Malaysia

RISK & COMPLIANCE REPORT

DATE: March 2018

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Executive Summary - Malaysia	
Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	US Dept of State Money Laundering Assessment Not on EU White list equivalent jurisdictions
Medium Risk Areas:	Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score) Offshore Finance Centre

Major Investment Areas:

Agriculture - products:

Peninsular Malaysia - palm oil, rubber, cocoa, rice; Sabah - palm oil, subsistence crops; rubber, timber; Sarawak - palm oil, rubber, timber; pepper

Industries:

Peninsular Malaysia - rubber and oil palm processing and manufacturing, petroleum and natural gas, light manufacturing, pharmaceuticals, medical technology, electronics and semi-conductors, timber processing; Sabah - logging, petroleum and natural gas production; Sarawak - agriculture processing, petroleum and natural gas production, logging

Exports - commodities:

semiconductors and electronic equipment, palm oil, petroleum and liquefied natural gas, wood and wood products, palm oil, rubber, textiles, chemicals, solar panels

Exports - partners:

Singapore 13.6%, China 12.6%, Japan 11.8%, US 8.7%, Thailand 5.4%, Hong Kong 4.3%, India 4.2%, Australia 4.1% (2012)

Imports - commodities:

electronics, machinery, petroleum products, plastics, vehicles, iron and steel products, chemicals

Imports - partners:

China 15.1%, Singapore 13.3%, Japan 10.3%, US 8.1%, Thailand 6%, Indonesia 5.1%, South Korea 4.1% (2012)

Investment Restrictions:

The Government of Malaysia in general strongly encourages foreign direct investment (FDI), although it maintains restrictions or limits on investment in some sectors. It actively reaches out to targeted industries and negotiates incentive packages to attract FDI. Malaysia provides a number of incentives, particularly in export-oriented high-tech industries and "back office" service operations.

The ETP identified 12 specific sectors in which the Malaysian government is encouraging foreign and domestic investment, including: electrical & electronics; medical devices; green energy, machinery & equipment; oil and gas, and transportation equipment. Also targeted for growth are a number of resource-based industries and some services sub-sectors including logistics, although the sectors are subject to foreign investment conditions or restrictions.

In 2009 the government announced a limited set of liberalization measures covering 27 service subsectors**.** In 2011**,** the government announced plans to liberalize an additional 17 services subsectors during 2012. So far, the government has liberalized 15 of these subsectors, allowing 100 % foreign equity participation in private hospital services, medical specialist clinics, department and specialty stores, telecommunications Application Service Providers (ASP), incineration services, accounting and taxation services, courier services, private universities, vocational schools, dental specialist services, skills training centres, international schools, and vocational schools for special needs. The Malaysian government added an 18th sub-sector of quantity surveyors services. Of the remaining subsectors, liberalizing architectural services, quantity surveying services and engineering services requires new legislation. Legislation that permits the opening of legal services was passed in 2012, but awaits the completion of implementing regulations.

Only Malaysian citizens may own agricultural land. Malaysia also restricts foreign participation in agriculture (unless it is an agro-tourism linked project), and construction.

Land acquisitions by foreign interests that require approval from the Malaysian government are;

- Acquisition of agricultural land valued at US$163,000 and above
- Land of at least five acres in area for following purposes of: commercial scale agricultural activities, agro-tourism projects or agro based industrial activities for production of export goods.
- Acquisition of industrial land valued at US$163,000 and above.

Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20% equity share in cable and satellite operations

Contents

Section 1 - Background

During the late 18th and 19th centuries, Great Britain 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. 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. 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 Mohamed NAJIB bin Abdul Razak (in office since April 2009) has continued these pro-business policies and has introduced some civil reforms.

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

Malaysia is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Malaysia was undertaken by the Financial Action Task Force (FATF) in 2015. According to that Evaluation, Malaysia was deemed Compliant for 16 and Largely Compliant for 21 of the FATF 40 Recommendations.

Money Laundering/Terrorism Financing Risks (FATF Mutual Evaluation Report):

Malaysia is exposed to a range of significant money laundering (ML) and terrorist financing (TF) threats and vulnerabilities. Malaysia's open economy, strategic geographic position and porous land and sea borders increase its exposure to ML/TF risks. Malaysia's geographic location within South East Asia positions it as a transit country for drugs originating from the Golden Triangle and Europe. Typologies illustrate that illicit funds generated within South East Asia flow into the regional financial centres, including Australia, Singapore and Malaysia. Similar to other countries in the region, Malaysia has an important cash-based and informal economy.

The TF risks in Malaysia are evolving, with TF traditionally carried out using cash and relying on a network of trusted members within a terrorist organisation. New global risks, in particular in relation to foreign fighters, have increased the prevalence of self-funded TF within Malaysia.

Malaysia's 2012 and 2013 National Risk Assessments (NRA) identified fraud, goods smuggling, drugs, tax crimes and corruption and bribery as high risk. The 2013 NRA identified forgery, theft and robbery, counterfeiting of currency, human trafficking and migrant smuggling, TF and organised crime as medium risk crimes. The banking, MSB (MVTS and money changers) and casino sectors were rated as high risk. Moderate scope limitations in the NRA process point to other crimes that may pose high risks to Malaysia including ML/TF linked with transnational crimes and criminal organisations.

Prior to the 2012 NRA some agencies undertook threat and vulnerability assessments on specific topics, including some at the national level. Malaysia's understanding of ML/TF risks has improved substantially since it started the process of systematic assessments, which culminated in a NRA in December 2012, and an expanded NRA in December 2013. The last NRA indicates that the country is exposed to a range of ML risk associated with high threat areas including fraud, smuggling, illicit drugs, tax crimes and corruption. With the exception of TF and, to an extent organised crime, the NRA appropriately highlights the findings of these crime areas as priority risk areas for attention. Understanding the interconnectivity of risks, e.g. in relation to organised crime, corruption and domestic and foreign crimes appears to be limited requiring moderate improvements. For example, while corruption risk is rated as high, its linkages to other lower rated crimes (e.g. illegal logging) do not appear to have been sufficiently assessed and understood.

Terrorism and TF is considered as medium risk in the 2013 NRA, but in practice, the authorities consider it has high risk partly due to post NRA developments. Malaysia has faced a number of threats related to terrorist financing, including from Al Qaida, Jemaah Islamiya, the Liberation Tigers of Tamil Ealam (LTTE), Abu Sayef Group, and others. Recently significant threats related to the financing of ISIL recruits have emerged. Malaysia has porous national borders, rendering the country susceptible to the smuggling of cash and weapons and the relatively easy movement of people. Since 2004, some 156 Malaysians and a number of foreign nationals have been arrested in Malaysia for adherence to terrorist groups.

Malaysian authorities provided information on terrorism threats and the country's increasing vulnerability of being used as a source of TF or recruits for terrorist groups active in other countries, including ISIL. Malaysian officials estimated that in 2014 more than 75 Malaysians had joined or attempted to join ISIL. The authorities indicated that most of the cases detected so far involve low income, unsophisticated individuals but recent reported cases involve recruitment and financing operations using the internet. This suggests the emergence of more organized and sophisticated operations and that the understanding of this risk is still evolving in pace with TF methods. In November 2014, SB arrested those suspected of recruiting Malaysians via Facebook to send to Syria.

Malaysian authorities indicated that there is no evidence linking the proceeds of criminal activities such as kidnapping, extortion, robbery, smuggling, fraud and drug trafficking to terrorist groups, despite the prevalence of these activities in 'hot spots' associated with terrorism risks (Southern Philippines and Southern Thailand). There have been incidents of kidnapping in Malaysia's territory, i.e. Sabah, by the Abu Sayyaf group for ransom to further terrorism activities in their home country. Malaysia collaborates with the relevant regional authorities to share risk information to address these threats.

In the past, Malaysia, through its cooperation with international partners, has had the experience of investigating terrorist groups that have raised monies in support of their causes on a larger scale. Malaysia has identified fundraising through contributions made by terrorist group members through a collection of infaq2 of approximately 5% of monthly income in cash.

Malaysia has also focused on the use of the internet by terrorism-affiliated entities to channel logistical assistance to militant groups, recruitment, and funding terrorist activities. Between February 2013 and late 2014, SB has arrested 45 suspected militants of whom 22 have been charged, including three connected to Tandzim Al-Qaeda. The authorities contend that most of the cases detected so far involve low income unsophisticated individuals but recent reported cases involve recruitment and financing operations using the internet which suggests more organized and sophisticated operations.

Religious, charitable and political NPOs account for about 40% of NPOs and are considered a highrisk TF area in the NRA. The NRA indicates that a small proportion of NPOs account for the majority of international financial transactions and activities (approximately 1000 of a total of more than 47 000 NPOs) and that relatively few transactions are linked to high risk and conflict countries. NPO receipts during 2013 more than tripled far exceeding payments which had been steady during the previous 8 years. TF risk associated with this sector was rated as medium in the NRA. While awareness of TF risks in the NPO sector has been generally low in the past, oversight and risk mitigation have started to improve but is limited by resources. Outreach of TF has increased including through online portals and an annual conference. All of these factors point to a reducing but still high vulnerability for the NPO sector.

Malaysia has taken strong regulatory and enforcement measures to control the MSB sectors (remitters and money changers) in response to signifiicant risks, but unauthorized illicit MSBs continue to pose a significant vulnerability, including with respect to TF. Malaysia is a net outbound remitter of funds, with a large presence of migrant workers both legal and illegal. Strengthened controls, enforcement and other supervisory measures are resulting in significant increases in formal channels for remittance which should mitigate the level of risk posed by this sector.

Malaysia's highly cash-based economy (vulnerability rated as high) and significant informal economy (vulnerability rated as moderate) is considered by the NRA. The NRA indicated that terrorists have used cash couriers in Malaysia in the past including cross-border operations. Malaysia's states that its efforts to increase financial inclusion have reduced the size of the informal economy while national efforts to promote e-money are aimed at reducing the use of cash. The World Bank's Global Findex for 2014 shows that 81% (an increase from 66% in 2011) of the adult population had access to accounts in formal financial institutions.

Malaysia's assessments and understanding of risk, as well as the assessment team's discussions with RIs and LEAs, indicate that use of informal nominee and front or 'mule' accounts in Malaysia is a challenge for RIs across Malaysia. The mule accounts identified by Malaysian authorities mainly involve individual account holders rather than legal persons. Use of formal nominees is also a feature in the offshore corporate sector. The authorities and private sector recognize this vulnerability and enforcement measures have been taken against those identified as mule account holders.

Malaysia has a small but important offshore financial centre in Labuan, which was rated as medium risk in the NRA. The assessment and understanding of ML/TF risks associated with Labuan-based businesses is partly based on the size of the sectors and the absence of cash transactions. Nonetheless, since many of the services are not substantially asset-based (e.g. company, trust, foundation and related services), these factors may be insufficient to properly assess and understand their associated ML/TF vulnerabilities and risks.

Many of the FIs operating in Labuan are owned or controlled by onshore banks (considered high risk), and a large proportion of business (e.g. loans by offshore banks) are to Malaysian customers. The Labuan offshore sector has exposure to a number of high-risk jurisdictions. These institutional, commercial and cross-border linkages and the associated ML/TF risks do not appear to have been sufficiently assessed and understood, requiring moderate improvements in the assessment and understanding or risk.

Only one large casino has been licensed in the country and is the single non-financial sector vulnerability rated as high risk in the NRA. This rating was well supported and the inherent ML risks and vulnerabilities are well known. The casino offers a wide range of high-risk services (e.g. those associated with client account and transaction practices), has several cross-border subsidiaries, affiliates and customers (e.g. through junket operations). The risks arising from the casino's foreign operations have yet to be viewed on a consolidated basis.

Malaysia has a significant Islamic Finance sector involving banks, takaful (Islamic insurance) and other intermediaries which are subject to the same AML/CFT legal and regulatory regime as conventional and Islamic Finance institutions. Supervisors are of the view that, based on their supervisory experience, there are no material differences in risks when compared to conventional FIs (for example Islamic banks and non-Islamic bank are all rated as high-risk sectors). The NRA and other assessments considered ML and TF risks for all sectors of FIs and did not separately assess ML/TF risk and vulnerabilities in the Islamic Finance verse the conventional Finance sector as it did, for example, for the domestic and offshore sector.

The role of Zakat and its potential connection with charitable organisations (NPOs) was another area that has been considered by the authorities, although it was not discussed directly in the NRA. Malaysia has centralised and closely monitors systems for collection and disbursement of Zakat to mitigate risks in the sector.

Extract from 2014 Asia Pacific Group on Money Laundering Yearly Typologies Report:

Continuing Trends:

Continuing trends indicated by the Suspicious Transaction Reports (STRs) include the following:

Reports on internet/wire transfer scams are increasing, involving cross border transfer of funds:

• Foreigners or individuals associated with foreigners opening accounts in different/multiple banks;
• Multiple inward remittances received from various entities in different countries;
• Funds received were withdrawn in cash and via ATM at various locations immediately upon receipt, leaving low balances;
• Transactions made were not consistent with individual's profile.

Large and rapid movement of funds (transit accounts):

• Large value cheques and cash were deposited into bank account followed by immediate cash withdrawals;
• Funds transferred in and out of an account on the same day or within a relatively short period of time;
• Camouflaging movement of funds to third parties with cash withdrawals.

