

# Rödl & Partner

INVESTMENT GUIDE  
MALAYSIA

Framework for Investments

2022  
2023

# Gaining Momentum



# Gaining Momentum

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“Malaysia successfully managed the structural change from a national economy traditionally defined by the primary sector, into a thriving growth region for the processing industry as well as for the services sector, and continues to benefit from its extraordinarily robust domestic economy. Continuously positive economic forecasts make Malaysia a most attractive destination for long-term investments.

Our multicultural, interdisciplinary team in our office in Kuala Lumpur offers valuable full-service support for your business ventures in one of the fastest growing markets in the region.”

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# About Rödl & Partner

As attorneys, tax advisers, management and IT consultants and auditors, we are present with 107 own offices in 50 countries. Worldwide, our clients trust our 5,260 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 1991. 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 'caring partner' is always close at hand; they identify the client's needs and points to be resolved. The 'caring partner' 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 confined to 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, attorneys, 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 realise our 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

## CORPORATE SERVICES / COMPLIANCE

- Establishment of subsidiaries, representative offices and branches
- Company secretarial compliance
- Transactional advisory, due diligence
- HR advisory
- Work visas and immigration
- Local compliance, licenses and permits
- Management of Intellectual Property

## TAX CONSULTING AND COMPLIANCE

- Domestic and international tax planning, consulting and restructuring (inbound – outbound)
- Permanent establishments
- Overseas deployment of employees, personal taxation and social security of expatriates
- Transfer pricing
- Tax audit assistance, representation in tax cases
- Indirect taxes
- Corporate tax compliance
- M&A advisory

## BUSINESS PROCESS OUTSOURCING

- Financial accounting
- Payroll
- Reporting and controlling
- Preparation of annual financial statements
- Payment processing
- Implementation and setup of new accounting systems
- Assistance in conversion of accounts and reports based on different accounting standards
- Internal control and process review



## AUDIT

- Statutory special audits in accordance with Malaysian or international accounting standards
- Internal audits
- Financial due diligence and valuations

Kuala Lumpur



# Why invest in Malaysia

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

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, Malaysia 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, efficient workforce, developed infrastructure comparable to that of any western country and a host of other amenities make for an enticing destination for investors. Other points for foreign investors to consider upon looking at Malaysia as a potential place for investment include various forms of business structures (e.g. representative office, branch office, companies etc.), tax-free zones, growth corridors and the Labuan International Business and Financial Centre. Furthermore, the country is subject to a comparatively liberal foreign investment and foreign exchange legislation, allowing for direct foreign investment in most industries, and a free flow of capital.

Malaysia today is one of the world’s top locations for off-shore 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



Background	<p>During the late 18<sup>th</sup> and 19<sup>th</sup> centuries, the British 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. 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 Ismail Sabri has announced Rancangan Malaysia ke-12 (RMK-12) with goals to achieve a High Income Nation by the year 2025.</p>
Location	South-east Asia, peninsula south of Thailand and north of Singapore, as well as northern one-third of the island of Borneo bordering Indonesia and Brunei; Strategic location along Strait of Malacca and South China Sea
Area	329,847 km <sup>2</sup> (about the area of Germany without the federal state of Brandenburg)
Climate	tropical; annual southwest (April to October) and northeast (October to February) monsoons
Natural resources	tin, petroleum, timber, copper, iron ore, natural gas, bauxite
Natural hazards	flooding; landslides; forest fires
Land use	agricultural land: 23.2 % forest: 62 % other: 14.8 % (2018 est.)

Environment: Current issues	air pollution from industrial and vehicular emissions; water pollution from raw sewage; deforestation; smoke / haze from Indonesian forest fires; endangered species; coastal reclamation damaging mangroves and turtle nesting sites
Population	33,519,406 (July 2021 est.)  Religions: Muslim (official) 61.3 %, Buddhist 19.8 %, Christian 9.2 %, Hindu 6.3 %, Confucianism, Taoism, other traditional Chinese religions 1.3 %, other 0.4 %, none 0.8 %, unspecified 1 % (2010 est.)
Language	Bahasa Malaysia (official), English, Chinese (Cantonese, Mandarin, Hokkien, Hakka, Hainan, Foochow), Tamil, Telugu, Malayalam, Panjabi, Thai
Population	31,809,660 (July 2018 est.)  <u>Religions:</u> Muslim (official) 61.3 per cent, Buddhist 19.8 per cent, Christian 9.2 per cent, Hindu 6.3 per cent, Confucianism, Taoism, other traditional Chinese religions 1.3 per cent, other 0.4 per cent, none 0.8 per cent, unspecified 1 per cent (2010 est.)
Population distribution	a highly uneven distribution with over 80 percent of the population residing on the Malay Peninsular
Unemployment rate	4.3% (Q4 2021 est.)
Ethnic groups	Bumiputera (Malays and indigenous peoples) 69.6%, Chinese 22.6%, Indian 6.9%, Other 1.0 % (2020 est.)
Languages	Bahasa Malaysia (official), English, Chinese (Cantonese, Mandarin, Hokkien, Hakka, Hainan, Foochow), Tamil, Telugu, Malayalam, Panjabi, Thai

