

MALAYSIA

Legal Provisions

Compiled by:

SBH ASEAN Malaysia

Kuala Lumpur, Sept 2018

GENERAL REMARKS

The Malaysian legal system is substantially based on the English legal system and on the principal of common law, a legacy of British colonial rule. The High Court has jurisdiction over all criminal and civil matters, while the Court of Appeal hears appeals from the High Court. The Federal Court, in turn, hears appeals from the Court of Appeal, and has jurisdiction over constitutional law matters. The King of Malaysia on the advice of the Prime Minister appoints judges to the Federal Court.

The Islamic system of law is provided in Article 121(1A) of the Constitution of Malaysia. The said article provides that Islamic law (syariah law) only applies to Muslims with regards to personal matters, for example, marriage, inheritance, and apostasy.

CUSTOMS

Malaysia has adopted the Harmonized Commodity Description and coding system for classification of goods. Customs duties are usually an "ad valorem" rate (a percentage) that is applied to the value of the imported goods. However, some goods are dutiable at a specific rate of duty (so many ringgits per piece, kilo, litre, etc.) Rates of duty vary based on the commodity and are available in the Harmonized Tariff Schedule of Malaysia. Although the maximum rate is 250% of (CIF) value, import customs duties usually are between 0 and 30% and export custom duties are usually between 0 and 15%.

Over years, Malaysia has abolished import duties on a wide range of raw materials, machinery and components to encourage foreign direct investments.

Malaysia is also committed to the ASEAN Common Effective Preferential Tariffs (CEPT) whereby import duties imposed on 99.48 of Tariff Lines from ASEAN countries has duties of between 0-5% only.

<http://www.customs.gov.my>

IMPORT AND EXPORT REGULATIONS

Malaysia practices free trade (import & export) policy. As per the Malaysian import trade policy, most imports can be admitted under an open general licensing regime. However, specific import licences are required for certain controlled items which are intended for import into the country. These items are explosives and firearms, motor vehicles, plants, certain pharmaceuticals, tin ore, soil samples and various foodstuffs. A restrictive import licensing regime is also charged on heavy construction equipment, electrical household appliances, and iron and steel products.

Exports are generally subject only to exchange-control regulations, whereby export proceeds should be sent back to the country within six-month period. Licenses are required for the export of primary products e.g. palm oil and timber, petroleum, minerals and other raw materials.

CURRENCY REGULATIONS

Malaysia has always maintained a liberal foreign exchange administration policy. The implementation of foreign exchange administration policy in Malaysia supports the monitoring of capital flows into and out of the country to preserve its financial and economic stability. As part of Malaysia's continuous efforts to increase efficiency and reduce cost of doing business, the foreign exchange administration policies have been progressively liberalised and simplified.

There are no restrictions for non-residents to invest in Malaysia to purchase ringgit assets, such as landed property and securities. There is also no restriction for non-residents to transfer abroad, in foreign currency, all profits, returns and divestment proceeds from their investments in Malaysia.

In line with the global effort to combat money laundering and terrorism financing, travellers entering or leaving Malaysia with cash and/or negotiable bearer instruments (e.g. traveller's cheques, bearer cheques) exceeding an amount equivalent to USD10,000 must make a declaration in form Customs No. 22. The forms will be made available at counters located before the Customs Checkpoints at all entry and exit points of Malaysia.

This is a requirement under section 23 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) and is in line with the Special Recommendation IX by the Financial Action Task Force which requires countries to have measures in place to detect the physical cross border transportation of cash and negotiable bearer instruments. Travellers could be fined up to RM1 million and/or face imprisonment not exceeding a term of one year if they fail to declare or make a false declaration.