Unjustified banking transactions:

• Deposits are not justified considering the nature of business or profession;
• Deposits were inconsistent with the volume generated by the business;
• No economic rationale and/or bona fide purposes;
• Deposits were structured below the reporting requirement to avoid detection;
• Deposits at various branches and times for no logical reasons;

• Substantial inter-account transfer between related accounts;
• Multiple cash deposits into an account followed by a large transfer to other third parties account/countries.

US Department of State Money Laundering assessment (INCSR)

Malaysia is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

Malaysia is a highly open, upper-middle income economy with exposure to a range of money laundering threats. The country's porous land and sea borders, visa-free entry policy for nationals from over 160 countries, strategic geographic position, and well-developed financial system increase its vulnerability to domestic and transnational criminal activity, including fraud, corruption, drug trafficking, wildlife trafficking, smuggling, tax crimes, and terrorism finance.

Malaysia has largely up-to-date AML legislation, well-developed policies, institutional arrangements, and implementation mechanisms. The country has shown continuing progress in efforts to improve AML enforcement. Malaysia has been investigating, prosecuting, and securing more convictions of money laundering; however, one key area for development would be the prosecution of foreign-sourced crimes.

VULNERABILITIES AND EXPECTED TYPOLOGIES

Malaysia is primarily used as a transit country to move drugs globally. Drug trafficking by Chinese, Iranian, and Nigerian organizations is a significant source of illegal proceeds. Malaysia is also a source, destination, and transit country for wildlife trafficking, with some contraband (i.e., ivory) used as currency by the trafficking networks.

Corruption is also a significant money laundering risk. State-owned development fund 1Malaysia Development Berhad (1MDB) faces credible allegations of misappropriation from its accounts and is the subject of several international probes. Other state-owned enterprises such as FELDA (the world's largest palm oil exporter) have also been subject to investigations of alleged corruption.

Illicit proceeds also are generated by fraud, criminal breach of trust, illegal gaming, credit card fraud, counterfeiting, robbery, forgery, human trafficking, and extortion. Smuggling of high- tariff goods is another major source of illicit funds. According to Customs officials, the implementation of GST (Malaysia's value-added tax) has helped uncover tax and customs duties evasion and led to better government control and investigations.

Malaysia has large cash and informal economies and an offshore sector on the island of Labuan, which is subject to the same AML laws as those governing onshore financial service providers. The financial institutions operating in Labuan include both domestic and foreign banks and insurers. Offshore companies must be established through a trust company, which is required by law to establish true beneficial owners and submit STRs.

Unauthorized illicit MSBs continue to pose a significant vulnerability. According to the FIU, in 2017, a joint operation with other Malaysian agencies uncovered illegal money remittance activities by a syndicate group totaling more than U.S. $3 billion over five years. Syndicate members as well as third party launderers were prosecuted in this case.

Malaysia has Free Industrial Zones (FIZ), where manufacturing and assembly takes place, and Free Commercial Zones (FCZ), generally for warehousing commercial stock. Currently, there are 17 FIZs and 17 FCZs in Malaysia. Companies wishing to operate in a FIZ or FCZ must be licensed. In 2017, Malaysia became the second country to launch a Digital FTZ.

Casinos are licensed and regulated by the Ministry of Finance. Malaysia has one licensed casino that the central bank periodically assesses for compliance with AML regulations.

Malaysia is a global leader in Islamic finance. The Islamic financial sector is subject to the same AML legal and regulatory regime as the conventional financial sector. Based on their supervisory experience, Malaysian regulators believe there are no material differences in AML risks between Islamic and conventional institutions. Malaysia's national risk assessment did not separately assess the Islamic financial sector.

KEY AML LAWS AND REGULATIONS

Malaysia's Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) covers the money laundering offense, financial intelligence, reporting obligations, investigative powers, the confiscation regime, and the cross border declaration regime. Other laws supplement AMLA, such as the Dangerous Drugs (Forfeiture of Property) Act 1988, Malaysian Anti-Corruption Commission Act 2009, and the Criminal Procedure Code. Malaysia's AML regime includes comprehensive KYC and STR regulations.

Malaysia is a member of the FATF and the APG, a FATF-style regional body

AML DEFICIENCIES

Malaysia has a high degree of technical compliance with international AML standards, but several deficiencies remain. Malaysia should continue its efforts to effectively target high-risk offenses or foreign-sourced crimes. In addition, criminal AML cases and predicate offenses have separate investigators and prosecutors. Combined investigations may lead to an increase in successful prosecutions. Malaysia has traditionally preferred to pursue other measures, particularly confiscation, rather than money laundering prosecutions; however, its management and efficient disposal of seized assets remain challenges. Additionally, the penalties for money laundering have been low and could be used more effectively.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

Malaysia has a national action plan for improving its effectiveness in several areas, including enhancing focus on investigation and prosecution of high-risk money laundering crimes and expanding the usage of formal international cooperation to mitigate risks.

In 2016, Malaysia pursued 314 non-drug-related money laundering investigations and more than 1,160 drug-related money laundering investigations. Money laundering convictions remain very low.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Malaysia does not conform with regard to the following government legislation: -

Arrangements for Asset Sharing - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

EU White list of Equivalent Jurisdictions

Malaysia is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

Labuan, a federal territory of Malaysia, is considered to be an Offshore Financial Centre.

The Federal Territory of Labuan was declared an International Offshore Financial Centre in October 1990. Businesses receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding businesses conducted in Labuan. Islamic banks and takaful (Islamic insurance) operators regulated by the Labuan Financial Services Authority are given greater flexibility to open operation offices anywhere in Malaysia and are granted a tax exemption for international currency Islamic financial businesses. Islamic banks and takaful operators retain the favored tax treatment extended to offshore businesses in Labuan, 3% or RM 20,000 (approximately US$5,650), whether or not they maintain a physical presence in Labuan. This option is not available for conventional banks, which are required to maintain a physical presence in Labuan in order to retain the favorable tax treatment.

Reports

US State Dept Narcotics Report 2017 (introduction):

Malaysia is not a significant source country or transit point for U.S.-bound illegal drugs. Nevertheless, trafficking through Malaysia to supply regional markets continues and transnational criminal organizations are attempting to expand crystal methamphetamine production within the country. Drugs smuggled into Malaysia from Thailand, Burma and Laos include marijuana, heroin, and amphetamine-type stimulants. Synthetic drugs originating from Iran, Nigeria and India are also trafficked through Laos including MDMA (ecstasy), nimetazepam (a diverted pharmaceutical drug), and crystal methamphetamine. Nigerian and Iranian traffickers use Kuala Lumpur as a hub, and have used commercial courier services to ship drugs into and from Malaysia. There is no notable cultivation of illicit drug crops in Malaysia and local demand and consumption for illicit drugs is limited.

Malaysian law stipulates a mandatory death penalty for drug trafficking. Harsh mandatory sentences are also enforced for drug possession and recreational use. Drug trafficking cases increased from 3,044 in 2014 to 3,235 cases in 2015. The number of other drug arrests increased from 4,888 to 5,324 over the same period. According to local media, 482 Iranians and 798 Nigerians were detained in 2015 for drug offenses in Malaysia; more than 400 of the detained Nigerians were in Malaysia on student visas. Between 2012 and 2015, approximately 185 Malaysian women were detained in Brazil and Venezuela for acting as drug couriers for transnational drug trafficking networks.

Major traffickers are sometimes arrested and held in preventive detention when there is insufficient evidence to prosecute. In some cases, subjects charged with trafficking may have charges reduced to a lesser offense, or have the sentence commuted upon appeal. The National Anti-Drugs Agency and the Narcotics Crimes Investigation Department, including 199 officers in the Special Tactical Intelligence Narcotics Group, comprise Malaysia’s counternarcotics enforcement capacity.

With U.S. support, Malaysia is engaged in a long-term process to further professionalize substance use treatment staff in the country through the Colombo Plan’s International Centre for Certification and Education of Addiction Professionals. The U.S. Coast Guard continued its maritime law enforcement training program with the Malaysian Maritime Enforcement Agency in 2016. Malaysia has bilateral extradition and mutual legal assistance treaties with the United States. In 2017, the United States will seek to promote further coordination between Malaysian and U.S. law enforcement authorities, including joint interdiction efforts, information sharing, and training to further improve Malaysia's investigative and prosecutorial capacity.

US State Dept Trafficking in Persons Report 2016 (introduction):

Malaysia is classified a Tier 2 Watch List country - a country whose government does not fully comply with the Trafficking Victims Protection Act’s minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Malaysia is a destination and, to a much lesser extent, source and transit country for men, women, and children subjected to forced labor and women and a small number of children subjected to sex trafficking. The majority of trafficking victims are among the estimated two million documented and an even greater number of undocumented migrant laborers in Malaysia. Foreign workers—primarily from Indonesia, Bangladesh, the Philippines, Nepal, India, Burma, and other Southeast Asian countries—typically migrate voluntarily to Malaysia to pursue better economic opportunities. Some of these migrants are subjected to forced labor or debt bondage by their employers, employment agents, or informal labor recruiters when they are unable to pay the fees for recruitment and associated travel. Foreign workers employed by outsourcing or contract labor companies, which may or may not have oversight of personnel issues or day-to-day working conditions, have heightened vulnerabilities to exploitative labor conditions and a reduced ability to resolve disputes. Agents in labor source countries may impose onerous fees on workers before they arrive in Malaysia, in some cases causing debt bondage. Foreign workers in Malaysia and the companies which employ them are subject to a range of government fees for immigration processing, foreign worker levies, and other administrative processes. The law allows many of the fees, which are initially paid by employers, to be deducted from workers' wages, incentivizing employers to prevent workers from ending their employment before fees are recouped. Government regulations placed the burden of paying some immigration and employment authorization fees on foreign workers; this practice makes workers more susceptible to debt bondage. Authorities report organized crime syndicates are responsible for some instances of trafficking. Corruption among immigration and police officers remains a problem and impedes efforts to address trafficking.

Some migrant workers on palm oil and agricultural plantations, at construction sites, in the electronics industry, and in homes as domestic workers are subjected to practices that can indicate forced labor, such as passport retention—both authorized and unauthorized—and contract violations, restricted movement, wage fraud, and imposition of significant debts by recruitment agents or employers. Discoveries of migrant camps and mass graves along the border with Thailand in 2015 generated reports some officials were complicit in facilitating migrant smuggling, which may have included trafficking crimes. In previous years, some forced labor victims—such as Cambodian and Burmese men on Thai fishing boats in Malaysian waters—escaped their traffickers in Malaysian territory. After reports of abuse, the Cambodian government instituted a ban in 2011 on its citizens becoming maids in Malaysia. The ban was lifted in December 2015 after the signing of two memoranda of understanding between the Governments of Cambodia and Malaysia to improve regulation of foreign worker contracts and protect workers' rights; some Cambodian women remain subjected to domestic servitude. In efforts to circumvent anti-trafficking protections established by the Indonesian government, there are reports that some Indonesian workers may transit Malaysia legally en route to Middle Eastern countries, where some may be subjected to domestic servitude. Although significantly fewer than the number of forced laborers, some young foreign women—mainly from Southeast Asia, and to a much lesser extent Africa—are recruited ostensibly for legal work in Malaysian restaurants, hotels, and beauty salons, but are instead forced into prostitution. Some Vietnamese women and girls enter into brokered marriages in Malaysia and are forced into prostitution.

The more than 150,000 registered refugees and asylum-seekers in Malaysia lack formal status or the ability to obtain legal work permits, leaving them vulnerable to trafficking. Many refugees incur large smuggling debts, which traffickers use to subject some refugees to debt bondage. Children from refugee communities in Peninsular Malaysia are reportedly subjected to forced begging. A large population of Filipino Muslims resides illegally in Sabah, some of whom are vulnerable to trafficking. Few Malaysian citizens are subjected to trafficking internally and abroad.

The Government of Malaysia does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these measures, the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period; therefore, Malaysia is placed on Tier 2 Watch List for the second consecutive year. In July 2015, Parliament passed amendments to the existing anti-trafficking law to reform its victim protection system; these amendments legally came into force in November. The government co-chaired, with an internationally recognized trafficking expert, a consultation session with civil society stakeholders to develop implementing regulations for the amendments, focusing on legal changes allowing trafficking victims to live and work outside of government facilities; it then hosted two subsequent consultation sessions with civil society. In unparalleled form, the government shared the full text of draft implementing regulations with more than 40 invited participants in advance of each consultation session and collaborated with NGOs and international organization representatives to make line by line edits to the drafts during the last two sessions. The regulations were completed in March 2016 but awaited formal adoption at the close of the reporting period. In an effort to allow victims to move freely and work outside government facilities, the government collaborated with an international hotel chain to identify employment opportunities, advertised the positions to more than 100 trafficking victims, issued work permits to four trafficking victims, and arranged medical screenings as part of the work permit approval process for an additional five victims during the year. However, two of the first four workers subsequently left their jobs, and many victims declined to participate in the program, citing a desire to return home instead. Malaysia initiated fewer trafficking investigations and prosecutions compared to last year, but increased convictions from three to seven. Sentences for convicted traffickers varied, but some were insufficiently stringent. The government questioned several officials after the discovery of mass graves on the Thai border, but did not prosecute any officials during the reporting period for complicity in trafficking crimes. The government maintained a dedicated anti-trafficking police force, doubled the number of specialized anti-trafficking labor inspectors, and increased the number of specialized trafficking prosecutors. The government did not convict any employers for unauthorized retention of passports, despite pervasive passport retention and the inherent difficulty in determining if an employee has willingly allowed his or her employer to safeguard the passport. This marks a decrease from one such conviction in 2014. Malaysia continued its government-sponsored trafficking prevention efforts, including public awareness campaigns and the signing of nine bilateral memoranda of understanding with labor source countries to improve regulation of foreign worker contracts and protect workers' rights.