Government type	<p>Federal Parliamentary Constitutional Monarchy</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>
GDP	<p><u>Gross Domestic Product:</u>  USD 359.00 billion (2021 est.)  (Germany: USD 4,889.96 billion (2021 est.))</p> <p><u>GDP Growth Rate:</u>  3.1 % (2021)  (Germany: 2.9 % (2021))</p> <p><u>Per Capita (PPP):</u>  USD 27,923.70 (2020)  (Germany: USD 54,844.50 (2020))</p>
GDP Composition by sector of origin	<p>Agriculture: 7.2 %  Industry: 24.3 %  Services: 56.5 % (2021 est.)</p>
Inflation rate (consumer prices)	<p>2.5 % (2021)</p> <p><u>Note:</u>  Approximately 30 % of goods are price-controlled</p>
Industries	<p><u>Peninsular Malaysia</u>  Rubber and palm oil processing and manufacturing, petroleum and natural gas, light manufacturing, pharmaceuticals, medical technology, electronics and semi-conductors, timber processing;</p> <p><u>Sabah</u>  Logging, petroleum and natural gas production;</p> <p><u>Sarawak</u>  Agriculture processing, petroleum and natural gas production, logging</p>

Exports	USD 280 billion (2021)
Export commodities	<ul style="list-style-type: none"> <li>- Semiconductors and Electronic Equipment</li> <li>- Palm oil</li> <li>- Petroleum and Liquefied Natural Gas</li> <li>- Wood and wood products</li> <li>- Rubber</li> <li>- Textiles</li> <li>- Chemicals</li> <li>- Solar Panels</li> </ul> <p><u>Export partners:</u> China 16.2%, Singapore 13.6%, USA 11.6%, EU 8.2% and Hong Kong 6.8%</p>
Imports	USD 223 billion (2021)
Import commodities	<ul style="list-style-type: none"> <li>- Electronics</li> <li>- Machinery</li> <li>- Petroleum Products</li> <li>- Plastics</li> <li>- Vehicles</li> <li>- Iron and Steel Products</li> <li>- Chemicals</li> </ul> <p><u>Import partners:</u> China 23.8 %, Singapore 9.5 %, Taiwan 8.1 %, Japan 7.6 % and USA 7.3 %</p>
	<p><i>Department of Statistics, Malaysia</i></p> <p><i>Central Bank of Malaysia</i></p> <p><i>European Union official website</i></p> <p><i>The Worldbank</i></p> <p><i>Index Mundi</i></p>

# 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 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 a 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 a Malaysian citizen or Permanent Resident of Malaysia can register as a sole proprietor, hence this structure is not open to foreigners or foreign investors.

## 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, hence this structure is not open to foreigners or foreign investors.

#### LIMITED LIABILITY PARTNERSHIP

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

An LLP is a corporate body 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 corporate body. The Limited Liability Partnerships Act 2012 will apply to an LLP unless a formal agreement has been drawn up setting out the rights and 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 will only 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. Its members have limited liability and are not personally liable for the debts and losses of the company. A private limited company cannot offer its shares or debentures to the public.

With the advent of the Companies Act 2016, a private limited company can now be incorporated with a minimum of a single member or single director, as opposed to the previous requirement of at least two members.

There must be a minimum of one subscriber holding one share of MYR 1. The Companies Act 2016 requires the minimum number of directors to ordinarily reside in Malaysia with a principal place of residence in Malaysia.

All companies with share capital migrated to no par value regime. Although foreign shareholders are allowed to hold all the shares in a Malaysian company, certain business areas are regulated through licenses which may be subject 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.

#### PUBLIC LIMITED COMPANY

A public limited company (Berhad or Bhd) is defined as a company other than a private company. A public company is incorporated whenever it is intended to invite the public to subscribe for shares or debentures in the company or to deposit money with the company. Public companies must have at least two directors that maintain their principal place of residence in Malaysia.