For further information, members of the public can contact the Royal Malaysian Customs Department or Bank Negara Malaysia at the following contact points:

Royal Malaysian Customs Department

Public Relations Division

Royal Malaysian Customs Department Headquarters

Tel: 1-800-88-8855/+6 03-8882 4803/+6 03-8882 2929 or

E-mail: kastam@customs.gov.my / aduan@customs.gov.my

Website: <http://www.customs.gov.my>

Bank Negara Malaysia

BNMTELELINK (Customer Service Call Centre)

Tel: 1-300-88-5465 or

E-mail: bnmtelelink@bnm.gov.my

Website: <http://www.bnm.gov.my>

REGISTRATION PROCEDURE FOR PRODUCTS

Present laws require pharmaceutical / medicine shops and persons involved in the handling of gazetted drugs, food (others as prescribe in the Customs order) to be registered with the Ministry of Health. Regulations on pesticides and chemicals designated as poisons are more stringent. The use of certain additives in food products must be disclosed, and it may not exceed permissible level.

All persons, who manufacture, sell, distribute, or import drugs or cosmetics must register with the Ministry's Drug Control Authority.

<http://www.moh.gov.my/>

<http://www.pharmacy.gov.my/>

<http://npra.moh.gov.my/>

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Rules and regulations exist for labelling and packaging for products, but it varies according to the industry sectors. The registration regulations for consumer food products tend to have the most stringent regulations including the 'HALAL' for labelling purposes in view of the large Muslim population.

Different products and services would fall under the control of different Ministry in Malaysia. As such, it is important to contact the relevant ministry for the regulations e.g. Pre-packed drugs must bear labels in English or Bahasa Malaysia that designate the substance or the active ingredients and quantitative particulars. The Food Act imposes compulsory labelling and shelf life on the packaging.

Most of the household electrical products must be approved by SIRIM prior to the importation and distribution, are some of the examples.

<http://www.halal.gov.my>

<http://www.sirim.my/>

TAXES

Malaysia taxation policies are imposed by federal legislation passed by Parliament. The individual states do not collect taxes.

Some of the main tax legislations are the Income Tax-1967, Promotion of Investments Act-1986, Real Property Gains Tax Act-1976, and Petroleum Income Tax Act-1967. Offshore companies carrying on an offshore business activity are subject to a preferential tax regime under the Labuan Offshore Business Activity Tax Act-1990. Certain taxpayers are taxed on special bases e.g. banks, insurance, air transport etc.

Malaysia has the following direct and indirect taxes:

Direct taxes

Income tax - is levied on individuals, companies and other taxable entities

Real property gains tax - this is levied on capital gains arising from disposal of real estate, rights on real estate and shares in real property companies where the property is situated in Malaysia

Petroleum income tax - this is levied on upstream petroleum companies.

<http://www.hasil.gov.my/>

Indirect taxes

Stamp duty - is imposed on certain documents e.g. agreements for transactions such as transfer of real estate, rental agreements, etc.

Sales tax - is imposed on purchase of certain manufactured goods. The tax is collected at the point of importation or when the goods are sold by a Malaysian manufacturer to a non- manufacturer e.g. trading company.

Service tax - this is imposed services provided by hotels, restaurants and certain prescribed professional establishment and when their turnover reaches certain threshold.

Import duties - these are tariffs imposed on import of goods as prescribed in the Customs Duties Order.

<http://www.customs.gov.my>

COMMERCIAL LAW

Malaysia commercial law is another left-over from the British legacy.

The domestic legal system is open and accessible. In the past, cases of foreign investment disputes, although it is rare, have been handled with satisfaction. However, many firms choose to include mandatory arbitration clauses in the contract.

Commercial Law firms of international standing are available in the country. However, it is noted that commercial disputes will takes a while for a final settlement through the court process.

SETTING UP COMPANIES

All companies (foreign) intending to do business in Malaysia are required to register with the Companies Commission of Malaysia (formerly called Registrar of Companies under the Ministry of Domestic Trade & Consumer Affairs) which is responsible for the administration of the companies act. This includes keeping files open for public inspection.

<http://www.ssm.com.my/en/company/incorporation-of-foreign-company>

JOINT VENTURE OPPORTUNITIES

Most large Malaysian companies have been involved in trade and industry for generations, and many have excelled in international and regional markets. Thus, foreign investors seeking joint-venture partners in Malaysia will be able to select from a wide range of companies to find one that matches their needs.

