malaysia and provides for the regulation of relations between employers and workers or employees and their trade union. The IRA was enacted to protect the employees whereby fair treatment is given to them and due process is observed in relation to the termination of employment. Strictly speaking, no employer can abuse its right to fire employees without due cause. An employer is only entitled to terminate employees for just and reasonable cause. 'Just Cause' would be in reference to misconduct, negligence or poor work performance. In Malaysia, the onus is on the employer to establish such allegations. This Act also sets out the procedure relating to submissions of claims for recognition and scope and representation of trade union and collective bargaining. However, matters relating to promotion, recruitment and dismissal are not allowed to be included in the proposal for collective bargaining.

The Employee Provident Fund (EPF) is a form of compulsory savings for workers. Employees can only withdraw EPF savings in certain circumstances, for example, medical bills and retirement. Currently, employees aged less than 60 years old are required to contribute 8% of their monthly salary to EPF while employers are required to contribute 12% of the employees’ monthly salary (where their monthly salary exceeds RM5,000) or 13% of the employees’ monthly salary (where their monthly salary is RM5,000 or less). For employees between 60 and 75 years old, the contribution rates are half of the statutory contribution rates set out above for both employers and employees. Expatriates are exempted from the EPF requirements.

Social Security Organization (SOCSO) is a fund to provide benefits for workers who meet with accidents in the course of their employment. Effective 1 June 2016, all employees must be registered and contribute to SOCSO. However, SOCSO coverage and protection is limited to Malaysian citizens and permanent residents.

Foreigners who desire to work in Malaysia are required to obtain the relevant permit from the Immigration Department of Malaysia. With effect from 1 September 2017, an expatriate worker seeking to obtain an Employment Pass (Category I) must earn a basic salary of minimum RM10,000 per month and must have an employment contract valid for up to five years. The Category II Employment Pass is issued to an expatriate worker taking up a contract of employment for up to two years and earning a monthly income of RM5,000 to RM9,999. A foreign spouse of a Malaysian citizen (legally married under the Malaysian law) is permitted to work in Malaysia without having to change his/her Social Visit Pass to an Employment Pass on condition that the spouse has acquired work approval from the Immigration Department.

It is important to note that foreign companies operating in Malaysia are permitted to hire expatriate personnel in areas where there is a shortage of trained Malaysians to perform these specific roles.

The minimum paid-up capital required of a private limited company incorporated in Malaysia applying for an expatriate post is RM250,000 (where the company is 100% locally owned), RM350,000 (where the company is both local and foreign owned), and RM500,000 (where the company is 100% foreign owned). In the case of companies engaging in wholesale, retail, trading, import and export business, the MDTCC guidelines will require a minimum paid-up capital of RM1,000,000 in order to obtain the
Wholesale and Retail Trade License, which is needed before the company can apply for expatriate work permit.

7. What role do local banks and government agencies play in regulating the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The Malaysian exchange control regime is governed by the Financial Services Act 2013 and is administered by the Central Bank of Malaysia (BNM) under the Foreign Exchange Administration (FEA) Rules and BNM’s Notices. The FEA rules impose general restrictions on foreign exchange dealings by residents and nonresidents.

The Malaysian capital markets are easily accessible by foreign investors. There is free mobility for inflow and outflow of capital for investments in Malaysia. Foreign investors may freely invest in any form of ringgit assets either as direct or portfolio investments. The investments can be funded through:

• The conversion of foreign currency to local currency (Malaysian Ringgit) with licensed onshore banks (excluding licensed international Islamic banks) or through an appointed overseas office of the licensed onshore bank’s banking group;

• Foreign currency borrowings from licensed onshore banks; or

• Ringgit borrowings from licensed onshore banks for real sector activities and for the purchase of residential and commercial properties in Malaysia (except for the purchase of land).

Investors are free to remit out divestment proceeds and any income arising from investments in Malaysia. However, the funds must first be converted into foreign currency with a licensed onshore bank before repatriation.

