

This article discusses doing business in Malaysia, which has a dynamic business environment, is technologically advanced, has well developed infrastructure, highly skilled and educated human resources and has a stable economic and socio-political environment.



A. COUNTRY BACKGROUND

Area	329,847 km ²
Population	31.81 million (October 2016 estimate); Religion: Muslim (official) 61.3%, Buddhist 19.8%, Christian 9.2%, Hindu 6.3%, Confucianism, Taoism, other traditional Chinese religions 1.3%, other 0.4%, none 0.8%, unspecified 1% (2010 estimates)
Languages	Bahasa Malaysia (official), English, Chinese (Cantonese, Mandarin, Hokkien, Hakka, Hainan, Foochow), Tamil, Telugu, Malayalam, Punjabi, and Thai
Government type	Federal constitutional monarchy
Economy GDP - per capita	US\$9,766 (2015)
GDP - real growth rate	5.0% (2015)
Labour force	14.73 million (July 2016)
Unemployment	3.5% (July 2016)
Currency (code)	Malaysian ringgit (MYR)

Malaysia today is one of the major locations for offshore manufacturing and service based operations. More than 5,000 companies from countries around the world have operations in manufacturing, oil & gas, and service based operations.

B. BUSINESS OPPORTUNITIES, AND POSSIBLE OBSTACLES, IN MALAYSIA

In this article, we shall focus on Company Structure as it is the most common form of incorporation/registration of business by foreigners in Malaysia.

B.1. COMPANY STRUCTURE

The Companies Act 1965 (CA 1965) was the governing legislation for all companies in Malaysia until the recently gazetted Companies Act 2016 (CA 2016) came into force on 31 January 2017.



B.1.1. MyCoId

The Malaysia Corporate Identity Number or its acronym, MyCoID, refers to the company incorporation number which is used as a single source of reference for registration and transaction purposes with other relevant Government agencies.

Incorporation of companies and simultaneous registration with the participating government agencies can be made via the electronic MyCoID gateway.

B.2 COMPANY LIMITED BY SHARES

B.2.1. Single Member / Single Director Company

- Private company - Under the Companies Act 2016 (CA 2016) a single member/single director company can be now incorporated as a private company.
- Public company - A public company can also be incorporated with only a single member but must have a minimum of 2 directors.

B.2.2. No-Par Value Regime

Under the previous CA 1965, the most common company structure in Malaysia was a company limited by shares.

With the CA 2016, companies will no longer be required to state its authorised share capital.

- The No-Par Value (NPV) regime will bring about simplification of accounts where share premium accounts and reserves will no longer be applicable.
- Companies will no longer be subject to lengthy and costly procedures to increase share capital.

The transition to a no-par value regime is in line with international trends and has been widely accepted in other countries such as Australia, New Zealand, Singapore and Hong Kong.

B.2.3. Constitution (Memorandum and Articles of Association)

- Under section 619(3) of the Companies Act 2016, for existing companies already registered under the previous law, their M&A remains valid and enforceable under the Companies Act 2016, unless otherwise resolved by the company.
- The company may decide whether to revoke entirely the Constitution or amend certain clauses.
- If the existing company decides to revoke the existing M&A and NOT to have a specific constitution, the company must pass a resolution to that effect.
- In that scenario, under section 31(3) of the Companies Act 2016, the company, each director and member shall have the rights, powers, duties and obligations as set out in the Companies Act 2016.
- Similarly, a company must also pass a resolution to amend any part of its constitution should the company wish to harmonise its constitution with the provisions of the Companies Act 2016.
- For example, a private company may want to amend provisions relating to minimum directorships from current 2 to 1.
- Although a company is not required to have a constitution, it is still required to notify the Registrar of its nature of business or when there is a change to the company's nature of business. This information will be publicly available.

