Business Guide to Malaysia

1.0 The investment climate

Malaysia is a federated constitutional monarchy, with a bicameral federal parliament consisting of an appointed Senate and an elected House of Representatives.

1.1 Economic structure

Following independence in 1957, rapid industrialization has transformed the economy from one relying primarily on the production of mineral and agricultural export commodities into one dominated by manufacturing and services. Under the "Vision 20/20" blueprint for economic development, Malaysia aims to become a fully developed nation by 2020.

Malaysia continues to play a leading role in world markets for some of its commodities: It is the leading producer of palm oil and one of the main sources of rubber. The country is also a producer and exporter of oil and natural gas; and electrical and electronic goods, the latter of which accounts for more than 40% of total export value.

However, to elevate the nation to a more advanced economy, Malaysia is shifting to a new economic model based on innovation, creativity and knowledge-based activities.

1.2 Banking and financing

The Malaysian banking sector has undertaken significant restructuring, consolidation and rationalization efforts in accordance with the Financial Sector Master Plan. These financial reforms have placed the banking sector on a stronger foundation with increased resilience and improved performance to face foreign competition. Progressive deregulation and liberalization measures include allowing seven new foreign banks to participate in Malaysia's financial sector by 2012 as well as increasing foreign equity holdings.

Islamic financing is of growing significance. The Malaysian International Islamic Financial Centre initiative was launched in August 2006 to position Malaysia strategically in this area. Malaysia also continues to promote Labuan as an international financial centre for offshore services.

1.3 Foreign trade

Malaysia is committed to a multilateral trading system. The country maintains a relatively open trade policy regime, with policies aim at improving market access for exports of primary commodities, manufactured products and, increasingly, services. As a founding member of the Association of Southeast Asian Nations (ASEAN) and a signatory to the ASEAN Free Trade Area agreement (AFTA), Malaysia intends to eliminate import duties on all products and thereby realize AFTA's ultimate target of creating an integrated market with free flow of goods within the region. Malaysia also enjoys generalized system of preferences (GSP) privileges from the European Union, Norway, Switzerland, Belarus, the Russian Federation and Turkey.

2.0 Choice of business entity.

2.1 Principal forms of doing business

The main types of business organization include the limited company (either public or private) , local branch of a foreign company, partnership and sole proprietorship. Among foreign investors, the limited company is the most popular form. It limits liability to the unpaid portion of the nominal value of the shares held, safeguarding the interests of all parties (including the foreign parent company). Private limited companies restrict the right of share transfers and may not seek capital, either equity or debt, from the public. All limited companies that do not meet the conditions governing private firms are deemed public. Private companies may be converted into public companies or vice versa.

Requirements of public and private limited companies:

Capital. Minimum two subscribers holding one share of MYR 1 each except for a wholly owned subsidiary of another company. No legal reserve requirements. Contribution can be made in cash or in kind, with valuation made by an impartial party.

Founders, shareholders. Minimum two founders. No residency or nationality requirements. For a private limited company, shareholders are restricted to a maximum of fifty, excluding employees and former employees of the company or its subsidiary.

Board of directors. Public and private limited companies must have at least two directors that maintain their principal (or only) place of residence in Malaysia (although they need not be Malaysian citizens).

Management, labour. There is no requirement that labour be represented in management or on the board of directors. There are no nationality or residency requirements for management.

Disclosure. Companies must lodge an annual return, directors' report and audited financial statements to the Companies Commission. Financial statements must be independently certified by government approved auditors.

Taxes and fees. The formation of a company involves professional fees ranging from MYR 2,500 to MYR 5,000 for private companies and public companies. There are no taxes on the issuance of shares, bonds or other issues although stamp duty may be payable. A registration fee is payable upon incorporation based on the authorized share capital. The fee ranges from MYR 1,000 to MYR 70,000 for authorized share capital not exceeding MYR 100,000 or that exceeding MYR 100 million. The same fee structure applies to registration of a foreign branch.

Types of shares. Shares must be registered and ordinary shares in a public company and its subsidiary must carry equal voting rights. Preferential shares are permitted and may carry special rights or restrictions on dividends, voting, repayment of capital and so forth.