In relation to conversion of local currency, both residents and nonresidents may freely buy and sell ringgit against foreign currency with licensed onshore banks on spot and forward basis for both current and financial account transactions.

Nonresidents are free to issue securities or Islamic securities denominated in foreign currency in Malaysia to any person, but BNM’s approval is required for issuance of any amount of ringgit securities in Malaysia. Nonresidents are also permitted to issue foreign-currency denominated sukuk/bonds in Malaysia for use in or outside Malaysia.

In addition to the general exchange control regulations, anti-money laundering and counter financing of terrorism policies issued by BNM pursuant to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 require banks in Malaysia to conduct customer due diligence when:

• Establishing business relations with any customer;

• Providing money changing and wholesale currency business for transactions involving an amount equivalent to RM3,000 and above;

• Providing wire transfer (remittance) services;

• Carrying out transactions involving an amount equivalent to RM50,000 and above, including in situations where the transaction is carried out in a single transaction or several transactions in a day that appear to be linked;

• Investigating if there is suspicion of money laundering or terrorism financing; or

• Checking if there are doubts about the veracity or adequacy of previously supplied information.

8. What types of taxes, duties, and levies should a foreign investor expect to encounter in negotiating an inbound investment in Malaysia?

Generally, all income of companies and individuals accrued in, derived from or remitted to Malaysia are liable to tax. Apart from income tax, there are other direct taxes (such as stamp duties) and indirect taxes (such as goods and services tax, excise duty and import duty).

Effective from the year of assessment 2017, the corporate tax rate is 24%, while the maximum individual tax rate is 28% effective from the year of assessment 2016. Malaysia also offers a wide range of tax incentives for manufacturing projects under the Promotion of Investments Act 1986 and the Income Tax Act 1967. The main incentives are the Pioneer Status, Investment Tax Allowance, Reinvestment Allowance, Incentives for High Technology Industries and Incentives for Strategic Projects.

Check carefully when planning where to site a project, because investment projects approved by the IRDA in certain designated zones will be eligible for a 10-year corporate tax exemption provided certain conditions are met.

The rate of tax varies depending on the status of the residency of the individual. Generally individuals are
regarded as residents if their stay in Malaysia is more than 182 days in a calendar year. Nonresidents are subject to withholding tax of 10% to 15%. However, there may be double taxation agreements entered into between Malaysia and certain countries of the nonresident, in which case the rate of withholding tax may be reduced.

The Stamp Act 1949 imposes stamp duty to be paid for certain instruments, including documents to effect any acquisition of properties and assets. However, there is no difference in the stamp rates applicable for foreigners. In the recent Budget 2018 Announcement, the Malaysian government has proposed that stamp duty exemptions be given on contract notes for trading of Exchange Traded Funds (ETF) and Structured Warrants (SW) by investors, with the aim of further promoting development of the capital market and to make Malaysia's capital market more competitive at the international level.

Pursuant to the Budget 2014 announcement, the rates for real property gains tax (RPGT) have been increased to further curb speculative activities in the local real property market. With effect from 1 January 2014, the revised RPGT rates for the disposal of real property and shares in real property companies will be as shown below:

<table>
<thead>
<tr>
<th>Disposal Period</th>
<th>Citizen or Permanent Resident</th>
<th>Companies</th>
<th>Non-Citizen or Non-Permanent Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 3 years</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
</tr>
<tr>
<td>In the 4th year</td>
<td>20%</td>
<td>20%</td>
<td>30%</td>
</tr>
<tr>
<td>In the 5th year</td>
<td>15%</td>
<td>15%</td>
<td>30%</td>
</tr>
<tr>
<td>In the 6th and subsequent years</td>
<td>0%</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Note: The holding period of three, four, five and six years refers to the period between the date of property acquisition and the date of property disposal. However, exemptions from RPGT are applicable to certain types of transactions.