US State Dept Terrorism Report 2016

Overview: Malaysia's 2016 counterterrorism efforts focused on monitoring and arresting ISIS supporters, increasing border security capacity at airports and in the Sulu Sea, countering violent extremist messaging on social media, and developing the capacity of its judiciary to effectively prosecute terrorism cases using a rule-of-law approach.

In June, Malaysia suffered its first ISIS-inspired attack, a grenade attack at a nightclub in Puchong, Selangor that injured eight people. The Royal Malaysian Police said that a number of other terrorist attacks were foiled by arresting individuals who were in the final stages of attack planning. There was an increase in kidnappings for ransom in Malaysian territorial waters off eastern Sabah. Many of these kidnappings were linked to the Abu Sayyaf Group (ASG).

Malaysia also uses it national security laws to arrest, jail, harass, and intimidate critics and political opposition. In November, police arrested a human rights activist under the Security Offenses (Special Measures) Act on the eve of a planned public demonstration and held her in solitary confinement for 10 days.

Legislation, Law Enforcement, and Border Security: In 2016, the Malaysian government employed both recently amended and new legislation to arrest and prosecute individuals with suspected links to terrorism, including the financing of terrorism. These laws, however, have also been used to stifle dissent critical of the alleged misappropriation of sovereign wealth fund money from 1MDB, Malaysia's government-owned investment fund. Malaysia's Attorney General's Chambers stated that at year's end they had prosecuted, or were in the process of prosecuting, 70 terrorism-related cases. Of those, they had secured 22 convictions, while five cases were ongoing at the High Court.

In August, the government passed the National Security Council Act, granting the prime minister expanded powers intended to counter terrorism. The new law gives the prime minister the authority to unilaterally enforce martial law by declaring security areas of concern where police have expanded search, seizure, and arrest powers. It has not been used or tested in courts.

The Royal Malaysian Police Special Branch Counterterrorism Unit has the lead counterterrorism law enforcement role. This unit proactively identifies terrorist threats on soft targets and reported during the year that it had foiled a number of attacks in the final planning stages, including a series of attacks on tourist sites and entertainment outlets that were allegedly planned to take place on August 31, Malaysia's Independence Day. Malaysian authorities continued to improve interagency cooperation and information sharing, including participation in regional meetings, Global Counterterrorism Forum (GCTF) events, and training conducted through Malaysia's Southeast Asia Regional Center for Counter-Terrorism, which is part of Malaysia's Ministry of Foreign Affairs.

The Malaysian government intensified its cooperation with Indonesia and the Philippines to respond effectively to kidnapping incidents in the Sulu and Celebes Seas.

The Royal Malaysian Police and Immigration Department took steps to provide immigration authorities with direct access to INTERPOL databases. Malaysia reports its stolen and lost travel documents regularly to INTERPOL. Malaysia has a no-fly list; passengers are compared to that list by the immigration officer at the port of entry and the decision to deny entry is made at the airport. Malaysia co-sponsored UN Security Council resolution (UNSCR) 2309 on aviation security, and took steps to improve intelligence and information sharing.

To support the implementation of UNSCR 2178 (2014) on foreign terrorist fighters, the government has criminalized travel to, through, or from Malaysia to engage in terrorism, and police have arrested individuals on arrival at the airport who were suspected of having traveled to Syria and Iraq to fight for terrorist groups.

In October, the government launched the National Special Operations Force to respond to terrorist threats, which was not operational at year's end. The new joint unit will reportedly include land, air, and maritime forces from the Malaysian Armed Forces, Royal Malaysian Police, and the Malaysian Maritime Enforcement Agency.

On September 23, Ardit Ferizi was sentenced in a U.S. District Court to 20 years' imprisonment for providing material support to ISIS. Ferizi, a Kosovo citizen living in Malaysia, hacked into a U.S. company's database and illegally obtained customer information, including personally identifiable information (PII) of 1,300 U.S. military and other U.S. government personnel. Ferizi then provided the PII to an ISIS recruiter and attack planner and posted a tweet containing a document with the PII. Ferizi admitted that he provided the PII to ISIS with the understanding that ISIS would use the PII to "hit them hard." Malaysian authorities provisionally arrested Ferizi based on a U.S. request in October 2015 and extradited him in January 2016.

Countering the Financing of Terrorism: Malaysia became a full member of the Financial Action Task Force (FATF) in February 2016 and is a member of the Asia/Pacific Group on Money Laundering, a FATF-style regional body. Malaysia's financial intelligence unit, the Unit Perisikan Kewangan, Bank Negara Malaysia, is a member of the Egmont Group of Financial Intelligence Units. In September 2015, FATF published its Mutual Evaluation Report on Malaysia's anti-money laundering/countering the financing of terrorism (AML/CFT) measures. The report gave Malaysia positive ratings for its robust policy framework, strong political commitment, and well-functioning coordination structures for AML/CFT, although it underscored the need for Malaysia to improve its understanding of terrorist finance risk.

In 2014, Malaysia elevated the risk of terrorism and terrorist financing to high due to the threats posted by ISIS and foreign terrorist fighters. In particular, a small but growing number of "self-financed" terrorists have sought to raise funds through family, friends, and the internet to support their travel to fight with ISIS.

Between January and early October, the government pressed charges in a total of 12 terrorist finance cases and convicted two. One of the convictions included the brother of Syria-based Malaysian ISIS operative Muhammad Wanndy. Wanndy's brother, Mohamed Danny, was sentenced to four years' imprisonment for transferring approximately US $3,000 to Wanndy from Malaysia through his bank account.

Malaysia has implemented sanctions in accordance with relevant UNSCRs, including designating domestic and foreign entities pursuant to UNSCR 1373 obligations, and co-sponsoring designations and freezing assets of individuals and entities on the UN Security Council ISIL (Da'esh) and al-Qa'ida sanctions list. The 2014 amendments to the Anti-Money Laundering and Anti-Terrorist Financing Act provide for automatic translation of United Nations (UN) designations into designations under Malaysian law and direct reference to the lists maintained by the United Nations. Malaysia routinely distributed lists of terrorist designations and freezing obligations to financial institutions.

The use of informal remittances created vulnerability for abuse by terrorist financiers. Malaysia has continued to undertake strong regulatory and enforcement action against unauthorized money services businesses that operate in the informal economy. Strengthened controls, enforcement, and other supervisory measures have boosted the use of formal remittance channels, although risks from unauthorized money services businesses remain.

Malaysia requires Know Your Customer data for a wide range of entities and requires financial institutions to promptly report transactions suspected to involve proceeds of any unlawful activity via suspicious transaction reports (STRs). Non-profit organizations (NPOs) are required to file annual financial reports to the Registrar of Societies (ROS), which may file STR reports. Law enforcement works with the ROS and other charity regulators to prevent misuse and terrorist financing in the NPO sector, especially those considered vulnerable by Malaysia. The ROS also conducts an annual conference for its members on the risks of terrorist financing.

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	47
World Governance Indicator – Control of Corruption	62

Corruption in Malaysia is relatively low in comparison to the rest of East Asia. One of the main sectors subject to corruption is public procurement, with Malaysian companies sometimes being favored over foreign companies and with political connections still playing an important role in the outcome of public tenders. Anti-corruption laws are mainly contained within the Malaysian Anti-Corruption Commission Act, which covers a range of offences (including active and passive bribery, extortion and abuse of office) and penalties for private and public sector corruption. However, a lack of capacity and technical skills in some areas mean the level of enforcement is sometimes lacking. Local laws do not make an exception for facilitation payments, which should therefore be considered unlawful. **Information provided by GAN Integrity.**

US State Department

Malaysia ranked in 53rd place in Transparency International's Corruption Perception Index in 2013 (the lower the ranking, the less perceived corruption). The Malaysian government has taken steps to address corruption, including through the establishment of the Malaysian Anti-Corruption Commission (MACC) in 2008, passage of legislation to make judicial appointments more transparent (the Judicial Appointments Commission Act) also in 2008, passage of a Whistleblower Protection Act in 2010, the introduction of procurement reforms and the launch of government initiatives to target corrupt practices. The Malaysian government considers bribery a criminal act and does not permit bribes to be deducted from taxes. Malaysia's anti-corruption law includes the criminal offense of bribery of foreign public officials, permits the prosecution of Malaysians for offense committed overseas, and also provides for the seizure of properties.

Critics have questioned the MACC's ability to effectively address high-level corruption, although a number of prosecutions are ongoing The MACC conducts investigations but prosecutorial discretion remains with the Attorney General. A lack of capacity and technical skills in some areas hampers MACC's overall effectiveness. The MACC introduced a public database of those convicted of corruption offenses. There is no systematic public disclosure of assets by senior officials. Critics also note that the Whistleblower Act does not protect those who disclose allegations to the media.

Government officials cite a four point approach to reducing corruption in government procurement, a key area of focus: increasing the number and decreasing the size of government procurement contract subject to open tenders, introducing the Transparency International "Integrity Pact" concept to be signed by all vendors that they understand bidding rules and anti-corruption laws prior to engaging in contract negotiations, issuing rules against Ministerial “referral letters” recommending specific contractors for government contracts, and fully implementing the new Whistleblower Act.

Corruption and Government Transparency - Report by Global Security

Political Climate

The United Malays National Organisation (UMNO) is the current ruling party in Malaysia with Prime Minister Najib Razak as the head of government. The UMNO remained in power with a majority of seats won during the 2013 general elections. In February 2013, Prime Minister Najib Razak signed the Transparency International Malaysia Integrity Pledge in order to ensure that the general elections would be free and fair, as reported by a February 2013 article by FMT News. Nevertheless, an April 2013 article by Yahoo News notes that the prime minister broke his integrity pledge as he abused his power by giving out money and gifts during the election period.

In an attempt to leave a legacy of reform, ex-Prime Minister Badawi and the government put forward an Anti-Corruption Bill, which was enacted in late 2008 and replaced the old Anti-Corruption Agency (ACA) with the new Malaysian Anti-Corruption Commission (MACC). Under the current Najib administration, anti-corruption has been a key policy component. For example, in 2010, it enacted a Whistleblower Protection Act aiming to protect anyone who discloses information on fraud and corruption. In the same year, a Government Transformation Programme (GTP) was unveiled, which according to the US Department of State 2013, has fighting corruption among its primary goals. Still, however, due to a number of corruption cases involving members at the highest levels of government, critics and the public have long questioned the actual political will in Malaysia to tackle corruption. For example, according to several news sources, such as a 2009 news article by The Wall Street Journal, Badawi and his successor, current Prime Minister Najib Razak, have also been tied to corruption scandals, including dubious defence contracts and charges of alleged abuse of power by respected UMNO party members for using government funds to bribe UMNO members in a bid to sustain their positions in the party. These charges have added fuel to on-going criticism of the BN coalition.

According to the Merdeka Centre for Opinion Research's Peninsular Malaysia Voters Opinion Poll Quarter 4/2013, 46% of household respondents think that the fight against corruption requires the Malaysian government’s attention the most, followed by improvement of the police and security services and reduction of inflation. This is further emphasised by Transparency International's Global Corruption Barometer 2010-2011, in which it reveals that 20% of household respondents perceive the government's efforts in the fight against corruption as ‘ineffective,’ and that 46% of the households perceive that the level of corruption in Malaysia has increased over the past 3 years. The same 2010-2011 survey also reveals that almost half of the respondents have paid a bribe in the last 12 months and that the Malaysian political parties are perceived to be highly affected by corruption. In addition, nearly three quarters of the responding households perceive political parties as ‘extremely corrupt’.

Business and Corruption

Problems with corruption is discouraging international investors from starting businesses in Malaysia and international donors' influence in this policy field is limited, according to the Bertelsmann Foundation's 2010 and 2012 reports. There is widespread corruption among the country's political and business elite, whose close connections are often known as ‘money politics'. The number of high-profile corruption cases, growing political instability, the government’s inability to control inflation, an increasing budget deficit, and declining macroeconomic performance have raised concerns among foreign investors about doing business in Malaysia. According to Transparency International's Global Corruption Report 2009, a study conducted by the World Bank estimates that corruption costs the government approximately MYR 10 billion annually, equivalent to 1-2% of Malaysia's annual GDP. Another significant impediment to the economic growth of the country is the complex network of ethnic preferences to promote the acquisition of economic assets and government contracts by the bumiputera (all ethnic Malays and other Malaysian indigenous peoples), as reported by the US Department of State 2013.

Some prosperous Malaysian companies owe their growth to the preferential treatment they receive from the ruling party, if not outright ownership by political figures. Furthermore, well-connected companies are rarely targeted in anti-corruption cases. This is reflected in Asia Foundation's Malaysia Business Environment Index 2012, where a majority of the surveyed SMEs perceive connections to government officials and support from political parties important factors for winning government contracts. According to the business executives surveyed in the World Economic Forum's Global Competitiveness Report 2012-2013, the level of unethical behaviour of companies in Malaysia constitutes a competitive disadvantage for doing business, as do both the diversion of public funds to companies, individuals or groups due to corruption; and the likelihood of government officials to favour well-connected companies and individuals when deciding on policies and contracts. Furthermore, the Bertelsmann Foundation 2012 reports that all smaller government contacts are only open to bumiputera-owned companies. The US Department of State 2013 also reports that for most of the public procurements, major infrastructure projects in particular, foreign companies are only allowed to participate if they take on a local partner. Companies should note that the government procurement process is not transparent and lacks competitive bidding. There are cases where huge infrastructure projects have been awarded without open tendering (see 'Public Procurement and Contracting' in the Corruption Levels section). Companies are recommended to use a specialised public procurement due diligence tool in order to mitigate corruption risks involving procurement in Malaysia.

