

Doing Business in Malaysia

2009



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Malaysia has been provided by the office of UHY representatives:

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Our partners in UHY Diong, the Malaysian member firm of UHY International, have been in the business of consultancy for over 20 years on all aspects of setting up and running businesses.

This publication is current at January 2009.

If you need further advice on doing business in Malaysia, please contact:

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We look forward to helping you do business in Malaysia.

UHY Diong is a member of UHY, an international association of independent accounting and consultancy firms, whose organising body is Urbach Hacker Young International Limited, a UK company. Each member of UHY is a separate and independent firm. Services described herein are provided by UHY Diong and not by Urbach Hacker Young international Limited or any other member of UHY. Neither Urbach Hacker Young International Limited nor any member of UHY has any liability for services provided by other members.

2. Business environment

Parliament and law-making

Malaysia practises Parliamentary Democracy with Constitutional Monarchy and His Royal Highness is the Paramount Ruler. The Federal Constitution was legislated with the setting up of conditions for this system to exist. One of the conditions of Parliamentary Democracy is the division of the administrative power into three parts - legislative, judiciary and administrative or executive.

Malaysia is also a country that practises a system of democracy based on the Federation system. Accordingly, all of the states have agreed to form the country of Malaysia.

Each state has surrendered part of its power, such as finance, defence, education, foreign affairs and others, as stated in the Malaysian Constitution, and which is administered by the Central Government. There are matters that are under the power of the state and each state administers power over those matters.

As a country with a Constitutional Monarchy, the Constitution is allocated by the institutions of Yang Di-Pertuan Agong, the Paramount Ruler, the hereditary rulers of the nine states and the Council of Malay Rulers. His Royal Highness has the power to safeguard the customs and traditions of the Malay people and the Administration of the Islamic Religion in each state.

Seri Paduka Baginda Yang Di-Pertuan Agong is also the Paramount Ruler of the country and His Royal Highness is the Highest Commander of the Armed Forces. His Royal Highness carries out his Constitutional duties with the advice of the Prime Minister and Cabinet Ministers. The hereditary rulers are Heads of State of their own state and carry out their duties with the advice of their own Menteri Besar, or Chief Minister.

The Parliament is the legislative authority for the Federation and, in this capacity, it makes laws applicable to the Federation as a whole. Parliament passes federal laws, makes amendments to existing federal laws, examines government policies, approves government expenditure and approves new taxes.

The Parliament also serves as the forum for criticism and focus of public opinion on national affairs.

Market conditions

Malaysia, with its strong economic strength, supportive government policies, educated workforce, developed infrastructure, vibrant business environment and quality of life, has always been an attractive market for foreign investors.

Population

Malaysia is a multi-racial country with a mid-year population projection for 2008 of 27.7 million. Malays, who make up about 60% of the population, are the predominant group, with Chinese, Indians and other ethnic groups making up the rest. About 80% of the nation's total population occupies Peninsula Malaysia.

Area

Malaysia is located in the heart of South-East Asia, slightly north of the Equator. It is made up of two geographical regions - Peninsular Malaysia or West Malaysia comprising 11 states and the Federal Territory of Kuala Lumpur, and East Malaysia, which has two states, and the Federal Territory of Labuan.

The total area of Malaysia is approximately 330,000 sq km. Most of its land is located in the island of Borneo. Peninsula Malaysia occupies only about 40% of its total area.

The climate is hot and humid. Relative humidity ranges from 60 to 90 percent, except in the highlands.

Language

Bahasa is the official language. However, English is widely used for business and in the tourism industry. Apart from English, Mandarin and Tamil are also common languages taught at school concurrently with Bahasa and English.

Currency

The local currency is Ringgit Malaysia (RM).

Major hotels and larger establishments readily accept foreign currency. Foreign currencies can also be readily exchanged at banks or licensed money changers.

The economy

The economic policies and strategies of the country are set out in the National Development policy. These are implemented through the outline Perspective Plan. The current action plan is the Ninth Malaysia Plan (2006-2010).