#### 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 upon undertaking designated functions.

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

An RO serves as the coordination center 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 through 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 of the Government of Malaysia. The approval for the RE / RO is usually valid for a period of two years, and any extension of the period thereafter will be subject to justifications submitted before the expiry of the approved period. In respect of REs, it is current practice to renew the approval only once for a period of two additional years.

## 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 liabilities 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 COMPANIES

Labuan is a Federal Territory of Malaysia off the coast of Borneo in East Malaysia. It comprises 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 center 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 activities 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 – may benefit from a preferential tax treatment under the Labuan Business Activity Tax Act (LBATA), and are subject to low income tax depending on the type of activity conducted in Labuan. With effect as of 1 January 2019, Labuan companies can no longer elect to be taxed at the fixed rate of RM 20,000, but will be taxed at 3 per cent on their net profits.

# Foreign Direct Investment

Generally speaking, there is no legislation limiting the foreign ownership in the share capital of Malaysian companies. However, where a company requires certain licenses to operate, equity conditions or requirements to employ a certain number of local employees may be imposed. This is to increase Bumiputera (Malaysians of Malay origin) participation in the wider economy.

## MANUFACTURING

Certain manufacturing companies must obtain a license under the Industrial Coordination Act 1975. Whilst new licenses are usually issued without any local equity requirements, restrictions imposed in the past are still maintained.

## TRADE

Trading companies may require a WRT License (Whole-sale, Retail, Trade) the issuance of which may be subject to the company complying with the Distributive Trade Guidelines 2009 issued by the Ministry of Domestic Trade, Co-Operatives and Consumerism. There are also minimum capital requirements. The guidelines apply to wholesale and retail activities as well as to all other distributive formats, such as agents, distributors or franchise systems with foreign equity. Depending on the company and the business of the company in question, the guidelines provide for a wide range of possible measures to foster Bumi-putera participation such as the employment of Bumi-putera managerial staff or the utilisation of certain Malaysian services such as ports.

## PUBLIC PROCUREMENT

The public sector including government departments and agencies, but also state owned companies (e.g. Petronas), frequently requires Bumiputera equity ownership in entities which qualify as suppliers under its procurement rules.

## GOODS AND SERVICE TAX

The GST regime was abolished on 1 September 2018, when the single stage consumption tax known as Sales Tax and Service Tax came into effect.

## SALES TAX AND SERVICE TAX

The Sales Tax and Service Tax regime was implemented on 1 September 2018 through the Sales Tax Act 2018, and the Service Tax Act 2018.

### Sales Tax

The Sales Tax Act 2018 applies throughout Malaysia, excluding the Designated Areas and the Special Areas. Sales Tax is a single stage consumption tax charged and levied on all taxable goods manufactured in or imported into Malaysia.

Sales Tax is an ad valorem tax with different rates – currently 5 percent and 10 percent – applied based on groups of taxable goods. Sales Tax for petroleum is charged at a specific rate which is different from other taxable goods.

The Sales Tax registration threshold amounts to RM 500,000.

### Service Tax

Service Tax is imposed on taxable services provided in Malaysia by a registered person in carrying on their business, or on any imported taxable services acquired by any person in Malaysia from any person who is outside Malaysia; or any digital services provided by a foreign registered person to a Malaysian consumer.

### Taxable services include:

- Accommodation services;
- Food and beverage services;
- Night clubs, dance halls, health centers, massage parlors, public houses and beer houses;
- Private clubs;
- Golf clubs and golf driving ranges;

- Betting and gaming;
- Professional services;
- Credit card and charge card providers; and
- Other service providers (e.g. telecommunications service providers, customs agents, courier service providers and advertising services).

The rate of service tax is fixed at 6 percent, except for the issuance of credit cards and charge card services which are charged at a fixed rate of RM 25 per card.

The Service Tax registration threshold is generally RM 500,000, however certain services have a different threshold.

## CORPORATE TAXATION

### Territorial basis of taxation

Malaysia operates a unitary tax system on a territorial basis. A company, regardless of whether it is a local or a foreign company, is liable to pay tax on income accrued in or derived from Malaysia, or received in Malaysia from outside Malaysia. A non-resident company is also liable to pay tax on income accrued in or derived from Malaysia. With effect as of 1 January 2022, income (with the exception of foreign sourced dividend income) derived from outside Malaysia and received in Malaysia by tax residents will be subject to income tax.

### Tax residency status

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

### Tax rate

Resident companies with a paid-up capital of RM 2.5 million or less; not being part of a group of companies where any of the related companies have a paid-up capital of more than RM 2.5 million; and with a gross business income of not more than RM 50

million are taxed at the rate of 17 percent on chargeable income up to RM 600,000, and of 24 percent on the remaining chargeable income from the Year of Assessment (“YA”) 2020.