Malaysian Investment Development Authority (MIDA) assists foreign investors in business match-making to start joint-venture projects or to undertake contract manufacturing.

As the government welcomes foreign investors investment into Malaysia, various agencies and trade associations including MIDA, Federation of Malaysian Manufacturers (FMM) and SME Corporation Malaysia etc. assist foreign investors to identify local joint venture partners in the manufacturing, trading and services sectors.

PROMOTION OF INVESTMENT

Malaysia welcomes and is actively inviting foreign investors through MIDA (Malaysian Investment Development Authority), particularly in export-oriented manufacturing and high-tech industries under the Promotion of Investments Act 1986 and the Industrial Co-ordination Act 1975.

MIDA was established to act as a one-stop centre to administer the regulation of investment in the manufacturing sector of the Ministry of International Trade & Industry. The government recognizes the need for foreign capital investments and technology for the development of the country.

MIDA's major functions are to recommend to MITI policies and strategies on industrial promotion and development, to evaluate applications for investment incentives, and to process applications for manufacturing licences.

Policy and guidelines are set and interpreted with flexibility; conditions imposed on foreign investors are usually flexible and based on the merits of individual projects. At the moment, foreign investors are allowed majority equity in most of the industries. Various incentives are offered to investors in promoted industries. These include 5-10 years tax holidays and investment and reinvestment allowances are also offered.

Another actively promoted sector for foreign investment is in the information technology industry particularly in the Multimedia Super Corridor (MSC). It is located in a 15 by 40 kilometre area south of Kuala Lumpur. Investors in the MSC area receive a host of financial incentives and regulatory exemptions.

Profits are freely remittable and exchange controls are minimal. Malaysia also signed investment guarantee agreements with various countries including Switzerland.

<http://www.mida.gov.my>

<https://www.mdec.my/msc-malaysia>

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

All persons seeking entry into Malaysia must possess valid national or other international recognised travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry of Malaysia.

Swiss nationals do not require a visa for travel of less than 3 months.

PROCEDURES FOR COLLECTING PAYMENT

It is customary for a creditor to negotiate with a financially difficult debtor when an unsecured debt has become due for some suitable arrangement for repayment.

It is only when the repayment fails; creditor will then resort to legal recovery method. Malaysia's judicial system is relatively effective for such purpose, however, in view of back-log in the judiciary system, it will take a few years for the case to be settled.

Private debt collection agency is another avenue, but it is not widely used as the fee is quite substantial (15-25% on amount collected).

Private debt collection agency: www.tgs.com.my

SOURCES OF INFORMATION AND LINKS

Ministry of International Trade & Industry: <http://www.miti.gov.my/>

Malaysian Industrial Development Authority: www.mida.gov.my

Bank Negara Malaysia: <http://www.bnm.gov.my>

SME Corp Malaysia: <http://www.smecorp.gov.my>

Royal Malaysian Customs Department: <http://www.customs.gov.my>

Inland Revenue Board of Malaysia: <http://www.hasil.gov.my/>

Ministry of Health: <http://www.moh.gov.my/>

Pharmaceutical Services: <http://www.pharmacy.gov.my/>

National Pharmaceutical regulatory Agency: <http://npra.moh.gov.my/>

Halal Malaysia: <http://www.halal.gov.my>

SIRIM Berhad: <http://www.sirim.my/>

Malaysia Digital Economy Corporation: <https://www.mdec.my/>

Companies Commission of Malaysia: <http://www.ssm.com.my/>

Date: Sept 2018

Author: PUNG Siau Wei (Ms.)

Author's address: Swiss Business Hub Asean
Embassy of Switzerland, Kuala Lumpur
16 Persiaran Madge
P.O. Box 12008
50764 Kuala Lumpur
Tel: (+60) 3 2148 06 22
Fax: (+60) 3 2148 09 35
E-Mail: siau-wei.pung@eda.admin.ch
Internet: www.s-ge.com