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Abstract

This report outlines the economic conditions of Malaysia in 2007-2008.

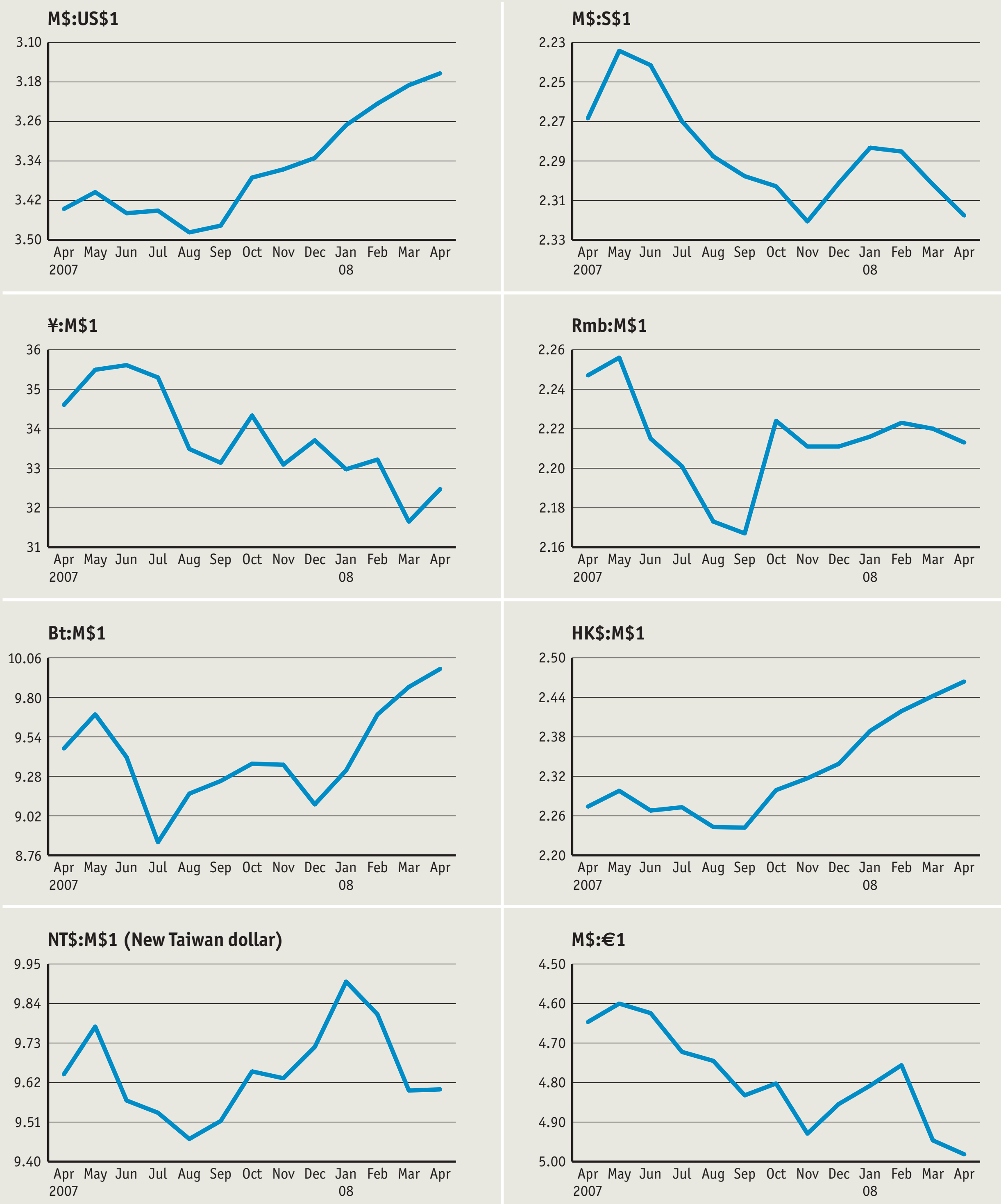
Regulatory/market alerts

- Abdullah Badawi, the prime minister, and his ruling coalition suffered a setback in general elections on March 8th 2008. Though the coalition won a simple majority, they lost the two-thirds majority needed to amend the constitution and also lost control over four state assemblies. 5
- Malaysia's currency, the ringgit, reached a ten-year high of M$3.13:US$1 in late-April 2008. The currency strengthened in 2007–08 as a result of the dollar's general weakness. 9
- By end-November 2007 the government had merged three plantation companies it controls into the world's largest listed producer of palm oil. Meanwhile, its main investment arm, Khazanah Nasional, has embarked on a programme to cut its stakes in several enterprises through the issue of convertible bonds. 11
- The Malaysian Industrial Development Authority reports that approved foreign-investment applications reached an all-time high of M$33.4bn in 2007, up by 65.3% from M$20.2bn in 2006. The top sources of foreign investment in 2007 were Japan (M$6.5bn), Germany (M$3.8bn) and Iran (M$3.1bn). 14
- The Special Task Force to Facilitate Business in 2007 streamlined approval procedures for expatriate work permits, cut review time for environmental-impact assessments and streamlined customs forms. 21
- In January 2008 the authorities announced the formation of the fifth, and last, economic development region. The regions are to focus their economies on industries. 34
- The opening of the Intellectual Property Court in July 2007 strengthens protection of intellectual-property rights (IPR); the court was an initiative under the M$5bn IPR policy unveiled in April 2007. Malaysia may ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty during 2008. 54
- The level of foreign trade hit a historic high in 2007, reaching M$1.1trn for the full year. The value of imports expanded by 5% year-on-year; the value of exports grew by 2.7%, leaving Malaysia with a trade surplus of M$100.3bn, which is down by 7.3% from 2006. 102

Regulatory/market outlook

- The US hopes to wrap up negotiations with Malaysia on a free-trade agreement (FTA) before President George W. Bush leaves office in January 2009, though Malaysian authorities say they are in "no rush" to sign a deal with its biggest trade partner. Malaysia did sign an FTA with Pakistan in November 2007. 19