The corporate tax rate for companies with paid-up capital of more than RM 2.5 million is 24 percent.

For YA 2022 only, a special one-off tax, i.e., Cukai Makmur, of 24 percent on the first RM 100 million chargeable income; and 33 percent on chargeable income in excess of RM 100 million will be imposed on companies which have generated high income during the COVID-19 pandemic.

#### 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.

#### Tax deductions

Generally, tax deductions are allowed for outgoings and expenses which are incurred wholly and exclusively in generation of the company’s taxable income.

#### 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
- Green incentives
- Incentives for high technology and strategic projects
- Double deduction of expenses incurred for promotion of exports
- Incentives for training
- Incentives for principal hub
- Incentives for agricultural projects
- Incentives for research and development
- Incentives for in-bound tour operators
- Incentives for export of products manufactured in Malaysia and export of approved services
- Incentives for healthcare and wellness
- Special economic corridors

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

#### Pioneer status

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

#### Investment tax allowance

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

#### Withholding tax

Withholding tax is charged upon non-resident companies or individuals that derive income from a Malaysian source for services provided or work done in Malaysia.

## 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.

### 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:

- in Malaysia for at least 182 days in a calendar year, or
- in Malaysia for at least 182 days for a continuous period over two years, or
- 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 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.

### Tax rate

Malaysia personal tax rates start at 0 per cent and are capped at 30 per cent with effect from YA 2020. Non-residents are taxed at a flat rate of 30 per cent with effect from YA 2020.

### Tax reliefs and tax deductions

Tax reliefs available for 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 children and parental care;
- Relief for lifestyle, i.e. purchase of books, sport equipment, computer, internet subscription, and gymnasium membership.
- Donations to charities and institutions which are approved by the government.

## OTHER TAXES

Other key types of taxes in Malaysia include:

- Real property gains tax;
- Stamp duty; and
- import and excise duties.

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.

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 material, components and machinery have been abolished, reduced or exempted.

Furthermore, Malaysia is committed to the ASEAN Common Effective Preferential Tariffs (CEPT) scheme under which import duties of 0 percent to 5 percent are levied on all industrial goods traded within ASEAN.

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

# 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 Enterprises (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 as of 1st January 2009. Further, the Transfer Pricing Guidelines 2012 (TP Guidelines) were introduced on 20 July 2012, replacing the Transfer Pricing Guidelines of 2003.

These TP Guidelines are largely based on the governing standards for transfer pricing which is the arm's length principle under the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines. Although some parts of the TP 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 to specific domestic circumstances.

The preparation and maintenance of a contemporaneous Transfer Pricing Documentation (TPD) is mandatory for:

- businesses with a gross income exceeding RM 25 million, and the total amount of related party transactions exceeding RM 15 million; or
- persons providing financial assistance exceeding RM 50 million.

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

TPD need not be submitted but should be made available to IRBM within 14 days upon request.

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

- 50 percent of the tax undercharged for failure to prepare contemporaneous TP documentation;
- penalty ranging from RM20,000 to RM100,000; or upon conviction, a fine of RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months, or both where contemporaneous TPD is not furnished within 14 days upon request;
- 30 percent of the tax undercharged for Transfer Pricing Documentation not prepared in accordance with the requirements of the TP Guidelines;
- 5 percent surcharge on the increase of any income or a reduction of any deduction or loss, i.e. the surcharge would apply on the quantum of such transfer pricing adjustment, whether or not such adjustment leads to additional tax payable.

The introduction of Advance Pricing Arrangement (APA) via Income Tax (Advance Pricing Arrangement) Rules 2012 allows for taxpayers to apply for APAs to reach an agreement with IRBM on prices of goods and services to 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 their efforts on transfer pricing control through audits, taxpayers ought to allocate resources and revise their workflows and expectations accordingly in order to ensure that their transfer prices comply with the arm's length principle stipulated through the relevant transfer pricing policy and documentation as required by local rules.

# Customs

The Royal Malaysian Customs Department (“RMCD”) is the government agency under the Ministry of Finance responsible for the administration of indirect taxes, which include import duties, export duties and excise duties.

## IMPORT DUTY

Import duties must be paid when goods are being imported into Malaysia, irrespective of whether the importer is a private individual or a commercial entity. Nonetheless, import duties in Malaysia for a wide range of raw material, components and machinery have either been abolished, reduced or exempted with respect to trade liberations. Goods not exempted are generally subject to import duties on an ad valorem basis, but they may also be imposed on a specific basis. The ad valorem rates range from 2 percent to 60 percent.