Control. Decisions are always by simple majority of capital except for alteration to the memorandum or articles of association and reduction of share capital, where a three-fourths majority (special resolution) is required.

2.2 Establishing a branch

Branches may be established by making an application to the Companies Commission on a prescribed form to ensure the availability of the proposed company's name, along with a nominal fee. Thereafter, a certified copy of the foreign company's certificate of incorporation and charter, details of its directors and statutory declaration by an agent of the foreign company are required, together with the registration fees. A branch must also supply the name and address of at least one Malaysian resident who is authorized to accept notices serves on the company.

Branch offices are not regarded as resident in Malaysia for tax purposes. As part of the government's efforts to encourage foreign companies to incorporate local subsidiaries, certain tax benefits enjoyed by resident companies are not available to branches. Although branch operations are subject to income taxes similar to those levied on resident companies, branches are generally not eligible for tax incentives and must supply proof of income not derived from Malaysia. If a branch does decide to incorporate, it may not carry forward its existing business losses on incorporation.

The tax implications associated with establishing a branch versus a subsidiary depend, in substantial part, on the tax regime imposed by the home country. Where the latter taxes the worldwide income of its residents, it is generally advisable initially to open a ranch (during the loss-making period) and subsequently to incorporate a company (when the business begins to make a profit).

A representative office or regional office of a foreign company performing permissible activities in Malaysia is not required to be registered with the Companies Commission. Approval must be obtained, however, from the MIDA and is normally valid for two years. These offices are not subject to tax in Malaysia.

2.3 Setting up a company

To establish a company in Malaysia, a similar name search must be conducted for the availability of the proposed company's name, along with a nominal fee to the Companies Commission. Thereafter, the following documents, together with registration fees, must be summited to the commission within three months: (1) the memorandum of association; (2) the articles of association; (3) statutory of declaration of compliance; (4) statutory declaration by a director/promoter; and (5) summary of incorporation details.as part of the requirements, a company secretary who is a member of a prescribed body or is licensed by the Companies Commission must be appointed.

3.0 Business regulations

3.1 Registration and licensing

The country's economic expansion has been accompanied by a steady rise in technical assistance as a means to transfer technology to new ventures. Nevertheless, most such transfers through licensing agreements have been limited to subsidiaries and to affiliates of the foreign licenser.

3.2 Price controls

The Ministry of Domestic Trade, Co-operatives and Consumerism controls prices of petrol, diesel, liquefied petroleum gas, sugar, cooking oil, bread and flour. Prices of specific food staples also are subject to price controls during festival seasons.

3.3 Monopolies and restraint of trade

Malaysia does not have antitrust legislation or a formal definition of "monopoly". As a free enterprise economy, it encourages healthy competition and fair play of the market forces of supply and demand. Industry consolidation is undertaken in the financial, communication and multimedia and plantation sectors to strengthen the local companies in lieu of implementing trade and investment liberalization measures under the country's World Trade Organisation commitments. However, certain strategic sectors are still protected from competition through government procurement and trade licensing or permits.

The government had drafted a Competition Act, which is expected to be enforced by 2011. The Act, which is anti-monopoly and anti-cartel, includes traditional pillars of competition law concerning anti-competitive agreements, abuses of dominant position and mergers having the effect of substantially lessening competition. Six other legislative acts would also be amended: the Hire-Purchase Act 1967, Price Control Act 1946, Consumer Protection Act 1999, direct Sales Act 1993, Copyright Act 1987 and the Co-operative College (incorporation) Act 1968.

3.4 Intellectual property

Malaysia is a member of the World Intellectual Property Organisation (WIPO) and a signatory of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Malaysia also signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and acceded to the Patent Cooperation Treaty and the Nice and Vienna Agreement to ensure that intellectual property protection in Malaysia conforms to international standards and provides protection to both local and foreign investors.

Intellectual property protection in Malaysia consists of trademarks, patents, copyright, industrial designs, geographical indications and layout designs of integrated circuits. In this regard, Malaysia has strong laws with adequate civil and criminal penalties, and takes proactive approach to enforcement. There is an Intellectual Property Court and the Government has crafted a National Intellectual Property Policy.