- A long-delayed new national competition policy remained with the Ministry of Domestic Trade and Consumer Affairs in May 2008. The ministry now expects the policy, which will include the long-awaited Fair Trade Act, to go to the new cabinet later in 2008. When it becomes law, the act will establish a Fair Trade Commission to improve consumer protection. 65
- The government suggested in early 2008 that it might cut the subsidies on fuel and various other products, since high world prices for oil, rice and other items was becoming a burden on government finances. Authorities spent M$43bn on subsidies in 2007 and expect to spend at least M$40bn in 2008. 68
- The government will cut the corporate income tax rate for 2009 by 1 percentage point, to 25%. The reduction follows two cuts, by 1 percentage point each, for 2007 and 2008. 74
- The government said in early 2008 that it planned to send home some 200,000 legal foreign workers by 2009, though it had not taken any action by May 2008. Authorities would like to reduce the reliance of Malaysian companies on foreign labour, though labour shortages will make this difficult to realise. 101

Fundamental indicators: exchange rates against chief trading partners



Source: Bloomberg (monthly averages).
Note. Some scales are inverted so that an upward-sloping line always indicates a strengthening ringgit.

Key commercial indicators

Investing: foreign-investment indicators	
Estimated level of foreign direct investment (FDI), 2007[a]	US$8.6bn
Estimated level of FDI as a percent of GDP, 2007[a]	4.6%
Main sources of foreign investment, 2007[b]	Japan, Germany, Iran
Sectors attracting the most FDI, 2007[b]	electronics, petroleum and petrochemicals, base-metals
Licensing: intellectual-property indicators	
Estimated level of software piracy, 2007[c]	59%
Estimated retail losses due to software piracy, 2007[c]	US$311m
Protection of intellectual property[a]	moderate
Patent applications granted to residents, 2007[d]	337
Patent applications granted to non-residents, 2007[d]	6,646
Trading: crossborder indicators	
Value of world merchandise exports, 2006[e]	US$160.7bn
Share of world merchandise exports, 2006[e]	1.3%
Value of world merchandise imports, 2006[e]	US$131.2bn
Share of world merchandise imports, 2006[e]	1.1%
Exports as a percent of GDP, 2006[a]	117.0%
Imports as a percent of GDP, 2006[a]	94.7%
Mean tariff rate for all goods, 2006[f]	6.2%
Tariff nomenclature[g]	Harmonised System
E-commerce indicators	
Personal computers per 100 persons, 2006[f]	21.8
Internet users per 100 persons, 2006[f]	43.2