## EXCISE DUTY

Excise duties are imposed on a selected range of goods manufactured in or imported into Malaysia. Goods that are subject to excise duty include liquor, cigarettes, tobacco, motor vehicles and playing cards. The rate of excise duties vary from a composite rate of MYR 1.10 per liter and 15 percent of the value for certain types of spirituous beverages, to as much as 105 percent of the value of motorcars (depending on the engine capacity). No excise duty is payable on dutiable goods that are exported.

Generally, excise duty is payable at the time the goods leave the place of manufacture. However, for motor vehicles, the excise duty is payable at the time the vehicles are registered with the Malaysian Road Transport Department.

## EXPORT DUTY

Export duties are generally imposed on Malaysia’s main commodities (crude oil, palm oil) on an ad valorem basis at rates ranging from 0 percent to 10 percent, depending on the classification of the goods.

## PROPERTY ACQUISITION RESTRICTIONS FOR FOREIGN BUYERS

Subject to the restrictions provided in the Guidelines of Acquisition of Property by the Economic Planning Unit, a non-Malaysian may buy any type of property in Malaysia in their own name or the company's name except the following:

- i. Properties valued less than the minimum purchase price as prescribed under the State Land Rules which vary from state to state;
- ii. Residential units which are categorized as low and low-medium cost units, as determined by the State Authority;
- iii. Properties which are built on the land designated as Malay reserved land; and
- iv. Properties which are allocated as "Bumiputera interest" in any property development project as determined by the State Authority.

The competent State Authority may also grant an exception/ release from the above rules.

# Employment

The principal laws regulating employment in Malaysia are contained in the Employment Act ("EA"). Further significant laws with an impact on employment practices include the Industrial Relations Act, the Trade Unions Act, the Employees Provident Fund Act, Employees Social Security Act, Occupational Safety and Health Act, the Employment (Part-Time Employees) Regulations, the Factories and Machinery Act and the 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.

## THE EMPLOYMENT ACT

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 a 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 entered into a contractual service relationship 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 Labor Court on terms and conditions in their individual contracts of service.

The Sabah and Sarawak Labor Ordinance covers certain types of employees who entered into or work under a contractual service relationship with their employers. The ordinances include foreign workers in 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 covers working hours, overtime, rest days and annual leave.

An employee covered by the EA:

- is not required to work for more than 8 hours a day or more than 45 hours a week;
- is permitted to work up to a limit of 104 hours of overtime in a month;
- must be paid no less than 1.5 times the hourly basic rate of pay for overtime work on ordinary working days, 2 times the hourly basic rate of pay for overtime work on rest days, and 3 times the hourly basic rate of pay for overtime on public holidays; and
- is entitled to one rest day per week.

The number of days of paid annual leave an employee is entitled to depends on their 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)

### Sick leave

An employee covered by the EA is entitled to paid sick leave if

- the employee has informed or attempted to inform the employer of his absence within 48 hours;
- the sick leave is certified by a registered medical practitioner appointed by the company or another registered medical practitioner.

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

Hospitalisation leave of 60 days is treated separately from any paid sick leave which the employee is entitled to in a calendar year.

### Maternity leave

A female employee covered by the EA is entitled to a minimum of 98 days of maternity leave if she has served her employer for at least 90 days before the birth of her child.

### Paternity leave

A male employee covered by the EA is entitled to a minimum of 7 days of paternity leave if he has served his employer for at least 12 months before the birth of his child.

## TERMINATION OF EMPLOYMENT

Employment is well protected under Malaysian common law. All terminations of employment must be fair and for “just cause”, i.e. there must always be a reason (e.g. misconduct, poor performance or retrenchment) for a termination, and certain procedural requirements have to be followed. If this is not the case, the former employer may be found liable for unfair dismissal in an Industrial Court which may then award a substantial compensation to the unfairly dismissed employee.

It is therefore important that all terminations of employment are carefully managed and documented. This applies to Malaysian and non-Malaysian as well as to non-EA employees.

## OTHER STATUTORY REQUIREMENTS

### Employees Provident Fund Act (EPFA)

The EPFA provides for mandatory monthly contributions proportionate to the amount of wages to be made by both, the employer and the employee, to a government-managed retirement fund. The general application of the monthly contributions on 1) employees who are Malaysian citizens, 2) employees who are permanent residents in Malaysia; and 3) employees who are not Malaysian citizens who have elected to contribute before 1 August 1998 on a 13:11 percentage-contribution ratio of employer to employee if the monthly wage is RM 5,000 and below, i.e. the

employer contributes 13 percent of the income and the employee contributes 11 percent. A ratio of 12:11 is applicable if the monthly wage is more than RM 5,000.