The Intellectual Property Corporation of Malaysia manages and regulates the laws and other matters relating to intellectual property. The laws are being revised and proposed amendments are expected in 2010 or early 2011 to address such issues as incorporating new technology, non-traditional trademarks, brand dilution, copyright protection and colour marks.

3.5 Mergers and acquisitions

Previously, the Foreign Investment Committee (FIC) regulated guidelines on the acquisition of assets, mergers and takeovers of existing companies and businesses in Malaysia to ensure consistency with the objectives of the New Economic Policy. The FIC was disbanded in 2009, however, and the guidelines have been liberalized. No equity conditions apply except for those imposed by regulators in certain strategic sectors. However, any direct of indirect acquisition of property valued at MYR 20 million and above – if it results in the dilution of ownership interests held by Bumiputera (indigenous people) or a government agency – requires approval of the Economic Planning Unit (EPU). All other property acquisitions do not require EPU approval, but foreign interest cannot acquire property valued at less than MYR 500,000 per unit.

4.0 Foreign investment

4.1 Foreign investment incentives and restrictions

Malaysia offers a broad range of incentives for companies seeking to invest in new projects or expand existing ones. These include pioneer status, special investment capital allowances, a variety of tax deductions, access to government-sponsored industrial estates, and concessional grants and loans from government agencies. Investments in less developed areas qualify for many of the same programmes, but may receive additional benefits.

Incentives are provided for high-technology companies in the Multimedia Super Corridor Malaysia, companies in the Economic Development corridors and small-and medium-sized enterprises. Other favoured activities include biotechnology, Islamic finance, venture capital, services, tourism, certain types of agriculture, petroleum, car component manufacturing, specialized machinery and equipment and energy conservation and environmental protection.

Offshore financial services are favoured on the island of Labuan. Incentives also are available for firms that succeed in creating operational headquarters, international procurement centres and regional distribution centres.

In 2009, the government liberalized 27 services sub-sectors, with no equity conditions imposed. These sub-sectors are in the areas of health and social services, tourism, transport, business services and computer and related services. A National Committee for Approval of Investments in the Services Sector has been established to facilitate investments.

4.2 Exchange controls

Malaysia maintains a liberal system of exchange controls tat applies uniformly to transactions with its trading partners. The central bank handles foreign exchange controls and regulations aimed to assist the bank in monitoring settlement payments and receipts of international transactions.

Repatriations of capital, profits and income, which include dividends, interest, royalties, rental and commissions are freely permitted. Foreign exchange administration rules have been relaxed of eliminated, expect for trade with certain countries. Generally, restrictions only apply to a resident with domestic ringgit borrowing.

5.0Labour environment

5.1 Employee's rights ad remuneration
Malaysia's main labour laws include the Employment Act 1955, the Trade Unions Act 1959, the Industrial Relations Act 1967, the Employees' Social Security Act 1969 and the Employees' Provident Fund Act 1991.

Working hours
Normal working hours are limited to 48-hours or six days per week at eight hours per day. A 44-hours working week is common for industrial and office employees. The maximum allowable overtime is 104 hours per month. A generally observed convention requires that all Muslim men be allowed to attend prayers on Friday afternoons (between noon and 2.45p.m.).

Overtime on working days is compensated at a minimum of one-and–a-half times the regular hourly rate. On non-regular working days, such as Sundays, overtime is paid at twice the regular rate; public holidays require on overtime rate at three times the regular wage.

5.2 Wages and benefits
There is no single minimum wage in Malaysia, although the government has introduced minimum wages for low income labourers of certain sectors. Wages earned must be paid not later than the seventh day after month end.