Sources: (a) Economist Intelligence Unit, *Country Forecast* Malaysia, April 2008; (b) Malaysian Industrial Development Authority; (c) Business Software Alliance/IDC 2007 *Global Software Piracy Study*; (d) Malaysian Intellectual Property Corp; (e) World Trade Organisation, *International Trade Statistics 2007*; (f) World Bank, *World Development Indicators 2008;* (g) World Customs Organisation.

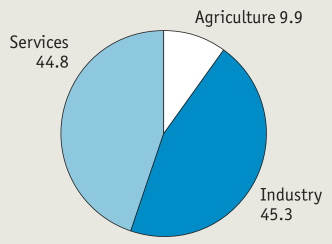
The operating environment

Political conditions

Malaysia is a constitutional monarchy nominally headed by a king. Kings are elected for five-year terms from among the nine sultans of the peninsular Malaysian states. Executive power is vested in a cabinet led by the prime minister; this post has been held since October 31st 2003 by Abdullah Badawi, who took over from Mahathir Mohamad. But Mr Badawi—Malaysia's fifth prime minister since independence in 1957—his party, the United Malays National Organisation (UMNO), and its coalition, the National Front (Barisan Nasional—BN), suffered a shocking blow in parliamentary elections on March 8th 2008. The BN (a 14-party coalition in which UMNO is the largest member) has ruled Malaysia since independence, but posted its worst election results in 50 years, mostly as a result of ethnic tensions, rising inflation and a perceived failure to root out corruption.

The BN won just 140 seats out of 222, or 63% of the total. This compares with 198 out of 219 (90%) in the previous elections, in March 2004. The opposition parties increased their number of seats from 19 at the last election to 82, or 37% of the total. Losing its two-thirds majority means the BN can no longer amend the constitution at will. The biggest winner has been the People's Justice Party (Parti Keadilan Rakyat—PKR) of Anwar Ibrahim, a former deputy prime minister. The PKR, a centrist party that attempts to break the race- and religion-based model followed by nearly all Malaysian parties, won 31 seats, compared with just one in 2004. The Democratic Action Party (DAP), a left-wing, mainly ethnic Chinese party, increased its number of seats from 12 to 28. The Parti Islam sa-Malaysia (PAS), a conservative Islamic party, won 23 seats, up from just seven at the last election.

The economy at a glance
% of 2007 GDP



Fiscal year: July 1st–June 30th.
Source: Economist Intelligence Unit, *Country Forecast* Malaysia, April 2008.

Equally important, the election has led to tremendous gains for opposition parties in the 12 out of 13 state assemblies for which polls were held. Before the election, the only opposition-controlled state was Kelantan, where PAS was in government. At the latest polls, PAS tightened its hold on Kelantan, and opposition parties gained control of state assemblies in Selangor, Penang, Perak and Kedah (the first two states have been very successful in attracting foreign investment).

On the first trading day after the elections, the national bourse lost 10% of its market value, reflecting fear by investors of political instability, though the market subsequently regained some losses. The opposition parties have stressed that they plan to pursue pro-business platforms.

The election result has seriously, possibly fatally, wounded Mr Badawi's prime ministership, though as at early May 2008 he was resisting calls to step down. Following the elections, Mr Badawi unveiled a new cabinet on March 18th. Only 16 of the 32 ministers in the previous cabinet were retained, eight of whom were re-appointed to their previous posts. He also announced an independent committee to vet prospective judges, promised to beef up the Anti-Corruption Agency, implement laws to protect whistleblowers and make changes to government procurement practices—long a source of patronage for the BN. Observers have noted that these were changes Mr Badawi should have made when he won the 2004 elections on a promise of a cleaner, more responsive government.