The minimum employer's share of contributions in respect of employees above the age of 60 (who are liable to contribute) is four (4) percent per month, while the employee's share of contribution is zero (0) percent.

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

All foreign workers, expatriates and their employers are exempted from compulsory contributions. However, the employer may consider having the foreign workers or expatriates register as member.

The applicable rate for non-Malaysian members will be at RM 5 per employee per month, whilst the employees are to contribute 9 percent of their monthly wages if below 60 years of age, and at 5.5 percent of their monthly wages if above 60 years of age, would be applicable if they are registered as a member from 1 August 1998,

#### Employees Social Security Act (SOCSO Act)

The SOCSO Act provides for two schemes, namely the Invalidity Pension Scheme ("IPS") and the Employment Injury Scheme ("EIS").

Mandatory contributions to this government-managed program which is akin to an insurance scheme where IPS provides pension payments and grant for the insured person in cases of invalidity or death, and EIS is to provide payments in cases of employee accidents while performing their job or commuting to the place of work, have to be made by both, employee and employer. However, for non-Malaysians and Malaysians above the age of 60, the contribution payment would only be required by the employer.

### Employment Insurance Act (EIA)

The EIA requires compulsory contribution from both, employer and employee, on a monthly basis for all Malaysian or permanent resident employee aged between 18 to 60. The contribution is made to the Employment Insurance System which is a scheme where the employees are insured in case they lose their job, with certain conditions to be considered.

### Pembangunan Sumber Manusia Berhad Act (PSMB)

Human Resource Development levy (HRD) falls under PSMB and operates on the basis of a levy / grant system for the purpose of promoting, developing and upgrading the professional skills of employees.

Employers who have paid the levy will qualify for training grants from the HRDF to defray or subsidize training costs for their Malaysian employees. It is compulsory for employers from most industries with ten (10) or more and optional five (5) to nine (9) Malaysian employees. The levy is charged at the rate of 1 percent of the monthly wages of employees, but employers who opt to register would only be charged a levy of 0.5 percent of the monthly wages of employees.

### Minimum Wages Order (Amendment) 2022

The Minimum Wages Order prescribes a minimum wage of RM 1,500 a month, or RM 7.21 an hour for employees in Malaysia. 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 the commencement of employment.

## HIRING FOREIGN EMPLOYEES

Foreigners must hold a valid work pass in order to work in Malaysia. Below please find a survey of the main types of work passes for foreigners. Please do note that this list is not exhaustive. The application process is conducted through the hiring company. Minimum capital requirements do apply with regard to the eligibility to hire foreigners.

### 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 an initial validity of 2 years being the norm. The EP may be renewed, depending on the nature of employment and the need for 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:

- registration and recommendations from regulatory agencies (if relevant, depending on the core business of the hiring company);
- minimum paid-up capital (with the amount depending on the equity ownership of the hiring company);
- the hiring company’s activities;
- monthly income; and
- 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 a maximum period of up to 12 months only. PVP holders may only work for the company 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 180,000 in order to be eligible for RP-T. RP-T is only valid in Peninsular Malaysia.

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

## FOREIGN EMPLOYEES' DEPENDANTS

### Dependant Pass

EP holders or RP-T holders may apply for Dependant Passes ("DP") for their dependants. Generally, dependants will 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 Pass (Long Term) for their:

- parents;
- parent in laws;
- children / step-children / legally adopted children aged 18 and above (yet to be married and still under the applicant's care).

# Intellectual Property

Intellectual property protection in Malaysia comprises patents, trademarks, industrial designs, copyright, geo-graphical 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 for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, and acceded to the Patents Cooperation Treaty and the Nice and Vienna Agreements, to ensure that intellectual property protection in Malaysia conforms with international standards.

## 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 upon creation of the work. Malaysia introduced the Voluntary Notification Registration System in 2012, allowing for 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 lifetime of the author plus 50 years subsequent to his death.

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

- an injunction;
- compensation of damages;
- an account of profits;
- statutory damages; and
- 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.

## 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:

- an injunction;
- compensation of damages;
- an account for profits; and (iv) other applicable remedies.

Malaysia is a member of the Madrid Agreement Concerning the International Registration of Marks.

## PATENTS

The Patents Act and the Patents Regulations govern the 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 domiciled or resident in Malaysia.

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

- an injunction;
- compensation of damages;
- an account for profits; and
- other applicable remedies.