According to Transparency International's Bribery Survey 2011, 50% of the surveyed companies have lost business or procurement contracts due to competitor corruption. Nevertheless, in recent years, both business organisations and the government have introduced corporate codes of conduct to address anti-corruption issues. One example of such an initiative was the introduction of the Corporate Integrity Pledge in 2011, the result of collaboration between several bodies, including the Malaysian Anti-Corruption Commission (MACC), the Prime Minister's Office and the Performance Management and Delivery Unit (PEMANDU). By voluntarily signing the Pledge to adhere to Anti-Corruption Principles, companies commit to a long-term programme to establish an effective system and to increase integrity in the Malaysian corporate sector. As of April 2013, 150 companies including Siemens Malaysia Sdn Bhd have signed the pledge since its implementation in 2011, and more companies are expected to join the effort, as reported by Transparency International. Companies should be aware of the corruption risks and legal liabilities associated with joint ventures and the use of agents, and are strongly advised to develop, implement and strengthen integrity systems, and to conduct extensive due diligence when planning to invest in Malaysia.

Regulatory Environment

Malaysia's regulatory environment changes frequently based on the relationship between pressures on the government to expand affirmative action policies to provide the bumiputera with more extensive benefits, and pressures from the private sector and other actors to liberalise the economy and reduce regulatory hurdles. The government has not only struggled to reduce corruption, but also to sustain its campaign to cut back on extensive red tape, which is particularly prevalent in relation to licensing. However, the Malaysian government has taken some steps to improve its business environment, click here for more information on the major improvements in 2011. According to the US Department of State 2013, the Ministerial Functions Act grants relevant ministries broad discretionary powers over the approval of specific investment projects. The details of the government's affirmative action policy implementation are left to the discretion of various line ministries. Policies and practices vary greatly. Some practices are explicit while others are informal, leaving much ambiguity for potential investors. According to the same source, one of the government's racial preference policies is a requirement that foreign and domestic non-manufacturing companies take on bumiputera partners with a minimum of 30% of share capital. Investors in industries prioritised by the government can often negotiate favourable terms with the relevant ministry or regulatory body. This can include assistance in navigating a complex web of regulations and policies, a few of which can be waived on a case-by-case basis. Despite general government encouragement of foreign investment, investors in non-targeted industries tend to receive less government assistance in obtaining the necessary approvals from regulatory bodies, and therefore face more bureaucratic obstacles

The government has recognised red tape as an obstacle to doing business and as a source for opportunities for corruption to occur. According to business executives surveyed by the World Economic Forum in the Global Competitiveness Report 2012-2013, complying with government administrative requirements (e.g. permits, regulations, reporting) is easy enough to constitute a competitive advantage for Malaysia. The government has relaxed regulations on property investments by foreign investors and has released a guidebook on registering property. The Bertelsmann Foundation 2012 reports that property ownership rights and the regulation of property acquisition are generally well defined. Another recent change has enabled companies to renew their business premise licences at any time during the year instead of year-end re-registration, and the validity of the licence has been extended from one to three years. The World Bank & IFC's Doing Business 2013 supports these positive changes and states that the overall regulatory environment in Malaysia has been significantly improved in recent years. The government has facilitated business start-up by introducing more online services. Now, starting a business in Malaysia requires a company to go through 3 procedures and takes 6 days with no minimum capital requirement.

Malaysia's secular legal system is based on English common law. However, Muslims are subject to Sharia, and Article 121 of the constitution stipulates that all matters related to Islam should be dealt with within Sharia courts. According to Freedom House 2013, the interpretation of Sharia law varies regionally. Malaysia's regulatory environment frequently gives rise to commercial disputes. In addition, the judiciary is reportedly not independent and there have been several instances of selective prosecution, preferential treatment, and arbitrary or politically motivated verdicts. According to the US Department of State 2013, the domestic legal system is accessible, but generally requires any non-Malaysian citizen to make a large deposit before pursuing a case in the Malaysian courts. The courts can be slow and bureaucratic and take years to even address cases, which is why many companies choose to include mandatory arbitration clauses in their contracts. The government has set up the Kuala Lumpur Regional Centre for Arbitration, which is the only recognised centre for arbitration in Malaysia. Malaysia has signed and ratified the New York Convention 1958 as well as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, granting jurisdiction over investment disputes between the Government of Malaysia and non-Malaysian citizens to the International Centre for Settlement of Investment Disputes (ICSID). Access the Lexadin World Law Guide for a collection of legislation in Malaysia.

Section 3 - Economy

Malaysia, a middle-income country, has transformed itself since the 1970s from a producer of raw materials into an emerging multi-sector economy. Under current Prime Minister NAJIB, Malaysia is attempting to achieve high-income status by 2020 and to move farther up the value-added production chain by attracting investments in Islamic finance, high technology industries, biotechnology, and services. NAJIB's Economic Transformation Program is a series of projects and policy measures intended to accelerate the country's economic growth. The government has also taken steps to liberalize some services sub-sectors. Malaysia is vulnerable to a fall in world commodity prices or a general slowdown in global economic activity.

The NAJIB administration is continuing efforts to boost domestic demand and reduce the economy's dependence on exports. Nevertheless, exports - particularly of electronics, oil and gas, palm oil, and rubber - remain a significant driver of the economy. Gross exports of goods and services constitute more than 80% of GDP. The oil and gas sector supplied about 29% of government revenue in 2014. As an oil and gas exporter, Malaysia has previously profited from higher world energy prices, although the rising cost of domestic gasoline and diesel fuel, combined with sustained budget deficits, has forced Kuala Lumpur to begin to address fiscal shortfalls, through initial reductions in energy and sugar subsidies and the announcement of the 2015 implementation of a 6% goods and services tax. Falling global oil prices in the second half of 2014 have strained government finances, shrunk Malaysia's current account surplus and put downward pressure on the ringgit. The government is trying to lessen its dependence on state oil producer Petronas.

Bank Negara Malaysia (the central bank) maintains healthy foreign exchange reserves; a well-developed regulatory regime has limited Malaysia's exposure to riskier financial instruments and the global financial crisis. In order to attract increased investment, NAJIB raised possible revisions to the special economic and social preferences accorded to ethnic Malays under the New Economic Policy of 1970, but retreated in 2013 after he encountered significant opposition from Malay nationalists and other vested interests. In September 2013 NAJIB launched the new Bumiputra Economic Empowerment Program, policies that favour and advance the economic condition of ethnic Malays.

Malaysia is a member of the 12-nation Trans-Pacific Partnership free trade agreement negotiations and, with the nine other ASEAN members, will form the ASEAN Economic Community in 2015.

Agriculture - products:

Peninsular Malaysia - palm oil, rubber, cocoa, rice; Sabah - palm oil, subsistence crops; rubber, timber; Sarawak - palm oil, rubber, timber; pepper

Industries:

Peninsular Malaysia - rubber and oil palm processing and manufacturing, petroleum and natural gas, light manufacturing, pharmaceuticals, medical technology, electronics and semiconductors, timber processing; Sabah - logging, petroleum and natural gas production; Sarawak - agriculture processing, petroleum and natural gas production, logging

Exports - commodities:

semiconductors and electronic equipment, palm oil, petroleum and liquefied natural gas, wood and wood products, palm oil, rubber, textiles, chemicals, solar panels

Exports - partners:

Singapore 13.9%, China 13%, Japan 9.5%, US 9.4%, Thailand 5.7%, Hong Kong 4.7%, India 4.1% (2015)

Imports - commodities:

electronics, machinery, petroleum products, plastics, vehicles, iron and steel products, chemicals

Imports - partners:

China 18.8%, Singapore 12%, US 8.1%, Japan 7.8%, Thailand 6.1%, South Korea 4.5%, Indonesia 4.5% (2015)

Banking

The government took a number of measures to strengthen Malaysia's banking system following the regional financial crisis in mid-1997. Bank Negara (BNM) directed the merger of Malaysia's local banking institutions into ten anchor banks, which was completed in 2002. The government is promoting further mergers among the local banking institutions to ensure that they will be competitive with international banks. Presently, there are nine local banks in the country. Malaysia is trying to position itself as a leader in Islamic banking (based on Sharia law that disallows the payment of interest in favor of profit-sharing), launching the Malaysian International Islamic Financial Centre (MIFC) initiative in August 2006. The government has been encouraging local banks to enter the market and allowing foreign Islamic banks to operate in Malaysia. There are now two standalone domestic Islamic banks and all the nine local banks have Islamic banking subsidiaries. In addition, there are three foreign Islamic banks operating in the country, three local Islamic foreign banks (Islamic subsidiaries of foreign commercial banks), three international Islamic banks (which can only operate in foreign currencies) and two foreign banks operating “Islamic banking windows” here. Islamic banking now accounts for almost 20% of Malaysia’s total banking assets.

Islamic Banking Industry

Islamic banking is subject to the Islamic Banking Act 1983 (IBA), which provides for similar regulatory and supervisory frameworks and requirements as conventional banking. Malaysia is encouraging institutional development, enhancing the domestic financial infrastructure, strengthening the Shariah and legal infrastructure, and promoting greater international integration for the Islamic banking sector.

The Islamic Financial Services Board (IFSB) was established in Kuala Lumpur in 2002. The IFSB is an international standard setter body established to ensure the soundness and stability of Islamic financial services industry. Malaysia established the International Centre for Education in Islamic Finance in March 2006, specialising in developing professionals and specialists in Islamic Finance. In August 2006, Malaysia launched the Malaysia International Islamic

Financial Centre (MIFC), which is a centre for the offering of Islamic financial products and services by a diversified range of financial institutions from anywhere in Malaysia in any currency to residents and non-residents.

Stock Exchange

The capital market institutions (stock exchanges, clearing houses, etc) and market intermediaries (securities dealers, brokers, etc) are regulated and supervised by the SC. The market institutions are Bursa Malaysia Berhad, the exchanges (Bursa Malaysia Securities Berhad and Bursa Malaysia Derivatives Berhad), the clearing houses (Bursa Malaysia Securities Clearing Sendirian Berhad and Bursa Malaysia Derivatives Clearing Berhad) and the central depository (Bursa Malaysia Depository Sendirian Berhad).

Section 4 - Investment Climate

Executive Summary

The Government of Malaysia encourages foreign direct investment (FDI), although it maintains restrictions or limits on investment in some sectors. It actively reaches out to targeted industries and negotiates incentive packages to attract FDI. Malaysia provides a number of incentives, particularly in export-oriented high-tech industries and "back office" service operations. Prime Minister Najib Razak has made generating new domestic and foreign investment a centerpiece of his economic policies. Inbound FDI has been steady in nominal terms, and Malaysia's performance in attracting FDI relative to both earlier decades and the rest of the Association of Southeast Asian Nations (ASEAN) has slowed.

According to the 2013 Organization for Economic Cooperation and Development (OECD) Investment Policy Review of Malaysia, FDI to Malaysia began to decline in 1992, and private investment overall started to slide in 1997 following the Asian financial crises. Since then, domestic demand has increasingly been the source of Malaysia's economic performance, with foreign investment receding as a driver of GDP growth. The OECD concluded in its review that Malaysia's FDI levels in recent years had reached record high levels in absolute terms, but have declined as percentage of GDP . A large share of FDI inflows involves reinvested earnings of existing foreign affiliates, suggesting that while established foreign investors remain committed to Malaysia, there are fewer new arrivals compared to earlier decades.

Malaysia's attractiveness for FDI in low-wage manufacturing has diminished as years of steady economic growth have increased average wage levels making Malaysia an upper middle-income country as defined by the World Bank. The Malaysian Government seeks to promote investment in higher value-added manufacturing and service sectors. The National Economic Advisory Council (NEAC) regularly reviews and adjusts incentives to improve Malaysia's competitiveness as a foreign investment destination to meet the country's goal of becoming a high-income economy by 2020.

Prime Minister Najib's 2009 Economic Transformation Program (ETP) encompassed policies and incentives for 12 key economic areas to accelerate growth: the Greater Kuala Lumpur/Klang Valley region; oil, gas and energy; palm oil and rubber; wholesale and retail operations; financial services; tourism; the electrical and electronics (E&E) sector; business services; communications content and infrastructure; education; agriculture; and health care. The ETP also targeted investment in resource-based industries and some services sub-sectors, including logistics, though these are also subject to foreign investment conditions or restrictions. Another initiative, the Government Transformation Program (GTP), addressed governance and quality of life issues, and aims to reduce corruption and crime, to improve education, urban public transport and rural basic infrastructure, and to reduce the number of low-income households.

In February 2016, Malaysia joined the other 11 negotiating partners to sign the Trans-Pacific Partnership (TPP), though it has yet to ratify the agreement. Once the TPP comes into force, the agreement will require participating nations, including Malaysia, to take various steps to facilitate investmentand improve market access: TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment.