Transparency International, a non-profit organisation for combating corruption, ranked Malaysia as the 43rd least-corrupt nation in its 2007 survey of 163 countries. (It was in 44th place, out of 163 nations, in 2006.) Malaysia's score of 5.1 on a scale of 0 (corrupt) to 10 (clean) was slightly better than the 5.0 it scored in 2006, putting it ahead of Indonesia, India, Thailand and China but behind Singapore, Hong Kong, South Korea and Taiwan.

Relationships with neighbouring countries generally have improved since Mr Badawi took office, though some strains remain. Indonesia at times has criticised Malaysia's crackdowns on illegal labour. (Most foreign workers, both legal and illegal, are Indonesian.) Ongoing unrest in three predominantly Muslim provinces in southern Thailand has strained ties with that country; Thailand accuses Malaysia of allowing suspected rebels to cross the border. Relations with Singapore remain tainted by economic rivalry; the island state has at times accused Malaysia of trying to lure foreign investors away from Singapore and into Malaysia's southern state of Johor, which borders on Singapore. But after Malaysia in early 2007 announced the establishment of its first special economic zone in that area, Singapore has viewed this scheme more as an economic opportunity than a threat. The long-standing issue of the pricing of vital water supplies from Malaysia to Singapore and the postponement of the construction of a new bridge connecting the two countries had not been fully resolved by April 2008.

The government acknowledges that the rule of law is important to economic success and in July 2007 the Intellectual Property Court opened (see Protection of intellectual property). Still, litigation is expensive and time-consuming. According to a 2007 survey by the World Bank, it takes an average of 30 procedures and 600 days to enforce contracts, at a cost of 27.5% of the value of the contract.

It is fairly standard for foreign companies doing business in Malaysia or with Malaysian firms to stipulate in their contracts that any potential litigation must take place in foreign courts (most often British or American). Companies are aware that the application of commercial laws is still sometimes unpredictable in Malaysian courts; decisions depend on the leanings of the judges, who often seem torn between upholding justice and protecting their jobs.

Malaysia practices a dualist legal system, under which international treaties and legal obligations are separate from the domestic legal system and do not form part of domestic law directly. An international legal obligation does not automatically apply in Malaysia until appropriate national legislation has been enacted to give a treaty the force of law domestically.

The basic structure of commercial law has changed little in recent years. Malaysia's legal system generally reflects its British colonial origins, though there have been several major changes since the nation became independent in 1957. One important change has been the dismantling of the jury system for all trials, including murder (abandoned in 1995). The Federal Court reviews decisions referred from the Court of Appeal; it has original jurisdiction in constitutional matters and in disputes between states or between the federal government and a state. Peninsular Malaysia and the East Malaysian states of Sabah and Sarawak each have a high court.

Upon independence, Malaysia inherited a civil service with a high level of competence, prestige and morale. The integrity of the civil service has been eroded somewhat, especially within the police forces. In addition, competition with the private sector for talent and attempts to play down the importance of English-language instruction has somewhat reduced the level of competency in English.

Market conditions

The Malaysian economy continued its growth momentum, expanding by 6.3% in 2007, according to Bank Negara Malaysia (BNM), the central bank. Gross domestic product had grown by 5.9% in 2006 and 5.3% in 2005. Growth was driven by robust domestic demand, which offset the moderation in export growth. Private consumption (up by 11.7% in 2007) recorded the highest growth rate since 2000, buoyed by rising disposable income following high commodity prices, salary increments in both the public and private sectors, and favourable labour-market conditions. Private investment expanded by 12.3% in 2007; growth was particularly strong in the manufacturing, services, construction, and oil and gas industries.