The Ninth Malaysia Plan is the first of three five-year blueprints for the National Mission, encapsulating policy directions and programmes, which are aimed at delivering the Mission's philosophy and thrusts. The National Mission will drive the design and prioritisation of programmes, plans and budgets from the year 2006 onwards. With consistent and determined effort in the implementation and delivery of the National Mission, the nation will be well

placed to achieve its aspirations and join the ranks of developed nations by the year 2020.

Malaysian economy recorded a 6.3% GDP growth for the year 2007 (2006: 5.9%). Growth for 2007 was largely contributed by growth in the manufacturing and service sectors. With the strengthening of domestic-led activities coupled with a fairly favourable external environment, 2008 is expected to yield growth of 5.5%.

Consumer price inflation is likely to remain around 2% over the next two years.

3. Foreign investment

Multinational corporations from more than 40 countries have invested in more than 3,000 projects in Malaysia's manufacturing sector, attracted by the conducive business environment which has made Malaysia one of the world's top locations for offshore manufacturing operations. Many of them have reinvested in multiple projects.

Foreign investors must comply with government guidelines and policies, and obtain a licence from the government, for investment in the following sectors:

- High technology manufacturing;
- Energy;
- Information technology;
- Telecommunications;
- Other sectors of strategic importance to Malaysia.

Foreign investment in any activities other than those in manufacturing, multimedia and petroleum industries may require the approval of the Foreign Investment Committee (FIC).

As for exchange control or currency, transactions are regulated by the Central Bank of Malaysia (Bank Negara Malaysia). Some of the related rulings pertaining to foreign investment are:

- The extension of a domestic credit facility by resident controlled to non-resident controlled companies, provided that it does not exceed RM 50 million;
- Payment to non-residents for the import of goods and services;
- Repatriation of a foreign direct investor's investments, including capital, profits, dividends and interest.

Tax incentives are offered for foreign investments into the following industries:

- Manufacturing;
- Tourism;
- Agriculture;
- Environment protection;
- Training;
- Research and development;
- Transport and communication.

4. Setting up a business

The principal forms of business entity through which business can be conducted are:

- Limited companies;
- Branch of a foreign company;
- Sole proprietorship;
- Partnerships.

Limited companies

Most businesses in Malaysia are registered as limited companies and regulated by the Companies Act 1965. Generally, there are three types of company: limited by shares, limited by guarantee and unlimited companies.

All businesses must first seek approval and be registered with the Companies Commission of Malaysia. A company can start operating only upon receipt of the certificate of incorporation.

In any incorporation, there must be a minimum of two resident directors. Directors need not be shareholders of the company.

The minimum authorised capital is RM 100,000.

Foreign investors must not hold more than 30% of a company's equity, unless the company is in the manufacturing or multimedia technology sector.

Branch of foreign company

Foreign companies are allowed to engage in a wide range of businesses in Malaysia except some, e.g. to carry out wholesale and retail trade in Malaysia. In some instances approval must first be obtained from the Domestic Trade Division, Ministry of International Trade and Industry.

In any case, a branch of a foreign company needs to register itself with the Companies Commission of Malaysia before it may start business in Malaysia.

Sole proprietorship

These are basically operated by one-owner businesses which are generally small. The registration of sole proprietorship is governed under the Registrar of Business under the Registration of Business Ordinance 1965.

However, no foreign individual or companies can be registered as a sole proprietor with the Companies Commission of Malaysia.

Partnership

These are business concerns consisting of not less than two and not more than 20 partners. The registration of partnership is also governed under the Registrar of Business under the Registration of Business Ordinance 1965.

The Companies Commission of Malaysia in practice also does not permit companies or foreign individuals to be registered as partners in a partnership.

5. Labour

General

Malaysian employment is governed by the Employment Act 1955 which regulates the minimum terms and conditions for services earning RM 1,500 per month and below.

The Act also provides for payment of compensation covered by the Employees Social Security Act 1969 for injuries caused by accidents arising from employment.