The business climate has been conducive to U.S. investment. The largest U.S. investments are in the oil and gas sector, manufacturing, and financial services. Firms with significant investment in Malaysia's oil and gas and petrochemical sectors include: ExxonMobil, Caltex, ConocoPhillips, Murphy Oil, Hess Oil, Halliburton, Dow Chemical and Eastman Chemicals. Major semiconductor manufacturers, including ON Semiconductor, Texas Instruments, Intel, and others have substantial operations in Malaysia, as do electronics manufacturers Western Digital, Honeywell, Haemonetics (medical devices), and Motorola. In recent years Malaysia has attracted significant investment in the production of solar panels, including from U.S. firms. Many of the major Japanese consumer electronics firms (Sony, Fuji, Panasonic, Matsushita, Hitachi, etc.) have facilities in Malaysia.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	54 of 167	transparency.org/cpi2015#results-table
World Bank's Doing Business Report "Ease of Doing Business"	2016	18 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	32 of 141	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in Malaysia ($M USD) stock positions)	2014	USD 14.36 billion	www.bea.gov/iTable/iTable.cfm?ReqID=2&step=1#reqid=2&step=10&isuri=1&202=1&203=30&204=10&205=1,2&200=1&201=1&207=49,48,43&208=2&209=50
World Bank GNI per capita	2014	USD 11,120	data.worldbank.org/indicator/NY.GNP.PCAP.CD

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Malaysia has one of the world's most trade-dependent economies with trade reaching 161 percent of annual GDP according to the World Trade Organization. The Malaysian government values foreign investment as a driver of continued national economic development, but is hampered by restrictions in some sectors and an at-times burdensome regulatory regime. However, the government continues to liberalize and in some cases remove investment restrictions.

In 2009, Malaysia removed its former Foreign Investment Committee (FIC) investment guidelines, enabling transactions for acquisitions of interests, mergers, and takeovers of local companies by domestic or foreign parties without FIC approval. While the FIC itself still exists, it now only reviews the purchase by foreigners of commercial properties valued greater than at RM 20 million (approximately USD 6.5 million) from the *bumiputera* (ethnic Malays and other indigenous ethnicities in Malaysia).

Since 2009, the government has gradually liberalized foreign participation in the services sector to attract more foreign investment. Following removal of certain restrictions on foreign participation in industries ranging from computer-related consultancies, tourism, and freight transportation, the government in 2011 began to allow 100 percent foreign ownership across the following sectors: healthcare, retail, education as well as professional, environmental, and courier services. Some limits on foreign equity ownership remain in place across in telecommunications, financial services, and transportation.

Foreign investments in services, whether in sectors with no foreign equity limits or controlled sub-sectors, remain subject to review and approval by ministries and agencies with jurisdiction over the relevant sectors. A key function of this review and approval process is to determine whether proposed investments meet the government's qualifications for the various incentives in place to promote economic development goals. Nevertheless, the Ministerial Functions Act grants relevant ministries broad discretionary powers over the approval of specific investment projects. Investors in industries targeted by the Malaysian government often can negotiate favorable terms with ministries, or other bodies, regulating the specific industry. This can include assistance in navigating a complex web of regulations and policies, some of which can be waived on a case-by-case basis. Foreign investors in non-targeted industries tend to receive less government assistance in obtaining the necessary approvals from the various regulatory bodies and therefore can face greater bureaucratic obstacles.

[Reference]
http://www.mida.gov.my/home/liberalisation-of-the-services-sector/posts/

Other Investment Policy Reviews

In 2013, Organization for Economic Cooperation and Development (OECD) launched Malaysia’s most recent Investment Policy Review. Although the review underscored the generally positive direction of economic reforms and efforts at liberalization, the recommendations emphasized the need for greater service sector liberalization, stronger intellectual property protections, enhanced guidance and support from Malaysia's Investment Development Authority (MIDA), and continued corporate governance reforms.

Malaysia also conducted a WTO Trade Policy Review in 2014, which incorporated a general overview of the country's investment policies. The WTO’s review noted the Malaysian government’s action to institute incentives to encourage investment as well as a number of agencies to guide prospective investors. Beyond attracting investment, Malaysia had made measurable progress on reforms to facilitate increased commercial activity. For example, the Malaysian Productivity Commission had simplified licensing requirements at the federal, state, and local levels, thus reducing business compliance costs. Construction permit procedures were also streamlined, as were processing times for construction contracts. The 2013 National Policy on the Development and Implementation of Regulations has increased the transparency of government rulemaking and made the process more inclusive of the private sector and the general public.

[Reference]
http://www.oecd.org/daf/inv/investment-policy/IPRMalaysia2013Summary.pdf
https://www.wto.org/english/tratop_e/tpr_e/s292_e.pdf

Laws/Regulations on Foreign Direct Investment

The Government of Malaysia established the Malaysia Investment Development Authority (MIDA) to attract foreign investment and to serve as a focal point for legal and regulatory questions. Organized as part of the Ministry of International Trade and Industry (MITI), MIDA serves as a guide to foreign investors interested in the manufacturing sector and in many services sectors. Regional bodies providing support to investors include: Invest Kuala Lumpur, Invest Penang, Koridor Utara Malaysia (Malaysia's Northern Corridor), the East Coast Economic Region Development Council, the Iskandar Regional Development Authority (IRDA), the Sabah Economic Development and Investment Authority (SEDIA), and the Sarawak Economic Development Corporation.

As noted, the Ministerial Functions Act authorizes government ministries to oversee investments under their jurisdiction. Prospective investors in the services sector will need to follow requirements set by the relevant Malaysian government ministry or agency over the sector in question.

Post is not aware of the Malaysian government's interference in judicial proceedings involving foreign investors.

Business Registration

The principal law governing foreign investors in the Malaysian economy is the Companies Act of 1965 (CA). Incorporation requirements under the CA are relatively simple and are the same for domestic and foreign sole proprietorships, partnerships, as well as privately held and publicly traded corporations. In addition to registering with the Companies Commission of Malaysia, business entities must file: 1) Memorandum and Articles of Association (i.e., company charter); 2) a Declaration of Compliance (i.e., compliance with provisions of the Companies Act); and 3) a Statutory Declaration (i.e., no bankruptcies, no convictions). The registration and business establishment process takes less than a week to complete, according to the World Bank's 2016 Doing Business Rankings.

Beyond these requirements, foreign investors must obtain licenses. Under the Industrial Coordination Act of 1975, an investor seeking to engage in manufacturing will need a license if the business claims capital of RM 2.5 million (approximately USD 641,000) or employs at least 75 full-time staff. The Malaysian government's guidelines for approving manufacturing investments, and by extension, manufacturing licenses, are generally based on capital-to-employee ratios. Projects below a threshold of RM 55,000 (approximately USD 14,100) of capital per employee are deemed labor-intensive and will generally not qualify. Manufacturing investors seeking to expand or diversify their operations will need to apply through MIDA.

Manufacturing investors whose companies have annual revenue below RM 50 million (approximately USD 12.8 million) or with fewer than 200 full-time employees meet the definition of small and medium size enterprises (SMEs) and will generally be eligible for government SME incentives. Companies in the services or other sectors that have revenue below RM 20 million (approximately USD 5.1 million) or fewer than 75 full-time employees will meet the SME definition.

[Reference]
http://www.mida.gov.my/home/getting-started/posts/- The Malaysian Investment Development Authority's starting point for prospective foreign investors. Select the "General Guidelines and Facilities" tab.

http://www.ssm.com.my/en - The Malaysian Companies Commission homepage for registering sole proprietorships, partnerships, and companies.

http://www.mscmalaysia.my/ - The Multimedia Development Corporation (MDeC) is responsible for governing the Multimedia Super Corridor (MSC), the initiative to attract investment in information and communications technologies.

http://www.skmm.gov.my/Sectors/Broadcasting.aspx - The Malaysian Communications and Multimedia Commission's page for requirements in the communications sector.

http://www.moh.gov.my/english.php/pages/view/160 - The Ministry of Health's FAQs on liberalization of medical services. See Question 14: "Can foreigners invest in, and operate, healthcare facilities in Malaysia?"

http://iab.worldbank.org

http://ger.co/how-it-works/information-portals.

http://www.doingbusiness.org/data/exploretopics/starting-a-business#close

Industrial Promotion

The Malaysian Government has codified the incentives available for investments in qualifying projects in target sectors and regions. Tax holidays, financing, and special deductions are among the measures generally available for domestic as well as foreign investors in the following sectors and geographic areas: information and communications technologies (ICT); biotechnology; halal products (e.g., food, cosmetics, pharmaceuticals); oil and gas storage and trading; Islamic finance; Kuala Lumpur; Labuan Island (off Eastern Malaysia); East Coast of Peninsular Malaysia; Sabah and Sarawak (Eastern Malaysia); Northern Corridor.

The lists of application procedures and incentives available to investors in these sectors and regions can be found at: http://www.mida.gov.my/home/invest-in-malaysia/posts/

Limits on Foreign Control and Right to Private Ownership and Establishment

The legal framework for foreign investment in Malaysia grants foreigners the right to establish businesses and hold equity stakes across all parts of the economy. However, despite the progress of reforms to open more of the economy to a greater share of foreign investment, limits on foreign ownership remain in place across many sectors.

Telecommunications

Malaysia began allowing 100 percent foreign equity participation in Applications Service Providers (ASP) in April 2012. However, for Network Facilities Providers (NFP) and Network Service Provider (NSP) licenses, a limit of 70 percent foreign participation remains in effect. In certain instances, Malaysia has allowed a greater share of foreign ownership, but the manner in which such exceptions are administered is non-transparent. Restrictions are still in force on foreign ownership allowed in Telekom Malaysia. The limitation on the aggregate foreign share is 30 percent or 5 percent for individual investors.

Oil and Gas

Under the terms of the Petroleum Development Act of 1974, the upstream oil and gas industry is controlled by Petroleum Nasional Berhad (PETRONAS), a wholly state-owned company and the sole entity with legal title to Malaysian crude oil and gas deposits. Foreign participation tends to take the form of production sharing contracts (PSCs). PETRONAS regularly requires its PSC partners to work with Malaysian firms for many tenders. Non-Malaysian firms are permitted to participate in oil services in partnership with local firms and are restricted to a 49 percent equity stake.. PETRONAS sets the terms of upstream projects with foreign participation on a case-by-case basis.

Financial Services

Malaysia's ten-year Financial Sector Blueprint envisages further opening to foreign institutions and investors but does not contain specific market-opening commitments or timelines. For example, the services liberalization program that started in 2009 raised the limit of foreign ownership in insurance companies to 70 percent. However, the central bank, Bank Negara Malaysia (BNM), would allow a greater foreign ownership stake if the investment is determined to facilitate the consolidation of the industry. The latest Blueprint, 2011-2020, helped to codify the case-by-case approach. Under the Financial Services Act passed in late 2012, issuance of new licenses will be guided by prudential criteria and the “best interests of Malaysia.” Prudential criteria include consideration of the financial strength, business record, experience, character and integrity of the prospective foreign investor, soundness and feasibility of the business plan for the institution in Malaysia, transparency and complexity of the group structure, and the extent of supervision of the foreign investor in its home country. In determining the “best interests of Malaysia,” BNM will consider the contribution of the investment in promoting new high value-added economic activities, addressing demand for financial services where there are gaps, enhancing trade and investment linkages, and providing high-skilled employment opportunities.

BNM currently allows foreign banks to open up to four new branches throughout Malaysia, subject to restrictions, which include designating where the branches can be set up (i.e., in market centers, semi-urban areas and non-urban areas). The policies do not allow foreign banks to set up new branches within 1.5 km of an existing local bank. BNM also has conditioned foreign banks’ ability to offer certain services on commitments to undertake certain back office activities in Malaysia.

Privatization Program

In several key sectors, including transportation, agriculture, utilities, financial services, manufacturing, and construction, Government Linked Corporations (GLCs) continue to dominate the market. However, the Malaysian Government remains publicly committed to continued, eventual privatization, though it has not set a timeline for the process and faces substantial political pressure to preserve the roles of the GLCs. The Malaysian Government established the Public-Private Partnership Unit (UKAS) in 2009 to provide guidance and administrative support to businesses interested in privatization projects as well as large-scale government procurement projects. As part of the Office of the Prime Minister, UKAS oversees transactions ranging from contracts and concessions to sales and transfers of ownership from the public sector to the private sector.

Foreign investors may participate in privatization programs, but foreign ownership is limited to 25 percent of the privatized entity's equity. The National Development Policy confers preferential treatment to the *bumiputera*, which are entitled to at least 30 percent of the privatized entity's equity.

Privatization is done through public bidding. However, the lack of transparency has led to criticism that the government's decisions tend to favor individuals and businesses with close ties to high-ranking officials.

Screening of FDI

The Malaysian government has authority to review and approve all foreign and domestic investments. The documents mentioned in the section of this Investment Climate Statement on Law/Regulations of Foreign Direct Investment, as well as the investor's business plans, financial statements, and staffing projections are subject to the government's review. Based on the review, the government decides whether or not to grant the licenses required for the business to engage in its intended activity, whether in the provision of goods or services. The review process also serves as a means for the government to assess whether the proposed investment meets the criteria for the various incentives available in target sectors and regions. Although U.S. businesses have occasionally raised concerns about delays in the government's review process, none has characterized the process as a barrier.

Competition Law

In April 2010, the parliament of Malaysia approved two bills, the Competition Commission Act 2010 and the Competition Act 2010. The Acts took effect in January 2012. The Competition Act prohibits cartels and abuses of a dominant market position, but does not create any pre-transaction review of mergers or acquisitions. Violations are punishable by fines and imprisonment. Malaysia's Competition Commission has responsibility for determining whether a company's conduct constitutes an abuse of dominant market position or otherwise distorts or restricts competition. The Competition Commission does not have separate standards for foreign and domestic companies. Commission membership consists of senior officials from the Ministry of International Trade and Industry (MITI), the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC), the Ministry of Finance, the Prime Minister's Economic Planning Unit and representatives from academia and the private sector.