Pensions
The Employees' Provident Fund (EPF) Act 1991 provides for a compulsory contributory retirement fund that is payable to employees in full when they reach age 55. All employers and employees must contribute to the fund; the minimum mandatory employee contribution is 8%of basic monthly pay up to 2011. Thereafter the employee contribution will be 11% of basic monthly pay. An employer must contribute another 12% to each employee's personal EPF holding, which is deductible from the employer's corporate income tax. The relief provided to employers may be extended to contributions of up to 19% of an employee's monthly pay that is placed into an EPF or another government-approved savings schemes. All foreign workers/expatriates and their employers are exempt from compulsory contributions; alternatively, expatriates may elect to make contributions at 8% of their monthly wages, with employers providing MYR5 per expatriate per month. Employers can seek tax deductions for contributions to their own pension schemes in addition to the EPF.

Social insurance
The Social Security Organisation administers both the Employment Injury Insurance Scheme and the Invalidity Pension Scheme for workers earning less than MYR 3,000 per month. Once a member, the contributions must continue (irrespective of earnings) and are capped at a percentage of MYR 3,000. Generally, employers contribute 1.25% of an employee's wages

under the Employment Injury Insurance Scheme and employees don not make contributions. The contributions required under the Invalidity Pension Scheme amount to 1% of an employee's wages and are shared equally by the employer and the employee.

Other benefits

Holiday and annual leave provisions vary widely among the states and industries. However, 10paid holidays are mandatory nationwide.

Employees with fewer than two years of service are entitled to eight days' paid leave each year. Employees with service of two to five years are entitled to 12 days of annual leave, and those employed for more than five years are entitled to 16 days. In practice, most employees receive around 14 days of paid vacation per year, and executives expect three weeks of annual holiday.

An employee is entitled to 14 days of annual sick leave if employed for less than two years, 18 days for two to five years, and 22days after five years. If hospitalization is necessary, paid medical leave is extended to a total of 60 days per year, most companies provide free medical facilities. Female employees are guarantee 60 days of paid maternity leave (for up to five surviving children) at the greater of the employee's normal rate of pay or MYR 6 per day.

Bonus payments can be discretionary or fixed in Malaysia. Generally, employees receive an annual bonus equivalent to one to three months of salary.

5.3 termination of employment

Employment contracts must include a clause starting the procedures for termination by either party. Normally, one month's notice of dismissal or one month's salary must be given, unless a longer period is stipulated in the agreement. The notice period may sometimes be as long as six months, or there may be provisions for lump-sum severance payments. Either party may end a contract without notice if an indemnity is paid equal to the amount of wages involved.

Where notice is not provided for in the agreement, the law stipulated that four weeks' notice must be given for employment of less than two years of service; six weeks for two to five years of service; and eight weeks for those exceeding five years.

Under the Employment (Termination of Lay-off Benefits) Regulations 1980, employees are entitled to a redundancy benefits of at least 10 days' wages for each year of service under two years, 15 days' wages per year for two or more but less than five years of service, and 20 days' wages per year for five years of service or more.

5.4 Labour-management relations

Only about 7% of the country's 11.4 million workers are unionized. Trade union must be registered with the Trade Union Affairs Department. Labour relations are generally harmonious and non-confrontational.

5.5 Employment of foreigners

It is encouraged that firms employ *Bumiputras* at all levels proportional to the local ethnic composition. The government also requires all foreign-investment firms to set up training programmes for their Malaysian staff and plan for the gradual replacement of expatriates (except those holding key posts) by Malaysians, particularly in managerial and white-collar positions. As part of the application for certain incentives, firms may be required to present a localization schedule. A labour shortage, however, has compelled the government to be more flexible in applying these policies.

The government has made it easier for companies to hire skilled foreigners. Automatic approval is granted to recruit highly skilled workers where no local expertise is available. Expatriates may fill executive posts if no Malaysians can be found with the necessary qualifications and experience. The expatriate may hold the post for up to 10 years. Within one year of the expatriate's arrival, a training programme must begin for a Malaysian to fill the position.

Approval for expatriate posts is usually handled by MIDA. The Multimedia Development Corporation approves applications from companies with Multimedia Super Corridor status, and the Public Service Department approves applications from government hospitals and clinics and public higher education institutions. Other approving authorities are the Central Bank and Securities Commission for the banking, finance, insurance and securities industries.

For further information contact:

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