With effect from 1 April 2015, the Goods and Services Tax (GST) (also known as VAT in other countries) at the rate of 6% will be levied and charged on the supply of goods and services in Malaysia. GST will also be charged on the importation of goods and services. Under the system, GST can only be levied and charged if the business is registered under the GST system. A business is not liable to be registered if its annual turnover of taxable supplies does not reach the prescribed threshold and such businesses are not entitled to charge and collect GST on the supply of goods and services.

9. **Do comprehensive intellectual property laws exist in Malaysia and do they provide the same levels of protection for foreign investors as local companies? Will local courts and tribunals enforce IP laws uniformly, regardless of the nationality of the parties?**

Malaysia offers an extensive statutory scheme covering intellectual property rights comprised of copyright, trademarks, patents, industrial designs, geographical indications and layout designs of integrated circuits. The laws are applicable to and seek to protect all parties, regardless of their nationalities, as long as the subject matter is within the jurisdiction of the local courts.

Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention and Berne Convention. Additionally, Malaysia is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). This effectively means that Malaysian intellectual property rights will be given the same treatment and protection in other TRIPS member countries provided local registration requirements are met. Malaysia has also recently acceded to the Patent Cooperation Treaty (PCT) in effect from 16 August 2006.

The Intellectual Property Corporation of Malaysia (MyIPO) was established in 1990 and is responsible for the development and management of the intellectual property system in Malaysia as well as to ensure the administration and enforcement of intellectual property legislation. In 2007, the Intellectual Property Courts were established to provide speedier and more specialized management of intellectual property disputes in the country.

Intellectual property rights are also afforded protection under the common law. For instance, the doctrine of passing off and breach of confidence are a basis for the unregistered trademark's owners to seek recourse.

Although “smell” has yet to be included the definition of a registerable trademark, and there are
Currently no enabling regulations to permit security interest to be taken over intellectual property, Malaysia generally provides adequate protection to both local and foreign investors. In recent years, the government has also intensified enforcement efforts on illegal counterfeiting activities through frequent raids and general public awareness initiatives. (On this note, MyIPO has recently proposed to revamp the Trade Marks Act 1976 and has indicated that new provisions could be introduced to protect nontraditional trademarks such as sound, smell and colours. Other proposed amendments to the Trade Marks Act include the procedure for single filing to get protection from the various member countries under WIPO.)

Under Malaysian law, pure information is not considered as property and thus, cannot be owned by a person, unlike copyright or patent rights. Information especially in business context is more commonly referred to as “trade secrets”, and is generically classified as “confidential information” in Malaysian law. Although there is no system for the registration of such information in Malaysia, trade secrets are recognized and can be enforced as long as the trade secrets are (i) not known to the general public, (ii) the abuse of the trade secrets will be detrimental to the business, and (iii) sufficient safeguards have been adopted to ensure the confidentiality of the information. An unauthorized disclosure of trade secrets is considered as a breach of confidence by a person who has promised not to divulge it and may therefore give rise to civil liability actionable in Malaysian courts.

10. If a commercial dispute arises, given the choice between local courts or an international arbitration venue, which would offer a more beneficial forum for fair dispute resolution for foreign investors?

In Malaysia, disputes may be resolved through courts or through arbitration. Many litigants resort to the processes of the local courts, which have of late ensured speedier disposal of cases and at lower costs, compared to that of arbitration. Nevertheless, arbitration has been the preferred forum where certain specific expertise or technical knowledge is required in the decision-making process, for example in areas such as maritime law, building and construction law, etc.

Arbitration is perceived to be more expedient as it provides certain flexibility and has less rigid evidential rules as opposed to court proceedings. As a result, there is no restriction on the language to be used in the arbitration proceedings. Therefore, there is preference for commercial contracts to stipulate arbitration as a preferred mode for dispute resolutions.