In addition to the Competition Commission, the Acts established a Competition Appeals Tribunal (CAT) to hear all appeals of Commission decisions. In the largest case to date, the Commission imposed a fine of RM 10 million on Malaysia Airlines and Air Asia in September 2013 for colluding to divide shares of the air transport services market. The airlines filed an appeal in March 2014. In February 2016, the CAT ruled in favor of the airlines in its first-ever decision and ordered the penalty to be set aside and refunded to both airlines.

2. Conversion and Transfer Policies

Foreign Exchange

Bank Negara Malaysia (BNM), the central bank, states that Malaysia maintains liberal foreign exchange administration policies. A series of sequenced and progressive liberalization initiatives gradually relaxed controls on foreign direct investment flows, wages, dividends, interest, and rental income earned in Malaysia. Financial capital now moves freely in and out of the country.

The government continues to control the use of Malaysian ringgit outside of Malaysia for settlement. However, there are no longer restrictions on resident companies with export earnings from paying in foreign currencies to another resident company for the purchase of goods and services. Foreign investors are allowed to buy or sell Malaysian ringgit on a forward or spot basis with licensed onshore banks to facilitate the settlement of investments in ringgit. In June 2011, BNM removed limits on outbound investment, non-bank inter-company loans, and trade financing.

BNM manages a floating exchange rate against a trade-weighted basket of currencies. The exchange rate against the USD stood at 4.29 on December 31, 2015 (compared to 3.49 on December 31, 2014). All payments to other countries must be made through authorized foreign exchange dealers. Banks must record the amount and purpose of each cross-border transfer over RM 200,000 (approximately USD 51,300).

More information on Malaysia’s regulation of foreign exchange can be found at:

http://www.bnm.gov.my/microsites/fxadmin/new_fea_rules/FEA_rules_Part_2_Non-residents.pdf

http://www.bnm.gov.my/microsites/fxadmin/new_fea_rules/FEA_rules_Part_1_Residents.pdf

Remittance Policies

Malaysia imposes few investment remittance rules on resident companies. Incorporated and individual U.S. investors have not raised concerns about their ability to transfer dividend payments, loan payments, royalties or other fees to home offices or U.S.-based accounts. Tax advisory firms and consultancies have not flagged payments as a significant concern among U.S. or foreign investors in Malaysia. Foreign exchange administration policies place no foreign currency asset limits on firms that have no ringgit-denominated debt. Companies that fund their purchases of foreign exchange assets with either onshore or offshore foreign exchange holdings, whether or not such companies have ringgit-denominated debt, face no limits in making remittances. However, a company with ringgit-denominated debt will need approval from BNM for conversions of RM 50 million or more into foreign exchange assets in a calendar year.

The Treasury Department has not identified Malaysia as a currency manipulator.

3. Expropriation and Compensation

The Embassy is not aware of any cases of uncompensated expropriation of U.S.-held assets, or confiscatory tax collection practices, by the Malaysian government. The government's stated policy is that all investors, both foreign and domestic, are entitled to fair compensation in the event that their private property is required for public purposes. Should the investor and the government disagree on the amount of compensation, the issue is then referred to the Malaysian judicial system.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Malaysia's legal system generally reflects English Law in that it consists of written and unwritten laws. Written laws include the federal and state constitutions as well as laws passed by Parliament and state legislatures. Unwritten laws are derived from court cases and local customs. The Contract Law of 1950 still guides the enforcement of contracts and resolution of disputes. States generally control property laws for residences, although the Malaysian government has recently adopted measures, including high capital gains taxes, to prevent the real estate market from overheating. Nevertheless, through such programs as the Multimedia Super Corridor, Free Commercial Zones, and Free Industrial Zones, the federal government has substantial reach into a range of geographic areas as a means of encouraging foreign investment and facilitating ownership of commercial and industrial property.

In 2007 the judiciary introduced dedicated intellectual property (IP) courts that consist of 15 "Sessions Courts" that sit in each state, and six 'High Courts' that sit in certain states (i.e. Kuala Lumpur, Johor, Perak, Selangor, Sabah and Sarawak). Malaysia launched the IP courts to deter the use of IP-infringing activity to fund criminal activity and to demonstrate a commitment to IP development in support of the country's goal to achieve high-income status. These lower courts hear criminal cases, and can impose fines for IP infringing acts. There is no limit to the fines that they can impose. The higher courts are designated for civil cases to provide damages incurred by rights holders once the damages have been quantified post-trial. High courts have the authority to issue injunctions (i.e., to order an immediate cessation of infringing activity) and to award monetary damages.

Labor Courts, which the Ministry of Human Resources describes as "a quasi-judicial system that serves as an alternative to civil claims," provide a means for workers to seek payment of wages and other financial benefits in arrears. Proceedings are generally informal but conducted in accordance with civil court principles. The High Court has upheld decisions which Labor Courts have rendered.

Certain foreign judgments are enforceable in Malaysia by virtue of the Reciprocal Enforcement of Judgments Act 1958 (REJA). However, before a foreign judgment can be enforced, it has to be registered. The registration of foreign judgments is only possible if the judgment was given by a Superior Court from a territory listed in the First Schedule of the REJA: the United Kingdom, Hong Kong, Singapore, New Zealand, Republic of Sri Lanka, India, and Brunei.

To register a foreign judgment under the REJA, the judgment creditor has to apply for the same within six years after the date of the foreign judgment. Any foreign judgment coming under the REJA shall be registered unless it has been wholly satisfied, or it could not be enforced by execution in the territory of the original Court.

If the judgment is not from a territory listed in the First Schedule to the REJA, the only method of enforcement at common law is by securing a Malaysian judgment. This involves suing on the judgment in the local Courts as an action in debt. Summary judgment procedures may be used to expedite the process.

Post is not aware of instances in which political figures or government authorities have interfered in judiciary proceedings involving commercial matters.

Bankruptcy

Malaysia's Department of Insolvency (MdI) is the lead agency implementing the Bankruptcy Act of 1967. The distribution of proceeds from the liquidation of a bankrupt company's assets generally adheres to the "priority matters and persons" identified by the Companies Act of 1965. After the bankruptcy process legal costs are covered, recipients of proceeds are: employees, secured creditors (i.e., creditors of real assets), unsecured creditors (i.e., creditors of financial instruments), and shareholders. Bankruptcy is not criminalized in Malaysia. The country ranks 45th on the World Bank Group's Doing Business Rankings (compared to 36th last year) for Ease of Resolving Insolvency, just behind Switzerland and just ahead of Romania.

Investment Disputes

Post has little data concerning the government's general handling of investment disputes. In 2004, a U.S. investor filed a case against the directors of the firm, who constituted the majority shareholders. The case involves allegations by the U.S. investor of embezzlement by the other directors. The case remains in the appeals process.

The Malaysian government has been involved in three ICSID cases -- in 1994, 1999, and 2005. The first case was settled out of court. The second, filed under the Malaysia-Belgo-Luxembourg Investment Guarantee Agreement (IGA), was concluded in 2000 in Malaysia's favor. The 2005 case, filed under the Malaysia-UK Bilateral Investment Treaty, was concluded in 2007, ultimately in favor of the investor.

International Arbitration

Malaysia's Arbitration Act of 2005 applies to both international and domestic arbitration. Although its provisions largely reflect those of the UN Commission on International Trade Law (UNCITRAL) Model Law, there are some notable differences, including the requirement that parties in domestic arbitration must choose Malaysian law as the applicable law. Although an arbitration agreement may be concluded by email or fax, it must be in writing: Malaysia does not recognize oral agreements or conduct as constituting binding arbitration agreements.

Many firms choose to include mandatory arbitration clauses in their contracts. The government actively promotes use of the Kuala Lumpur Regional Center for Arbitration (http://www.rcakl.org.my), established under the auspices of the Asian-African Legal Consultative Committee to offer international arbitration, mediation, and conciliation for trade disputes. The KLRCA is the only recognized center for arbitration in Malaysia. Arbitration held in a foreign jurisdiction under the rules of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 or under the United Nations Commission on International trade Law Arbitration Rules 1976 and the Rules of the Regional Centre for Arbitration at Kuala Lumpur can be enforceable in Malaysia.

ICSID Convention and New York Convention

Malaysia has signed and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Malaysia became a Contracting State on October 14, 1966 when the Convention entered into force, granting jurisdiction over investment disputes between the Government of Malaysia and non-Malaysian citizens to the International Center for Settlement of Investment Disputes (ICSID). Malaysia also is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Although the domestic legal system is accessible to foreign investors, filing a case generally requires any non-Malaysian citizen to make a large deposit before pursuing a case in the Malaysian courts. Post is unaware of any U.S. investors' recent complaints of political interference in any judicial proceedings.

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http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Malaysia%20Factsheet.pdf

http://jtksm.mohr.gov.my/index.php/en/majikan-dan-pekerja/mahkamah-buruh#1-labour-court

https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=Contractingstates&ReqFrom=Main)

http://www.newyorkconvention.org/contracting-states/list-of-contracting-states.

Duration of Dispute Resolution – Local Courts

The World Bank Group's 2016 "Doing Business" indicators reflect that contract enforcement cases average 425 days, require 29 different procedures and filings, and cost approximately 37 percent of the amount at issue. The "Investing Across Borders" rankings state that parties to an arbitration process can expect to wait 24 weeks for resolution.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

The Malaysian employs a variety of tax incentives to attract investment in various sectors and regions of the country. The most notable example of investment promotion efforts in tension with TRIMS is the National Automotive Policy (NAP).

Under the 2014 policy, the government eased manufacturing licensing restrictions for investors and manufacturers seeking to produce commercial and hybrid vehicles. However, the current policy on contract assembly and the freezing of licenses for reconditioning and reassembling activities remain in place. Moreover, the policy introduced higher tax exemptions for exported goods with a significant portion of value added in Malaysia. The tax exemptions on statutory income will be based on the percentage of increase in the value-added of the exported goods. Specifically, tax exemptions have been increased to 30 percent of the value of increased exports (from a previous ten percent), if the goods have at least 30 percent value-added; and to 50 percent of the value of increased exports (from a previous 15 percent), if the goods have at least 50 percent value-added. The NAP is currently under review.

Investment Incentives

The lists of application procedures and incentives available to investors in manufacturing and services sectors and regions can be found at: http://www.mida.gov.my/home/invest-in-malaysia/posts.

Research and Development

Government-funded research and development programs are open to participation by U.S. and other foreign firms.

Performance Requirements

Fiscal incentives granted to both foreign and domestic investors historically have been subject to performance requirements, usually in the form of export targets, local content requirements and technology transfer requirements. Performance requirements are usually written into the individual manufacturing licenses of local and foreign investors.

The Malaysian government extends a full tax exemption incentive of 15 years for firms with "Pioneer Status" (companies promoting products or activities in industries or parts of Malaysia to which the government places a high priority), and ten years for companies with "Investment Tax Allowance" status (those on which the government places a priority, but not as high as Pioneer Status). However, the government appears to have some flexibility with respect to the expiry of these periods, and some firms reportedly have had their pioneer status renewed. Government priorities generally include the levels of value-added, technology used, and industrial linkages. If a firm (foreign or domestic) fails to meet the terms of its license, it risks losing any tax benefits it may have been awarded. Potentially, a firm could lose its manufacturing license. The New Economic Model stated that in the long term, the government intends gradually to eliminate most of the fiscal incentives now offered to foreign and domestic manufacturing investors. More information on specific incentives for various sectors can be found at www.mida.gov.my.

Malaysia also seeks to attract foreign investment in the information technology industry, particularly in the Multimedia Super Corridor (MSC), a government scheme to foster the growth of research, development, and other high technology activities in Malaysia. Foreign investors who obtain MSC status receive tax and regulatory exemptions, as well as commitments by Malaysia to provide world class telecommunications infrastructure in exchange for a commitment of substantial technology transfer. For further details on incentives see www.mdec.my. The Multimedia Development Corporation (MDeC) approves all applications for MSC status.

In the services sector, the government's stated goal is to attract foreign investment in regional distribution centers, international procurement centers, operational headquarters research and development, university and graduate education, integrated market and logistics support services, cold chain facilities, central utility facilities, industrial training, and environmental management. To date, Malaysia has had some success in attracting regional distribution centers and local campuses of foreign universities. For example, GE and Honeywell maintain regional offices for ASEAN in Malaysia. In 2016, McDermott moved its regional headquarters to Malaysia and Boston Scientific broke ground on a medical devices manufacturing facility.

Malaysia seeks to attract foreign investment in biotechnology, but sends a mixed message on agricultural and food biotechnology. In July 2010, the Malaysian Ministry of Health amended the Food Regulations 1985 [P.U. (A) 437/1985] to require mandatory labeling of food and food ingredients obtained through modern biotechnology. The amendments also require that no person shall import, prepare or advertise for sale, or sell any food or food ingredients obtained through modern biotechnology without the prior written approval. The labeling regulation was originally scheduled to be enforced beginning in July 2012. However, a Ministry of Health circular published August 2012 announced that enforcement would be deferred until July 2014. However, there has not been any announcement to date of its enforcement. A copy of the law and regulations respectively can be found at:

http://www.biosafety.nre.gov.my/BiosafetyAct2007.shtml, and
http://www.biosafety.nre.gov.my/BIOSAFETY%20REGULATIONS%202010.pdf.

Data Storage

Malaysia has not implemented measures amounting to "forced localization" for data storage. The government has provided inducements to attract foreign and domestic investors to the Multimedia Super Corridor but does not mandate use of onshore providers. Companies in the information and communications technology sector are not required to hand over source code.