## INDUSTRIAL DESIGNS

Industrial design protection in Malaysia is governed by the Industrial Designs Act 1996 and the Industrial Designs Regulations.

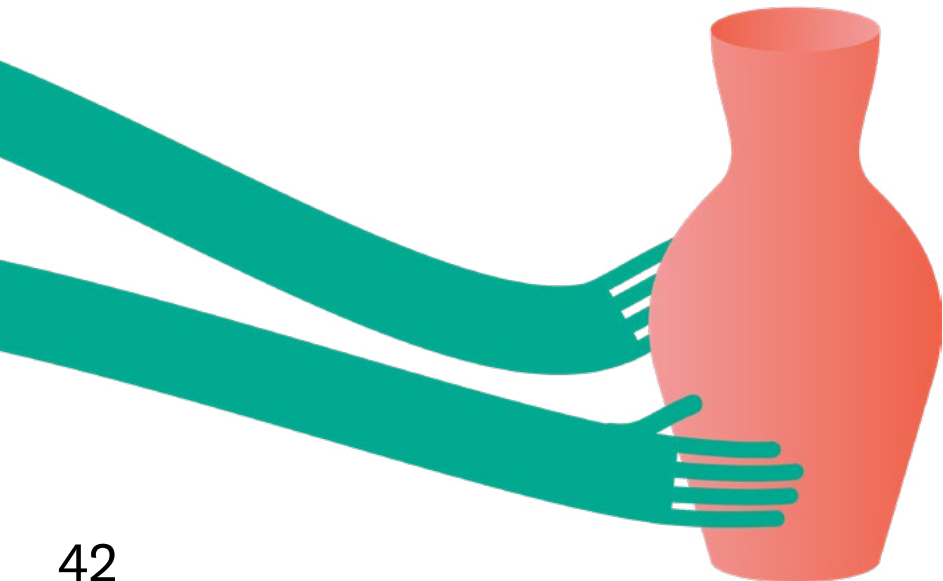
An industrial design is the ornamental or aesthetic aspect of an article which may consist of three dimensional features such as the shape and configuration of an article, or two dimensional features, such as pattern and ornamentation.

To be eligible for registration, the industrial design must be new and may 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 four further 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:

- an injunction;
- compensation of damages;
- an account for profits; and
- 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 directly or indirectly relates to an individual, who is identified or identifiable by this information or by this 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 do register themselves and comply with the PDPA. It does not matter 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 the way personal data are stored, handled and processed.

Organisations are advised to periodically review their policies, processes, contractual rights and obligations as well as standard forms and notices relating to the processing of personal data, in order to ensure they are in compliance with the PDPA.

Breaching the PDPA may have severe consequences. 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

The Competition Law promotes economic development by promoting and protecting the process of competition, while 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 outside Malaysia, as long as the commercial activity has a negative or anti-competitive effect in any market in Malaysia.

## PROHIBITIONS

The CA prohibits anti-competitive agreements and the abuse of a 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:

- constitute bidrigging;
- directly or indirectly fix purchase or selling prices or any other trading conditions;
- share markets or sources of supply; or
- 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 results in an abuse of dominance.

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

- price discrimination which is not due to any economic reason and is unfair;
- predatory behavior towards competitors;

- taking advantage of a market position by refusing to supply a particular enterprise or group or category of enterprises;
- tied selling where the conclusion of contracts is subject to the acceptance by other parties of supplementary obligations which have no connection with the subject of the contracts; or
- buying up scarce goods or resources required by a competitor but not needed for own use.

## EXEMPTIONS

The CA does not apply to:

### Commercial Activities regulated by:

- Communications and Multimedia Act 1998;
- Energy Commission Act 2001;

### 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 cover public utilities or have the character of a revenue producing monopoly;