Foreign employees

Foreigners are encouraged to take up employment in Malaysia. However, they are allowed to take up employment only in areas where there is a shortage of suitably trained Malaysians.

The Malaysian Government has issued the following guidelines on the employment of expatriate personnel:

- For manufacturing companies with a foreign paid-up capital of USD 2 million and above: (i) Automatic approval will be given for up to 10 expatriate posts, including five key posts; (ii) Expatriates can be employed for up to a maximum of 10 years for executive posts and five years for non-executive posts;
- For manufacturing companies with a foreign paid-up capital of more than USD 200,000 but less than USD 2 million: (i) Automatic approval will be given for up to five expatriate posts, including at least one key post; (ii) Expatriates can be employed for up to a maximum of 10 years for executive posts, and five years for non-executive posts;
- Manufacturing companies with a foreign paid-up capital of less than USD 200,000 will be considered for both key posts and time posts based on the following guidelines: (i) Key posts can be considered where the foreign paid-up capital is at least RM 500,000. This amount, however, is only a guideline and the number of key posts allowed depends on the merits of each case; (ii) Time posts can be considered for up to 10 years for executive posts that require professional qualifications and practical experience, and five years for non-executive posts that require technical skills and experience. For these posts, Malaysians must be trained to take over the posts eventually; (iii) The number of key posts and time posts allowed depends on the merits of each case;
- For Malaysian-owned manufacturing companies, automatic approval for the employment of expatriates for technical posts, including R & D posts, will be given as requested.

All employment passes are valid for a period approved for the posts. However, key post holder employment passes will be issued on a five-year renewable basis.

Holders of employment passes are issued with multiple entry visas valid for the duration of the employment pass.

6. Taxation

Scope of charge

Malaysia taxation is imposed on income accruing in or derived from Malaysia. Malaysia's taxes are also assessed on a current year basis and are regulated by a self-assessment system for all corporate and individual taxpayers.

The Malaysian taxation system consists of direct and indirect imposition of taxes.

Direct taxes are:

- Income tax;
- Real property gains tax (suspended since 1 April 2007);
- Petroleum income tax;
- Stamp duty.

Indirect taxes are:

- Excise duty;
- Import and export duty;
- Sales tax;
- Service tax.

Corporate tax

All companies, whether resident or not resident in Malaysia, are taxed at the tax rate of 26% on all income or profits derived from Malaysia. Corporate tax rate will be reduced to 25% in 2009.

However, effective from Year of Assessment 2004, all SMEs (Small Medium Enterprises) are taxed at preferential rate of 20% on their first RM 500,000 chargeable income. SMEs are defined as companies having paid-up capital of less than RM 2.5 million.

With effect from Year of Assessment 2009, the preferential rate for SME will not apply if more than:

- (a) 50% of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
 - (b) 50% of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company;
- and

- (c) 50% of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

“Related company” is defined as a company which has a paid up capital exceeding RM 2.5 million in respect of ordinary shares.

Personal income tax

Resident individuals are subject to tax at graduated tax rates after the deduction of personal reliefs. The resident individual tax rates are as shown in appendix II.

Non-resident individuals are taxed on income derived from Malaysia at a flat rate of 28% with no personal reliefs given. Non-resident individual tax rate will be reduced to 27% in 2009.

Personal reliefs

Resident individuals are entitled to the following personal reliefs:

Personal reliefs	RM 8,000
Wife relief	RM 3,000
Children	RM 1,000 per child
Disabled child	RM 5,000 per child
Contribution to approved funds/ life insurance	RM 6,000 (max)
Medical expenses for parents	RM 5,000 (max)
Medical/Education insurance	RM 3,000 (max)
Medical expenses for taxpayer, spouse and children with serious disease (including RM 500 for medical examination expenses)	RM 5,000 (max)
Disabled person:	
Taxpayer	RM 6,000
Spouse	RM 3,500
Supporting equipment for disabled taxpayer, spouse, children or parent	RM 5,000 (max)
Fee for acquiring technical, vocational, industrial, scientific or technological skills or qualifications	RM 5,000 (max)
Purchase of books, journals, magazines and other similar publications (excluding newspapers or banned publications) for use of taxpayer, spouse	RM 1,000 (max)

or children	
Interest expended to finance purchase of a first residential property (if taxpayer fulfil requirements as stipulated in S 46A of ITA 1967)	RM 2,000 (max)
Purchase of computer	RM 3,000 (max)
Purchase of sports equipment	RM 300 (max)
Amount deposited into Skim Simpanan Pendidikan Nasional for children	RM 3,000 (max)