B.3 REGISTERING A FOREIGN COMPANY

Under the Companies Act 2016 (CA 2016), if a foreigner wishes to form a company, they must fulfil the following requirements to be a foreign director/member:

- must be above 18 years old; and



- those who are named as the director of company should have a principal or only place of residence within Malaysia [Section 196 (4) (a) of the Companies Act 2016].

C. PROTECTING FOREIGN INVESTORS INTEREST AND BOOSTING CONFIDENCE

The Malaysian government has emphasised the need to build and maintain investor confidence in the administrative governance of the country, banking and legal system not only to attract new investors but also to keep the existing companies from going to other countries in the region that have in recent years been attracting foreign investors.

Countries such as Vietnam and Cambodia have seen steady foreign investor growth since the end of their internal political turmoil with many companies taking advantage of their low labour cost.

However, Malaysia has always had an advantage over most of the countries in the South East Asia region as it has a very skilled and educated population, and is not prone to natural disasters such as cyclones, earthquakes and volcanic eruptions.

D. TAX RATES IN MALAYSIA

D.1 INCOME TAX

Expatriates who do **not** qualify for tax residency in Malaysia are taxed on all their Malaysia sourced income at a flat rate of 26% before 2016, and at a flat rate of 28% from the 2016 assessment year onwards.

For expatriates who qualify for tax residency, Malaysia has a progressive personal income tax system in which the tax rate increases as an individual's income increases, starting at 0%, and **capped at 25%** before the assessment year of 2016, and **28% from 2016 onwards**.

The rates applicable to each bracket of income (for locals and expatriates) are as follows:

The exchange
Australian
Malaysian
AUD\$1.00 =

Table of tax

Taxable Income	Tax Calculation	Tax Rate (%)	Tax Amount
RM 0 to 5000		0	RM 0
RM 5,001 to 20,000	On the First 5,000 Next 15,000	1	RM 0 RM 150
RM 20,001 to 35,000	On the First 20,000 Next 15,000	5	RM 150 RM 750
RM 35,001 to 50,000	On the First 35,000 Next 15,000	10	RM 900 RM 1,500
RM 50,001 to 70,000	On the First 50,000 Next 20,000	16	RM 2,400 RM 3,200
RM 70,001 to 100,000	On the First 70,000 Next 30,000	21	RM 5,600 RM 6,300
RM 100,001 to 250,000	On the First 100,000 Next 150,000	24	RM 11,900 RM 36,000
RM 250,001 to 400,000	On the First 250,000 Next 150,000	24.5	RM 47,900 RM 36,750
RM 400,001 to RM 600,000	On the First 400,000 Next 200,000	25	RM 84,650 RM 50,000
RM 600,001 to RM 1,000,000	On the First 600,000 Next 400,000	26	RM 134,650 RM 104,000

rate between
Dollar (AUD) to
Ringgit (RM) is
RM3.40 (Feb 2017)
rates 2016-2017



Taxable Income	Tax Calculation	Tax Rate (%)	Tax Amount
Exceeding RM 1,000,000	On the First 1,000,000 Next RM	28	RM 238,650

In Malaysia, the tax year runs in accordance with the calendar year, beginning on 1 January and ending on 31 December. All tax returns must be completed and returned before 30 April of the following year.

D.1.1. Residency for Tax Purposes

In Malaysia, regardless of citizenship, if an individual satisfies any of the following criteria then he or she is considered to be liable for income tax:

- The individual has been a resident of Malaysia for 182 days of the tax year.
- The individual has been a resident of Malaysia for less than 182 days of the tax year, but resided in the country for a total of 182 consecutive days linked to days from the year immediately preceding or following that tax year.
- The individual has been a resident of Malaysia for at least 90 days of the current tax year and resided in Malaysia for at least 90 days in three of the four preceding years.
- The individual will be a resident of Malaysia in the year following and has resided in Malaysia in the three years preceding the one being taxed.

Anybody meeting any of these criteria is liable to pay income tax in Malaysia.

The type of form you will have to fill out depends entirely on your source of income. You can now fill out the forms online at www.hasil.gov.my. This website often comes up automatically in Malay, but there is an icon in the top right hand corner of the page which allows you to switch the language to English.