6. Protection of Property Rights

Real Property

Land administration is shared among federal, state, and local government. State governments have their own rules about land ownership, including foreign ownership. Malaysian law affords strong protections to real property owners. Real property titles are recorded in public records and attorneys review transfer documentation to ensure efficacy of a title transfer. There is no title insurance available in Malaysia. Malaysian courts protect property ownership rights. Foreign investors are allowed to borrow using real property as collateral. Foreign and domestic lenders are able to record mortgages with competent authorities and execute foreclosure in the event of loan default.

Intellectual Property Rights

Malaysia was removed from the U.S. Special 301 Watch List in 2012 following improvements in recent years in protecting IPR. The 2015 Special 301 Report, however, identified Malaysia as a country where media box-based piracy was growing in popularity.

In December 2011, the Malaysian Parliament passed amendments to the copyright law designed to, inter alia, bring the country into compliance with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, define Internet Service Provider (ISP) liabilities, and prohibit unauthorized recording of motion pictures in theaters. Malaysia subsequently acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty in September 2012. In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia's enforcement regime, including active cooperation with rights holders on matters pertaining to IPR enforcement, ongoing training of prosecutors for specialized IPR courts, and the 2013 reestablishment of a Special Anti-Piracy Taskforce.

In response to trends of rising internet piracy, the interagency Special Anti-Piracy Task Force established a Special Internet Forensics Unit (SIFU) within MDTCC. The SIFU team's responsibilities include monitoring for sites suspected of being, or known as, purveyors of infringing content. This organization follows MDTCC's practice of launching investigations based on information and complaints from legitimate host sites and content providers. Capacity building remains a priority for the SIFU. Coordination with the Malaysian Communications and Multimedia Commission (MCMC), which has responsibility for overall regulation of internet content, has been improving, according to many rights holders in Malaysia. Our contacts at MDTCC have told Post that the process for developing investigative leads that would support a case for the Attorney General's Chambers (equivalent to the U.S. Department of Justice) is evolving.

Despite Malaysia's success in improving IPR enforcement, key issues remain, including relatively widespread availability of pirated and counterfeit products in Malaysia, high rates of piracy over the internet, and continued problems with book piracy. The United States continues to encourage Malaysia to accede to the WIPO Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. In addition, the United States continues to urge Malaysia to provide effective protection against unfair commercial use, as well as unauthorized disclosure of test or other data submitted to obtain marketing approval for pharmaceutical products, and to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products.

Resources for Rights Holders

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http://www.amcham.com.my/ - The American-Malaysian Chamber of Commerce
http://www.myipo.gov.my/ - The Intellectual Property Corporation of Malaysia - a government body to aid in registration and protection of patents, trademarks, copyrights, and designs.
http://www.wipo.int/directory/en - Additional information about treaty obligations and points of contact at local IP offices.

7. Transparency of the Regulatory System

In July 2013, the Malaysian government initiated a National Policy on Development and Implementation of Regulations (NPDIR). Under this policy, the federal government embarked on a comprehensive approach to minimize redundancies in the country's regulatory framework. The benefits to the private sector thus far have largely been reduced licensing requirements, fees, and approval wait-times for construction projects. The main components of the policy have been: 1) a regulatory impact assessment (a cost-benefit analysis of all newly proposed regulations); and 2) the creation of a regulations guide, PEMUDAH (similar to the role MIDA plays for prospective investors), to aid businesses and civil society organizations in understanding regulatory requirements affecting their organizations' activities. Under the NPDIR, the government has committed to reviewing all new regulations every five years to determine with the new regulations need to be adjusted or eliminated.

Despite this effort to make government more accountable for its rules and to make the process more inclusive, many foreign investors continue to criticize the lack of transparency in government decision making. The implementation of rules on government procurement contracts are a recurring concern. Non-Malaysian pharmaceutical companies claim to have lost bids against ethnic Malay-owned companies despite offering more effective medicines at lower cost.

8. Efficient Capital Markets and Portfolio Investment

Foreigners may trade in securities and derivatives. Malaysia houses one of Asia's largest corporate bond markets, and is the largest sukuk (Islamic bond) market in East Asia. Both domestic and foreign companies regularly access capital in Malaysia's bond market. Malaysia provides tax incentives for foreign companies issuing Islamic bonds and financial instruments in Malaysia.

Malaysia's stock market (Bursa Malaysia) is open to foreign investment and foreign corporation issuing shares. However, foreign issuers remain subject to ethnic Malay ownership requirements of 12.5 percent if the majority of their operations are in Malaysia. Listing requirements for foreign companies are similar to that of local companies. There are additional criteria for foreign companies wanting to list in Malaysia including approval of the regulatory authorities of the foreign jurisdiction where the company was incorporated, valuation of assets according to standards applied in Malaysia or International Valuation Standards, and registration with the Registrar of Companies under the Companies Act 1965.

Malaysia has taken steps to promote good corporate governance by listed companies. Publicly listed companies must submit quarterly reports that include a balance sheet and income statement within two months of each financial quarter's end and audited annual accounts for public scrutiny within four months of each year's end. An individual may hold up to 25 corporate directorships. All public and private company directors are required to attend classes on corporate rules and regulations.

Legislation also regulates equity buybacks, mandates book entry of all securities transfers, and requires that all owners of securities accounts be identified. A Central Depository System (CDS) for stocks and bonds established in 1991 makes physical possession of certificates unnecessary. All shares traded on the Bursa Malaysia must be deposited in the CDS. Short selling of stocks is prohibited.

Money and Banking System, Hostile Takeovers

International investors generally regard Malaysia's banking sector as dynamic and well regulated. Although privately owned banks are competitive with state-owned banks, the state-owned banks dominate the market. The five largest banks - Maybank, CIMB, Public Bank, RHB, and Ambank - account for an estimated 75 percent of banking sector loans. According to the Ministry of Finance Report for 2015-2016, total banking sector lending as of August 2015 was 140 percent of GDP. According to the World Bank, 1.6 percent of the Malaysian banking sector's loans were non-performing for 2015.

Bank Negara prohibits hostile takeovers of banks, but the Securities Commission has established non-discriminatory rules and disclosure requirements for hostile takeovers of publicly traded companies.

9. Competition from State-Owned Enterprises

State-owned enterprises play a very significant role in the Malaysian economy. Such enterprises have been used to spearhead infrastructure and industrial projects. The government owns approximately 36 percent of the value of firms listed on the Bursa Malaysia through its seven Government-Linked Investment Corporations (GLICs), including a majority stake in a number of companies. Only a minority portion of stock is available for trading for some of the largest publicly listed local companies. Khazanah, often considered the government's sovereign wealth fund, owns stakes in companies competing in many of the country's major industries. The Prime Minister chairs Khazanah's Board of Directors. PETRONAS, the state-owned oil and gas company, is Malaysia's only Fortune Global 500 firm.

In Malaysia, state owned enterprises (SOEs) are also refered to as Government Linked Companies (GLCs). As part of its GLC Transformation Program, the Malaysian Government seeks to reduce its shares across a range of companies and to make those companies more competitive. Among the notable divestments of recent years, Khazanah, the largest GLIC, offloaded its stake in the national car company Proton to DRB-Hicom Bhd in 2012. In 2013, Khazanah divested its holdings in telecommunications services giant Time Engineering Bhd. In 2015, Khazanah cut its equity ownership of national utility company Tenaga Nasional from 31 percent to 29 percent. Khazanah's annual report for 2015 noted only that the fund had completed ten divestments that produced a gain of RM 2.9 billion.

OECD Guidelines on Corporate Governance of SOE/GLCs

SOEs with publicly traded shares must produce audited financial statements every year and also submit filings related to changes in the organization's management. The SOEs that do not offer publicly traded shares are required to submit annual reports to the Companies Commission. The requirement for publicly reporting the financial standing and scope of activities of SOEs has increased their transparency. It is also consistent with the OECD's guideline for Transparency and Disclosure. Although many SOEs prioritize operations that maximize their earnings, the close relationships SOEs have with senior government officials blur the line between strictly commercial activity pursued for its own sake and activity that has been directed to advance a policy interest. For example, Petroliam Nasional Berhad (Petronas) is both an SOE in the oil and gas sector and the regulator of the industry. Malaysia Airlines (MAS), in which the government previously held 70 percent but is now 100 percent government-owned, required periodic infusions of resources from the government to maintain its large numbers of employees. The airline is still undergoing a restructuring, and the stated goal of the country's largest sovereign wealth fund, Khazanah, which holds all of the airline's shares, is to re-list the airline as early as 2017.

Sovereign Wealth Funds

The Malaysian government established government-linked investment companies (GLICs) as vehicles to harness revenue from commodity-based industries and promote growth in strategic development areas. Khazanah is the largest of the GLICs, and the company holds equity in a range of domestic firms as well as investments outside Malaysia. The other GLICs – Armed Forces Retirement Fund (LTAT), National Capital (PNB), Employees Provident Fund (EPF), Pilgrimage Fund (Tabung Haji), and Public Employees Retirement Fund (KWAP) – execute similar investments but are structured as savings vehicles for Malaysians. Khazanah follows the Santiago Principles and participates in the International Forum on Sovereign Wealth Funds

Khazanah was incorporated in 1993 under the Companies Act of 1965 as a public limited company with a charter to promote growth in strategic industries and national initiatives. As of December 2015, Khazanah reported "realizable" assets of RM 150 billion (USD 38 billion) and a pre-tax profit of RM 1.2 billion (USD 308 million). The sectors comprising its major holdings include telecommunications and media, airports, banking, real estate, health care, and the national energy utility. According to the company's 2015 annual review, 81 percent of Khazanah's assets are invested in Malaysian-headquartered companies. Although the company generally manages its investments with the objective to produce strong companies and high returns, Khazanah often undertakes investments that are deemed government policy priorities, as with the purchase of Malaysia Airlines publicly traded shares (as noted above).

10. Responsible Business Conduct (RBC)

The development of responsible business conduct programs in Malaysia has shifted from a government-led initiative to business-led practices. In 2006, Malaysian stock market regulator, the Securities Commission, published a Corporate Social Responsibility (CSR) Framework for all publicly listed companies, which are required to disclose their CSR programs in their annual financial reports. In 2007 the Women, Family and Community Ministry launched the Prime Minister's CSR's Awards to encourage the spread of CSR programs. In 2011, the Malaysian Government launched the 1 Malaysia Training Plan (SL1M), an employment incentive that allows businesses to double the tax deduction for expenses to hire and train graduates from rural areas or from low-income families. In 2011, the Board for Corporate Sustainability and Responsibility Malaysia (BCSRM) supplanted the Institute for Corporate Responsibility Malaysia as the focal point for the country's responsible business conduct programs. The BCSRM is the local affiliate of the World Business Council for Sustainable Development.

OECD Guidelines for Multinational Enterprises

Although the Malaysian Government encourages companies to adopt RBC programs, it does not promote adherence to the principles in the OECD Guidelines for Multinational Enterprises or the UN Guiding Principles on Business and Human Rights. Malaysia is not a member of the Extractive Industries Transparency Initiative.

11. Political Violence

Malaysia has experienced political stability since its independence in 1957, with the exception of ethnic riots that followed the 1969 national elections. Najib Razak peacefully took office as Malaysia's 6th Prime Minister on April 2, 2009. In April 2012, the Peaceful Assembly Act took effect, which eliminates the need for permits for public assemblies but outlaws street protests and places other significant restrictions on public assemblies. In April 2012, the police disrupted a large protest march that took place despite government restrictions. Subsequent demonstrations and protest marches took place in 2013 and 2014 without disruption. Following the July 2014 Israeli incursion into Gaza, several Malaysian non-governmental entities organized a boycott of McDonald's. Over a several week period, protestors picketed at several McDonalds restaurants, at times taunting and harassing employees. Periodically, Malaysian groups will organize modest protests against U.S. policies, usually involving demonstrations outside the U.S. embassy. To date, these have remained peaceful and localized, with a strong police presence. In August 2015, the Coalition for Clean and Fair Elections (aka Bersih) organized rallies in Kuala Lumpur, Kuching (Sarawak state), and Kota Kinabalu (Sabah state). Thousands of participants, predominantly Malaysian Chinese, gathered to call upon the Malaysian Government for greater transparency and accountability. Police did not interfere with the demonstrations, and the overall event was largely peaceful.

12. Corruption

The Malaysian government has taken steps to address corruption, including through the establishment of the Malaysian Anti-Corruption Commission (MACC) in 2008, passage of legislation to make judicial appointments more transparent (the Judicial Appointments Commission Act) also in 2008, passage of a Whistleblower Protection Act in 2010, the introduction of procurement reforms and the launch of government initiatives to target corrupt practices. The Malaysian government considers bribery a criminal act and does not permit bribes to be deducted from taxes. Malaysia’s anti-corruption law includes the criminal offense of bribery of foreign public officials, permits the prosecution of Malaysians for offense committed overseas, and also provides for the seizure of properties.