Tax rebates

Rebate to taxpayer:

Individual	<u>2008</u>	<u>2009</u>
- chargeable income not exceeding RM 35,000	RM 350	RM 400
- additional rebate for wife - does not elect for separate assessment or has no income	RM 350	RM 400
- additional rebate for husband if he has no income or elects for combined assessment with wife	RM 350	RM 400
Rebate for Zakat, Fitrah or Other Islamic religion dues:		
Individuals (evidenced by receipts)	Full deduction	
Companies	2.5% of company's aggregate income in relevant year	

Withholding tax

Non-resident individuals are subject to a final withholding tax on the following sources of income:

- 10% on special classes of income such as use of movable property, technical advice, assistance or services; installation services on the supply of plant, machinery, etc; personal services associated with the use of intangible property;
- 10% on royalties;

- 15% on bank interest;
- 15% on services of a public entertainer;
- 10% on gains or profits taxable under Section 4(f) of the Income Tax Act 1967 such as commissions, guarantee fees and introducer's fees.

Effective from 21 September 2002, technical fee and installation fee for services performed outside Malaysia will not be subject to withholding tax.

Real property gains tax (suspended since 1 April 2007)

Capital gains are generally not subject to tax in Malaysia. Real property gains tax is imposed on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such land as well as the disposal of shares in real property companies.

Tax rates for Malaysian citizens and permanent residents are:

Period of holding	Tax rate
Disposal within 2 years	30%
Disposal within 3 rd year	20%
Disposal within 4 th year	15%
Disposal within 5 th year	5%
Disposal within 6 th year and subsequent year:	5%
Company	Nil
Individual	Nil

For non-citizens and non-permanent resident individuals, gains from the disposal of real property within five years are taxed at a flat rate of 30%. If after five years, the tax rate is 5%.

Sales tax

Sales tax in Malaysia is a single stage tax imposed on taxable goods manufactured locally and / or imported. Taxable goods means goods of a class or kind not for the time being exempted from sales tax.

The Sales Tax Act 1972, and its related legislation, applies throughout Malaysia, excluding the Joint Development Area, Labuan, Langkawi and Tioman. Licensed Manufacturing Warehouses are deemed to be placed outside Malaysia and, as such, do not fall within the ambit of the tax.

Sales tax is ad valorem tax and can be computed based on the value of the taxable goods sold, used or disposed of, or imported. Specific sales tax rates are currently imposed only on certain classes of petroleum (generally refined petroleum).

Broadly, sales tax is chargeable at the following rates: fruits, certain foodstuff, timber and building materials 5%; liquor and alcoholic drinks 5%; cigarettes and tobacco products 5%; all other goods not specifically exempted 10%.

Service tax

Service tax is a consumption tax levied and charged on any taxable service provided by any taxable person. This Act applies throughout Malaysia excluding Langkawi, Labuan, Tioman and the Joint Development Authority. The Free Trade Zone is deemed to be outside Malaysia.

The rate of service tax is 5% of the price, charge or premium of the taxable service. The list of taxable persons and taxable services are set out in the Second Schedule of the Service Tax Regulations 1975.