The Arbitration Act 2005 came into effect on 15 March 2006 and embodies major provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. Absent a determination of the number of arbitrators by the parties, the number of arbitrators usually consists of three arbitrators for international arbitration and one arbitrator for domestic arbitration. The Kuala Lumpur Regional Centre for Arbitration (KLRCA) was established in 1978 and its role includes:

- Acting as the appointing authority for arbitrators where there is no agreed procedure in the arbitration agreement or where the agreed procedure has failed
- Rendering assistance in the enforcement of awards
- Administering international and domestic arbitration under the Rules of UNCITRAL

In 2012, the KLRCA launched its revised KLRCA Fast Track Rules, with the view of providing an alternative and flexible procedure to ensure a just, expeditious, economical and final determination of disputes. Under the Fast Track Rules, parties are to nominate the arbitral tribunal within seven days from the commencement of arbitration, failing which the arbitral tribunal shall be appointed by the director of the KLRCA. Further, final award is to be handed down expeditiously, within 90 days from the commencement of arbitration for documents-only arbitration and 160 days if a substantive oral hearing is involved. In recognition of these initiatives, the KLRCA was awarded the prestigious voter-based Global Arbitration Review Award for Innovation by an Individual or Organization in 2012.

11. What recommendations can you offer for how best to negotiate and conduct business in Malaysia?

Malaysia is a multicultural country represented by several ethnic groups. Thus it is important to understand the different customs and practices of each group when conducting business in Malaysia.
The Malaysian government is committed to maintaining a business environment that provides companies with opportunities for growth and profits. Practical challenges generally lie in administrative procedures which may appear to complicate the process of foreign direct investment in Malaysia. However, advice may be readily sought from regulatory authorities who are generally cooperative and willing to offer guidance to investors who wish to conduct business in Malaysia.

In establishing a successful business plan, a strategic review of current policies and market opportunities in Malaysia would be key. Current market opportunities exist in a host of sectors, such as manufacturing, distribution, transport infrastructure and technical expertise in the services sector. The Malaysian government particularly encourages foreign direct investment in export-oriented high-tech industries and in capital/technology-intensive industries such as those of biotechnology, green energy, electrical and electronic equipment. Foreign investors seeking to enter these industries may avail themselves of various financial incentives offered by various federal government ministries and agencies. In this respect, the recently established Incentive Coordination and Collaboration Office (ICCO) under the Malaysian Investment Development Authority (MIDA) has launched the i-Incentive portal, which serves to assist investors by providing information on all incentives available across various sectors. The portal can be accessed at https://incentives.mida.gov.my.

Malaysians are generally non-confrontational and as such most negotiations are unlikely to be hostile. However, this may mean that not all issues get fully discussed at meetings and you may find that contrary to what appeared to be general consensus, there remain open issues which may only surface at the end. We recommend after each negotiation session that a summary list containing bullet points be agreed on by parties which summarizes open issues.

Securing the right local partner will open up a valuable network which may not be able to be penetrated save for the personal relationships established by the local partner as business transactions tend to be premised on trust.

12. **What practical advice can you share with investors who decide to do business in Malaysia?**

Notwithstanding the deregulation of the FIC, there remains local equity participation requirements imposed on foreign investments in certain sectors. In seeking to fulfill such requirements, it is important for foreign investors to select the right local partners who subscribe to the same business principles and have a similar vision for the business as a whole.

It is recommended that foreign investors have a general understanding of the key priority development sectors of the ruling government so as to avail themselves of possible incentives being offered (including tax reliefs and, in some instances, seed funding).

The Malaysian government is very much pro-business and committed to undertaking reforms to encourage business growth and development. Investors can look for support and guidance from the following government agencies:

- **Malaysian Investment Development Authority (MIDA)**
  - www.mida.gov.my
- **Malaysia Digital Economy Corporation (MDec)**
  - www.mdec.my
- **Halal Industry Development Corporation (HDC)**
  - www.hdcglobal.com
- **Bioeconomy Corp**
  - www.bioeconomycorporation.my
- **Invest KL**
  - www.investkl.gov.my

13. **Does Malaysia currently have any data privacy laws or regulations? How do they affect business activities?**

The privacy laws in Malaysia are currently regulated by the Personal Data Protection Act 2010 (PDPA) that came into effect in June 2010. The main purpose of the PDPA is to regulate the processing of personal data which includes collecting, storing, organizing, erasing and transferring data.