The MACC conducts investigations but prosecutorial discretion remains with the Attorney General’s Chambers (AGC). Moreover, there is no systematic public disclosure of assets held by senior officials. Consequently, critics have questioned the MACC’s ability to effectively address high-level corruption. Critics also note that the Whistleblower Act does not protect those who disclose allegations to the media. These vulnerabilities were on display in 2015 when questions surrounding the financial management of state development fund 1 Malaysia Development Berhad (1MDB) led to an investigation by the Attorney General and a formal inquiry by Parliament. With the Prime Minister as the chairman of the board of 1MDB, the matter became a political scandal during Malaysia’s year as the chair of the Association of Southeast Asian Nations (ASEAN). However, the Prime Minister reshuffled the cabinet in late July 2015, installing a new Attorney General and removing other ministers. The new Attorney General brought the MACC’s investigation into 1MDB to a close in late 2015 and in January 2016 declared the Prime Minister innocent of any wrongdoing connected to 1MDB.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Malaysia signed the UN Convention Against Corruption in 2003 and ratified it in 2008. However, Malaysia is not a party to the OECD's Anti-Bribery Convention.

Resources to Report Corruption

Contact at government agency or agencies are responsible for combating corruption:
-Abu Kassim Mohamad
-Chief Commissioner
-Malaysia Anti-Corruption Commission
-Block D6, Complex D, Pusat Pentadbiran
Kerajaan Persekutuan, Peti Surat 6000
62007 Putrajaya
-+6-1800-88-6000
-info@sprm.gov.my

-Cynthia Gabriel
-Director
-The Center to Combat Corruption and Cronyism (C4)

-C Four Consultancies Sdn Bhd
A-2-10, 8 Avenue,
Jalan Sg Jernih 8/1,
Seksyen 8,
46050 Petaling Jaya,
Selangor, Malaysia
info@c4center.org

13. Bilateral Investment Agreements

Bilateral Taxation Treaties

Malaysia has bilateral investment treaties with 36 countries, but not yet with the United States. However, Malaysia – along with Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and Vietnam – joined the United States in signing the Trans-Pacific Partnership (TPP) in February 2016. The agreement contains strong investment provisions, including investor-state dispute settlement. Malaysia does have bilateral investment guarantee agreements with over 70 economies, including the United States. The government reports that 65 of Malaysia's existing investment agreements contain Investor State Dispute Settlement (ISDS) provisions. Malaysia has double taxation avoidance treaties with over 70 countries, though the agreement with the United States currently limited to air and sea transportation.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

The Free Zone Act of 1990 authorized the Minister of Finance to designate any suitable area as either a Free Industrial Zone (FIZ), where manufacturing and assembly takes place, or a Free Commercial Zone (FCZ), generally for warehousing commercial stock. The Minister of Finance may appoint any federal, state, or local government agency or entity as an authority to administer, maintain and operate any free trade zone. Currently there are 13 FIZs and 12 FCZs in Malaysia. In June 2006, the Port Klang Free Zone opened as the nation's first fully integrated FIZ and FCZ, although the project was dogged by corruption allegations related to the land acquisition for the site. The government launched a prosecution in 2009 of the former Transport Minister involved in the land purchase process, though he was later acquitted in October 2013

Raw materials, products and equipment may be imported duty-free into these zones with minimum customs formalities. Companies that export not less than 80 percent of their output and depend on imported goods, raw materials, and components may be located in these FZs. Ports, shipping and maritime-related services play an important role in Malaysia since 90 percent of its international trade by volume is seaborne. Malaysia is also a major transshipment center.

Goods sold into the Malaysian economy by companies within the FZs must pay import duties. If a company wants to enjoy Common External Preferential Tariff (CEPT) rates within the ASEAN Free Trade Area, 40 percent of a product's content must be ASEAN-sourced. In addition to the FZs, Malaysia permits the establishment of licensed manufacturing warehouses outside of free zones, which give companies greater freedom of location while allowing them to enjoy privileges similar to firms operating in an FZ. Companies operating in these zones require approval/license for each activity. The time needed to obtain licenses depends on the type of approval and ranges from two to eight weeks.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) ($M USD)	2015	$272bn	2015	$296bn	www.imf.org/external/pubs/ft/weo/2016
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in Malaysia ($M USD, stock positions)	2014	$9.1b	2014	$14.36 bn	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Malaysia's FDI in the United States ($M USD, stock positions)	2014	$436m	2014	$809	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2014	42.2%	2014	39.5%	http://www.imf.org/ and http://data.imf.org/

*Department of Statistics Malaysia https://www.statistics.gov.my

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			Outward Direct Investment		
Total Inward	$133,767	100%	Total Outward	$133,685	100%
Singapore	$25,073	19%	Singapore	$20,145	15%
Japan	$19,012	14%	Indonesia	$15,193	11%
Netherlands	$12,359	9%	Australia	$8,377	6%
USA	$10,251	8%	Mauritius	$7,639	6%

Hong Kong SAR	$6,629	5%	UK	$6,263	5%
"0" reflects amounts rounded to +/- USD 500,000.					

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	$72,535	100%	All Countries	$47,417	100%	All Countries	$25,118	100%
Singapore	$23,341	32%	USA	$17,922	38%	Singapore	$8,795	35%
USA	$21,648	30%	Singapore	$14,546	31%	USA	$3,726	15%
Hong Kong SAR3	$4,325	6%	Hong Kong SAR	$3,053	6%	Australia	$1,489	6%
UK	$3,576	5%	UK	$2,891	6%	Indonesia	$1,318	5%
Australia	$2,852	4%	Australia	$1,363	3%	Hong Kong SAR	$1,272	5%

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

Legal system:

mixed legal system of English common law, Islamic law, and customary law; judicial review of legislative acts in the Supreme Court at request of supreme head of the federation

International organization participation:

ADB, APEC, ARF, ASEAN, BIS, C, CICA (observer), CP, D-8, EAS, FAO, G-15, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IDB, IFAD, IFC, IFRCS, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IPU, ISO, ITSO, ITU, ITUC (NGOs), MIGA, MINURSO, MONUSCO, NAM, OIC, OPCW, PCA, PIF (partner), UN, UNAMID, UNCTAD, UNESCO, UNIDO, UNIFIL, UNMIL, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Exchange control

Malaysia continues to maintain a liberal foreign exchange administration (FEA) policy which are mainly prudential measures to support the overall macroeconomic objective of maintaining monetary and financial stability while safeguarding the balance of payments position. The FEA policies have been progressively liberalised to enhance competitiveness of the economy and to achieve greater efficiency in the conduct of trade and investments.

Rules applicable to Non-Residents

Investments in Malaysia

There are no FEA restrictions and the Malaysian markets are easily accessible by global investors. There is free mobility of inflow and outflow of capital for investments in Malaysia.

- Non-residents are free to invest in any form of ringgit assets either as direct or portfolio investments; and
- They are free to remit out divestment proceeds, profits, dividends or any income arising from these investments in Malaysia.

There are no restrictions for the non-residents to convert foreign currency to ringgit or vice versa, with licensed onshore banks, for the purchase of ringgit assets or for repatriation of funds arising from these ringgit investments. Non-residents are also allowed to undertake the settlement of ringgit investments through appointed overseas banks which are within the same banking group of banks with presence in Malaysia.

Treaty and non-treaty withholding tax rates

Malaysia has signed **74 agreements** (**73 DTC** and **1 TIEA** agreements) providing for the exchange of information.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Albania	DTC	24 Jan 1994	21 Aug 1995	No	No
Australia	DTC	20 Aug 1980	26 Jun 1981	Yes	Yes
Austria	DTC	20 Sep 1989	1 Dec 1990	No	No
Bahrain	DTC	14 Jun 1999	31 Jul 2000	Yes	Yes
Bangladesh	DTC	19 Apr 1983	1 Jan 1984	No	No
Belgium	DTC	24 Oct 1973	14 Aug 1975	No	No
Belgium	DTC Protocol	18 Dec 2009	not yet in force	Yes	Yes
Bermuda	TIEA	23 Apr 2012	4 Jun 1934	Yes	Yes
Bosnia and Herzegovina	DTC	21 Jun 2007	not yet in force	No	No
Brunei Darussalam	DTC	5 Aug 2009	17 Jun 2010	No	Yes
Canada	DTC	16 Oct 1976	18 Dec 1980	No	No

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5	
Chile	DTC	3 Sep 2004	25 Aug 2008	No	No	
China	DTC	23 Nov 1985	14 Sep 1986	No	No	
Croatia	DTC	18 Feb 2002	15 Jul 2004	No	No	
Czech Republic	DTC	8 Mar 1996	9 Mar 1998	No	No	
Denmark	DTC	4 Dec 1970	4 Jun 1970	No	No	
Egypt	DTC	14 Apr 1997	9 Jul 2002	No	No	
Fiji	DTC	19 Dec 1995	30 Jul 1997	No	No	
Finland	DTC	28 Mar 1984	23 Feb 1986	No	No	
France	DTC	24 Apr 1975	23 Jun 1976	Yes	Yes	
Germany	DTC	23 Feb 2010	21 Dec 2010	Yes	Yes	
Hong Kong, China	DTC	25 Apr 2012	28 Dec 2012	Yes	Yes	
Hungary	DTC	22 May 1989	26 Oct 1992	No	No	
India	DTC	9 May 2012	26 Dec 2012	Yes	Yes	
Indonesia	DTC	12 Sep 1991	11 Aug 1992	No	No	
Iran	DTC	11 Nov 1992	15 Apr 2005	No	No	
Ireland	DTC	28 Nov 1998	10 Sep 1999	Yes	Yes	
Italy	DTC	28 Jan 1984	18 Apr 1986	No	No	
Japan	DTC	19 Mar 1999	31 Dec 1999	Yes	Yes	
Jordan	DTC	2 Oct 1994	29 May 2000	No	No	
Kazakhstan	DTC	26 Jun 2006	20 May 2010	No	No	
Korea, Republic of	DTC	20 Apr 1982	3 Dec 1982	No	No	
Kuwait	DTC	5 Feb 2003	29 May 2007	No	No	
Kuwait	DTC Protocol	25 Jan 2010	not yet in force	Yes	Yes	
Kyrgyzstan	DTC	17 Nov 2000	26 Dec 2006	No	No	
Lao People's Democratic Republic	DTC	3 Jun 2010	23 Feb 2011	Unreviewed	No	
Lebanon	DTC	20 Jan 2003	10 Nov 2004	No	No	
Luxembourg	DTC	21 Nov 2002	2 Jul 2004	No	No	
Malta	DTC	3 Oct 1995	1 Sep 2000	No	No	
Mauritius	DTC	23 Aug 1992	19 Aug 1993	No	No	
Mongolia	DTC	27 Jul 1995	7 Nov 1996	No	No	
Morocco	DTC	2 Jul 2001	29 Dec 2006	No	No	
Myanmar	DTC	9 Mar 1998	21 Jul 2008	No	No	
Namibia	DTC	28 Jul 1998	13 Dec 2004	No	No	
Netherlands	DTC	7 Mar 1988	2 Feb 1989	Yes	Yes	
New Zealand	DTC	19 Mar 1976	2 Sep 1976	No	No	
New Zealand	DTC Protocol	6 Nov 2012	not yet in force	Unreviewed	Yes	
Norway	DTC	23 Dec 1970	9 Sep 1971	No	No	
Pakistan	DTC	29 May 1982	9 Nov 1982	No	No	
Papua New Guinea	DTC	20 May 1993	11 Jun 1999	No	No	
Philippines	DTC	27 Apr 1982	27 Jul 1984	No	No	
Poland	DTC	16 Sep 1977	15 Dec 1978	No	No	
Poland	DTC	8 Jul 2013	not yet in force	Unreviewed	Yes	
Qatar	DTC	3 Jul 2008	28 Jan 2009	No	No	

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5	
Qatar	DTC Protocol	16 Feb 2011	not yet in force	Yes	Yes	
Romania	DTC	26 Nov 1982	7 Apr 1984	No	No	
Russian Federation	DTC	31 Jul 1987	4 Jul 1988	No	No	
San Marino	DTC	19 Nov 2009	28 Dec 2010	Yes	Yes	
Saudi Arabia	DTC	31 Jan 2006	1 Jul 2007	No	No	
Senegal	DTC	17 Feb 2010	not yet in force	Unreviewed	Yes	
Seychelles	DTC	3 Dec 2003	10 Jul 2006	No	No	
Seychelles	DTC Protocol	22 Dec 2009	not yet in force	Yes	Yes	
Singapore	DTC	5 Oct 2004	13 Feb 2006	No	No	
South Africa	DTC	26 Jul 2005	6 Jul 2006	Yes	Yes	
Spain	DTC	24 May 2006	28 Dec 2007	No	No	
Sri Lanka	DTC	16 Sep 1997	13 Aug 1998	No	No	
Sudan	DTC	7 Oct 1993	18 Dec 2002	No	No	
Sweden	DTC	12 Mar 2002	28 Jan 2005	No	No	
Switzerland	DTC	30 Dec 1974	8 Jan 1976	No	No	
Syrian Arab Republic	DTC	26 Feb 2007	31 Aug 2007	No	No	
Thailand	DTC	29 Mar 1982	2 Feb 1983	No	No	
Turkey	DTC	27 Sep 1994	28 Jan 1997	No	No	
Turkey	DTC Protocol	17 Feb 2010	not yet in force	Yes	Yes	
Turkmenistan	DTC	19 Nov 2008	6 Oct 2009	No	No	
United Arab Emirates	DTC	28 Nov 1995	18 Sep 1996	No	No	
United Kingdom	DTC	10 Dec 1996	18 May 1998	Yes	Yes	
Uzbekistan	DTC	6 Oct 1997	10 Aug 1999	No	No	
Venezuela	DTC	28 Aug 2006	8 Jan 2008	No	No	
Viet nam	DTC	7 Sep 1995	13 Aug 1996	No	No	
Zimbabwe	DTC	28 Apr 1994	not yet in force	No	No	

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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