Double Taxation Agreements

Double Taxation Agreements are signed between countries to avoid the incidence of double taxation on income such as business profits, dividends, interest and royalties that are derived in one country and remitted to another country. Malaysia has signed 68 Double Taxation Agreements with various countries:

Albania	Iran	Romania
Argentina	Italy	Russia
Australia	Japan	Saudi Arabia
Austria	Jordan	Seychelles
Bahrain	Kazakhstan	Singapore
Bangladesh	Korea	South Africa
Belgium	Kuwait	Spain
Bosnia & Herzegovina	Kyrgyz	Sri Lanka
Canada	Lebanon	Sudan
Chile	Luxembourg	Sweden
China	Malta	Switzerland
Croatia	Mauritius	Syria
Czech Republic	Mongolia	Taiwan
Denmark	Morocco	Thailand
Egypt	Myanmar	Turkey
Fiji	Namibia	United Arab Emirates
Finland	Netherlands	United Kingdom

France	New Zealand	USA
Germany	Norway	Uzbekistan
Hungary	Pakistan	Venezuela
India	Papua New Guinea	Vietnam
Indonesia	Philippines	Zimbabwe
Ireland	Poland	

Tax incentives

The Malaysian Government has, also, offered a whole range of tax incentives to attract foreign investors.

Applications for tax incentives should be made to the Malaysian Industrial Development Authorities (MIDA), a division of the Ministry of International Trade and Industry.

To ensure foreign investors can secure their investments, Malaysia signs guarantee agreements (IGAs), which guarantee the investor against expropriation and allows the free remittance and repatriation of capital.

A summary of the incentives available for various industries are listed below:

Incentives for manufacturing sector

- Pioneer status;
- Investment tax allowance;
- Reinvestment allowance;
- Export credit refinancing facility;
- Double deduction for export credit insurance premium;
- Double deduction for promoting export;
- Incentives for research and development;
- Incentives for training;
- Incentives for storage, treatment and disposal of toxic and hazardous waste;
- Incentives for small-scale companies;
- Incentives for high-technology industries or strategic industries;
- Incentives for the manufacture of machinery and equipment;
- Incentives for the Multimedia Super Corridor;
- Incentives for information and communication technology;
- Incentives for relocating manufacturing activities to promoted areas
- Incentives to strengthen industrial linkages
- Incentives for automotive component modules
- Accelerated Capital Allowance
- Incentive for Industrialised building system
- Tax exemption on the value of increased exports
- Group relief

Incentives for the agricultural sector

- Pioneer status;
- Investment tax allowance;
- Agricultural allowance;
- Export credit refinancing facility;
- Double deduction for promotion of exports;
- Double deduction of export credit insurance premium;
- Industrial building allowance;
- Reinvestment allowance;
- Incentives for research and development;
- Incentives for food production;
- Incentives for existing company which reinvests;
- Incentives for companies providing cold chain facilities and services for food products
- Incentives for modernising chicken and duck rearing;
- Accelerated capital allowance;
- Tax exemption on the value of increased exports;
- Double deduction for expenses to obtain “Halal” certification and quality systems and standards certification;
- Double deduction on freight charges for export of rattan and wood-based products.

Incentives for the tourism sector

- Pioneer status;
- Investment tax allowance;
- Enhanced incentives for undertaking new investments;
- Incentives for reinvestment in hotels and tourism projects;
- Incentives for the luxury yacht industry;
- Industrial building allowance;
- Double deduction for expenses incurred on approved training;
- Double deduction on overseas promotion;
- Double deduction on approved trade fairs;
- Tax exemption for tour operators;
- Tax exemption for promoting international conference and trade exhibitions;
- Deduction on cultural performance
- Incentive for car rental operators

7. Accounting & reporting

Applicable regulation

All limited companies in Malaysia are governed by the Companies Act 1965, which includes provisions relating to:

- The maintenance and retention of accounting records;
- The maintenance of registers and minutes relating to directors and shareholders and their meetings;
- The form and content of annual accounts;
- The publication to shareholders and the public filing of annual accounts;
- The requirements for annual accounts to be audited;
- The penal provisions for incorrect or unsatisfactory annual accounts.

There are no regulations directly governing the accounting practices of unincorporated businesses such as sole proprietorships and partnerships. However, such unincorporated businesses would have to comply with Income Tax Ruling 4 / 2000 as mentioned below.