Under the PDPA, there are two important concepts:
- Data Subject; and
- Data User

A Data Subject is as a person whose data has been collected, while, a Data User is the person who collected the said data for processing or has control or authority over the said data.
Personal data under the PDPA covers the usual types of personal information collected in day-to-day transactions i.e. name, address, telephone number, email address, banking details and identification card numbers. That being said, this personal data must be in relation to commercial transaction which is defined as any transaction of a commercial nature which includes the supply or exchange of goods or services, agency, investments, financing, banking and insurance but does not include a credit reporting business.

As an illustration of the function of the PDPA, all employees’ personal details that are collected and stored upon and during their employment are considered “personal data” and will be protected under the PDPA. It is important to note that non-compliance with the PDPA is a criminal offence which comes with heavy penalties; a person who commits an offence under the PDPA shall, upon conviction, be liable to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding 3 years or to both.

14. Are there any recently passed laws or regulations in Malaysia that are expected to affect the activities of foreign investors in the future?

Malaysia introduced the Companies Act 2016 with the purpose of simplifying the operational processes of a company. It is now possible to have a single-shareholder and single-director company under the new Companies Act. The incorporation process is also simplified by the dispensing of multiple forms, common seals, as well as the memorandum and articles of association.

Malaysia has also recently introduced the Interest Schemes Act 2016, which regulates the registration, administration and dissolution of interest schemes in Malaysia. The new Interest Schemes Act serves as a stand-alone legislation to provide stronger investor protection and greater regulatory powers for the Companies Commission of Malaysia in relation to interest schemes, which are classified in the Interest Schemes Act as any investment scheme, recreational membership scheme, time-sharing scheme or a combination of these. Under the Interest Schemes Act, only a management company (which must be a company incorporated under the Companies Act 2016) may issue or offer to the public subscription or purchase of any interest. However, note that new management companies applying for such schemes may find it harder to meet the stringent requirements, including minimum paid-up capital requirements.

The regulatory framework for takeovers and mergers in Malaysia was enhanced through the Malaysian Code on Take-Overs and Mergers 2016 (New Take-Over Code) and the Rules on Take-Overs, Mergers and Compulsory Acquisition 2016 (Take-Over Rules). The New Take-Over Code is intended to be more facilitative towards commercial realities whilst ensuring appropriate shareholder protection in takeover transactions. Under the New Take-Over Code and Take-Over Rules, guidance is provided on the treatment of offerees which have listings in dual jurisdictions.

Glossary

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>BNM</td>
<td>Bank Negara Malaysia</td>
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<tr>
<td>Bumiputera</td>
<td>Malaysian natives</td>
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<tr>
<td>CA</td>
<td>Companies Act, 2016</td>
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<td>EA</td>
<td>Employment Act, 1955</td>
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<td>ECM</td>
<td>Exchange Control of Malaysia Notices</td>
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<td>EPF</td>
<td>Employee Provident Fund</td>
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<td>EPU</td>
<td>Economic Planning Unit</td>
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<td>FIC</td>
<td>Foreign Investment Committee</td>
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<td>GLCs</td>
<td>Government-Linked Companies</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<td>IDR</td>
<td>Iskandar Development Region</td>
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<td>IRA</td>
<td>Industrial Relations Act, 1967</td>
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<td>IRDA</td>
<td>Iskandar Regional Development Authority</td>
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<td>KLRCA</td>
<td>Kuala Lumpur Regional Centre for Arbitration</td>
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<td>MyIPO</td>
<td>Intellectual Property Corporation of Malaysia</td>
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<td>NDP</td>
<td>New Development Policy</td>
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<td>NEM</td>
<td>Malaysia New Model</td>
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<td>NEP</td>
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<td>OHQs</td>
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<td>PDPA</td>
<td>Personal Data Protection Act, 2010</td>
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<td>RPGT</td>
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<td>SC</td>
<td>Securities Commission</td>
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<td>SEDCs</td>
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<td>SOCSO</td>
<td>Social Security Organization</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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