### 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.

## 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:

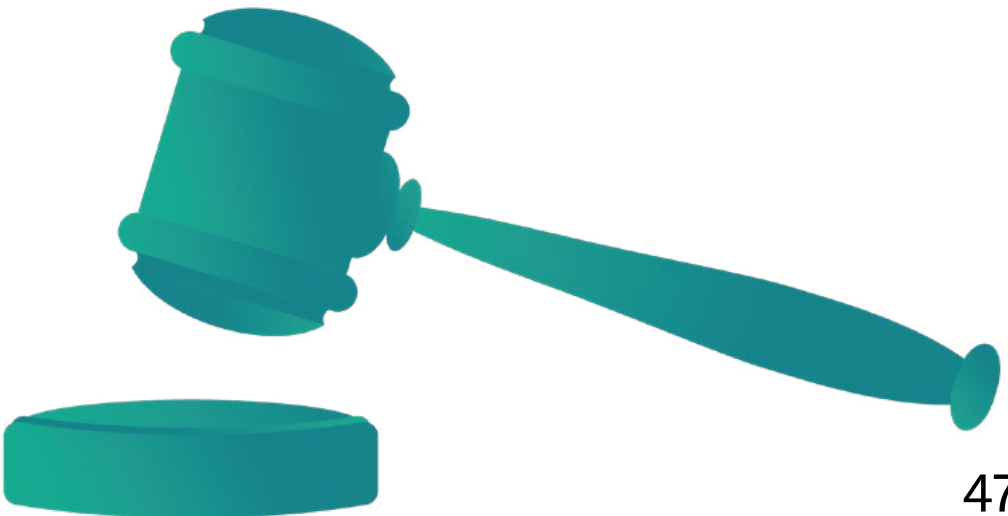
- Implement and enforce the provisions of the CA;
- Issue guidelines in relation to the implementation and enforcement of the competition laws;
- Act as an advocate for competition matters;
- Give a direction as an interim measure, while an investigation is still ongoing;
- Carry out general studies 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 percent of the worldwide turnover of the business.

# Enforcement of Foreign Judgements

In Malaysia there are two procedures to enforce foreign judgements:

- i. Under the Reciprocal Enforcement of Judgements Act of 1958, judgements from certain common law countries or territories (e.g. United Kingdom, Singapore, Brunei, Hong Kong, certain Indian states) can be enforced by way of registration in the High Court of Malaya, Kuala Lumpur. The registration is subject to certain conditions defined by the Act (e.g. enforcement of the judgement may not be contrary to public policy in Malaysia), but usually granted on the basis of the presentation of the original judgement and upon the submission of an affidavit. A registered foreign judgement can be enforced in Malaysia;
- ii. All other judgements must be enforced under common law, which means that fresh proceedings must be initiated in Malaysia to secure an enforceable Malaysian summary judgement on the subject matter. The foreign judgement is effectively only part of the evidence on the subject matter in the fresh Malaysian proceedings.



# Arbitration

Arbitration is a form of alternative dispute resolution whereby parties to a dispute appeal 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 substantially based on the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration.

## 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.

### Asian International Arbitration Centre (Malaysia)

The Asian International Arbitration Centre (Malaysia) (“AIAC”) formerly known as Kuala Lumpur Regional Centre for Arbitration was established in 1978 and was the first regional arbitration center established in the Asia-Pacific region under Asian African Legal Consultative Organisation (“AALCO”), an intergovernmental organisation established in 1956.

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



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

AIAC has a panel of over 700 experienced domestic and international arbitrators from diverse fields of expertise. Its fee structure is 20 per cent below those of other established international arbitration centers, and there is no withholding tax imposed on the fees of foreign arbitrators, who are free to practice in Malaysia.

In 2012, KLRCA now known as AIAC, received international recognition when it won the Global Arbitration Review Award for “Innovation by an Organisation or Individual” for the KLRCA i-Arbitration Rules.

#### DRAFTING ARBITRATION CLAUSES

Parties to a transaction should always implement 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.

# International Trade

Malaysia's international trade policy supports free trade while offering some protection to local industry.

Malaysia is a member of ASEAN, and since 2003 of the ASEAN Free Trade Area (AFTA), which means that trade between ASEAN members benefits from a preferential tariff treatment. ASEAN is currently pursuing the ASEAN Economic Community (AEC) aiming at a regional trade integration for services, goods and the flow of capital.

In addition to the ASEAN membership, Malaysia is also party to a number of bilateral trade agreements including India, Japan and Australia. A free trade agreement with the European Union is currently subject to negotiations.

Malaysia is also member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and in 2022, Malaysia joined the Regional Comprehensive Economic Partnership, the largest free trade agreement outside of the World Trade Organization.

# Contact

## ● MALAYSIA

RÖDL CONSULTING SDN. BHD.  
COMPANY REGISTRATION NO.  
201201041284 (1025762-D)

### KUALA LUMPUR

18-12 Menara Q Sentral  
2A Jalan Stesen Sentral 2  
50470 Kuala Lumpur

● GERMANY  
Im Zollhafen 18  
Kranhaus 1  
50678 Cologne

MARKUS SCHLUETER  
Investment Structuring/  
Coordination Southeast Asia

T +49 221 9499 09 342  
[markus.schlueter@roedl.com](mailto:markus.schlueter@roedl.com)



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[www.roedl.com/malaysia](http://www.roedl.com/malaysia)