Accounting standards

Financial reporting in Malaysia adopts the framework of the Financial Reporting Foundation (FRP), established under the Financial Reporting Act 1997, and the Malaysian Accounting Standards Board (MASB).

All financial statements prepared pursuant to any law administered by the Securities Commission, the Central Bank and the Companies Commission of Malaysia has to comply with MASB-approved accounting standards.

The Companies Commission of Malaysia, Bursa Malaysia and Securities Commission are empowered by law to monitor compliance with MASB standards.

Income tax ruling

Under Inland Revenue Board Public Ruling 4 / 2000, all companies must keep records and books of accounts including a cash book, sales ledger, purchase ledger and a general ledger. The books should be written up at regular intervals. Appropriate entries for each transaction should be recorded as soon as possible (in any case not later than 60 days after the transaction). Supporting documents such as invoices, bank statements, paying-in slips, cheque butts, receipts for payments, payroll records and copies of receipts issued should be retained. Receipts issued should be serially numbered.

Audit requirements

The Companies Act 1965 requires that the annual accounts include a report from qualified registered auditors to the shareholders.

Filing of accounts

All limited companies are required to file their audited accounts with the Companies Commission of Malaysia unless they are private exempt companies.

8. UHY firms in Malaysia

UHY Diong

UHY Diong is the Malaysian member of UHY, one of the world's leading medium-size accountancy organisations.

UHY Diong has three offices in major business centres around Malaysia providing personal and corporate clients with a full range of tax, accounting and business advisory services including:

- Business development and improvement services;
- Business and strategic planning;
- Mergers and acquisitions;
- Due diligence, investigation and evaluations;
- Corporate finance;
- Business systems;
- Tax planning and compliance;
- Transfer pricing;
- Financial reporting;
- Audit and assurance
- Financial planning and retirement planning estate planning;
- Liquidations.

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9. UHY offices worldwide

UHY offices

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit www.uhy.com

Appendix I – Sources of information

Business environment

Bank Negara Malaysia (Central Bank)	www.bnm.gov.my
Ministry of Trade & Industry	www.mti.gov.my
Bursa Malaysia (Stock Exchange)	www.klse.com.my
Companies Commission of Malaysia	www.ssm.com.my
Malaysian Institute of Chartered Secretaries & Administrators	www.maicsa.org.my

Foreign investment

Malaysian Industrial Development Authority (MIDA)	www.mida.gov.my
Foreign Investment Committee	www.fic.gov.my

Taxation

Inland Revenue Board	www.hasilnet.org.my
Kastam Diraja Malaysia (Royal Customs)	www.customs.gov.my
Malaysia Institute of Taxation	www.mit.org.my

Accounting and reporting

Malaysian Institute of Accountants	www.mia.org.my
Companies Commission of Malaysia	www.ssm.com.my
Securities Commission of Malaysia	www.sc.com.my

Appendix II – Malaysian tax rates for resident individuals

Chargeable income brackets	2008		2009	
	Tax rate (%)	Tax payable (RM)	Tax rate (%)	Tax payable (RM)
First 2,500	0	0	0	0
Next 2,500 (to 5,000)	1	25 (25)	1	25 (25)
Next 5,000 (to 10,000)	3	150 (175)	3	150 (175)
Next 10,000 (to 20,000)	3	300 (475)	3	300 (475)
Next 15,000 (to 35,000)	7	1,050 (1,525)	7	1,050 (1,525)
Next 15,000 (to 50,000)	13	1,950 (3,475)	12	1,800 (3,325)
Next 20,000 (to 70,000)	19	3,800 (7,275)	19	3,800 (7,125)
Next 30,000 (to 100,000)	24	7,200 (14,475)	24	7,200 (14,325)
Next 50,000 (to 150,000)	27	13,500 (27,000)	27	13,500 (27,825)
Next 100,000 (to 250,000)	27	27,000 (54,975)	27	27,000 (54,825)
Over 250,000	28		27	