D.2 GOODS AND SERVICES TAX (GST)

The Goods and Services Tax (GST) was implemented effective from **1 April 2015** with the current GST rate fixed at **six per cent (6%)**. Sales tax and service tax have been abolished. (Sales tax and service tax rates were 10% and 6% respectively.)

The implementation of the GST was generally not well received by the Malaysian public and has been the subject of intense debate with the opposition coalition voicing their concern that it is a burden on the people and declaring as part of their manifesto, to abolish the GST should they be elected into power.

D.2.1. Is a Company Required to Register for GST?

GST is a self-assessed tax and businesses are required to continually assess the need to be registered for GST. GST registration falls into two categories: compulsory registration and voluntary registration.

- **Compulsory registration**

Registering for GST is compulsory when the turnover of your business is more than RM500,000 (AUD146,431) for the past 12 months – known as the retrospective basis OR you are currently making sales and you can reasonably expect the turnover of your business to exceed RM500,000 (AUD146,431) in for the next 12 months – known as the prospective basis.

Note: Failing to register will attract penalties. There are anti-avoidance provisions to ensure that entities are not established merely to keep turnovers less than the threshold and thereby avoid registration.



- **Voluntary registration**

You may apply to voluntarily register for GST if you are not liable to compulsorily register and you satisfy the following conditions:

1. Your annual turnover is not more than RM500,000 (AUD146,431);
2. You only supply goods outside Malaysia (out-of-scope supplies); and
3. You make zero-rated supplies.

The advantage of voluntary registration is that you can enjoy the benefits of claiming input tax incurred in the course of your business. This is especially so when you make purely zero-rated supplies.

Note: Once you are voluntarily registered, you must remain registered for at least two years and you have to maintain all your records for at least seven (7) years, even after your business has ceased and you have deregistered from GST. You may also have to comply with any additional conditions that are imposed by the Royal Malaysian Customs Department.

E. EMPLOYMENT LAWS IN MALAYSIA

E.1. EMPLOYMENT ACT 1955

The Employment Act 1955 is the main legislation on labour matters in Malaysia.

The Employment Act provides minimum terms and conditions (mostly of monetary value) to certain category of workers:-

Any employee as long as his monthly wages is less than RM2,000.00 (AUD585.73); and

Any employee employed in manual work including artisan, apprentice, transport operator, supervisors or overseers of manual workers, persons employed on vessels and even domestic servants are classified as employees even if their wages is more than RM2,000.00 (AUD585.73) per month.

E.2. EMPLOYMENT (RESTRICTION) ACT 1968

Non-Malaysian citizens are required to obtain a valid work permit before they can be employed locally.

Working without a valid work permit is strictly illegal under the Immigration Act 1966.

E.3. MINIMUM WAGES ORDER 2016

Minimum wage has been implemented in 2013 and has been closely observed thereafter.

Minimum wages are basic wages, excluding any allowances or other payments.

The Minimum Wages Policy also applies to employees who are paid on piece-rates, tonnage, trip or commission-based. Employers are required to supplement the wages of these employees if their income does not meet RM1,000 (AUD292.86) per month for Peninsular Malaysia and RM920 (AUD269.46) for Sabah, Sarawak and Labuan.



MINIMUM WAGES RATE (as per Minimum Wages Order 2016)					
Regional areas	Monthly	Hourly	Daily		
			Number of days worked in a week		
			6	5	4
Peninsular Malaysia	RM1,000 AUD292.86	RM4.81 AUD1.41	RM38.46 AUD11.26	RM46.15 AUD13.52	RM57.69 AUD16.90
Sabah, Sarawak and Labuan	RM920 AUD269.43	RM4.42 AUD1.29	RM35.38 AUD10.36	RM42.46 AUD12.43	RM53.08 AUD15.55

Comasters is able to assist clients in setting up a business in Malaysia complying with local laws.

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