All sectors registered positive growth during the year. Manufacturing recorded overall growth of 3.1% (though down from 7% in 2006); growth in both the domestic and the oil and gas sectors only partly compensated for the subdued external demand for electronics and electrical products. The services sector expanded by 9.7%, driven mainly by real-property and business services, finance and insurance, communication, and wholesale and retail trade. Agriculture recorded a moderate expansion of 2.2%, fuelled by food production, whereas rubber and palm-oil production suffered from inconsistent weather. Mining rebounded to record a positive growth of 3.2% in 2007 because of higher output of both crude oil and natural gas, in an environment of stronger energy prices. After three years of decline, the construction sector turned around to register positive growth of 4.6% in 2007, driven mainly by implementation of projects under the Ninth Malaysia Plan (see below) and in the oil and gas sector.

The Economist Intelligence Unit forecasts that real GDP will grow by 5.8% in both 2008 and 2009. BNM forecasts GDP to expand by 5–6% in 2008, and the Malaysian Institute of Economic Research (MIER), the country's leading economic think-tank, forecasts growth to hit 5.4%. The MIER warned, however, that a downturn in the US economy would slow Malaysia's economy in the second-half of 2008.

BNM reported that inflation had moderated to 2% in 2007, compared with 3.6% in 2006, and it forecasts inflation to accelerate to 2.5–3% in 2008. We expect the consumer-price index to rise by an average of 2.8% in 2008 and 2.3% in 2009. Rising global prices for food staples such as wheat and rice will stoke inflationary pressures. This particular category of goods accounts for some 30% of the consumer-price index in Malaysia.

The M$200bn Ninth Malaysia Plan, announced on March 31st 2006, emphasises five "thrusts": moving the economy up the value chain; enhancing education and training; reducing poverty and economic inequalities; improving the quality of life; and strengthening institutions. The biggest share of the development budget will go to education and training, for which the government has allocated M$41.1bn (one-fifth of total spending) for 2006–10. The government planned to spend M$31.9bn on rural roads, highways, railways, airports and urban transport projects, and M$21.8bn on energy and public-utility projects, where the allocation has jumped by 71% from the previous five-year period. However, the government said in early 2008 that it would scale down its ambitious infrastructure programme because of escalating costs. The first casualty was a proposed M$8bn high-speed railway line between Kuala Lumpur and Singapore. Authorities also are diverting funds to agricultural projects after prices of rice and other staples reached record highs in early 2008. The government introduced a M$4bn plan on April 19th 2008 to increase food production.

The Ninth Malaysia Plan retains existing affirmative-action requirements (such as requiring companies to hire personnel in proportion to the racial demographics of the country) that favour the country's *bumiputras* (ethnic Malays and other indigenous peoples) and introduced an M$2bn fund to help them buy prime real property.

Fundamental indicators: production and consumption
% growth

	2007 actual	2008 forecast	2009 forecast
GDP	6.3	5.8	5.8
Private consumption	11.7	6.4	7.6
Government consumption	6.4	6.0	5.4

Source: Economist Intelligence Unit, *Country Forecast* Malaysia, April 2008.

Currency

After ending the currency's peg to the dollar in July 2005, Bank Negara Malaysia (BNM), the central bank, said it would allow the ringgit to operate in a "managed float", allowing economic fundamentals to determine its value. The BNM monitors the exchange rate against a basket of currencies "to ensure it remains close to fair value". The central bank has not disclosed the make-up of the currency basket. Nevertheless, it can be inferred from BNM statements that the currencies used include the Chinese renminbi, Singapore dollar, Japanese yen and US dollar. Other currencies represented probably include the euro and the currencies of the other members of the Association of South-East Asian Nations.

The ringgit reached a ten-year high of M$3.13:US$1 in late-April 2008, though it had lost a little terrain by early-May. This compares with an average of M$3.44:US$1 in April 2007. The appreciation in 2007–08 was in line with other regional currencies. The Economist Intelligence Unit forecasts the ringgit to appreciate to M$3.21:US$1 in 2008 and to M$3.15:US$1 in 2009, from M$3.44:US$1 in 2007. An improvement in the net foreign direct investment position will support the ringgit's strength against the US dollar during 2008–09. Surpluses on the current account and the general weakness of the US dollar will further support the ringgit. We expect the BNM to maintain a managed exchange rate against a trade-weighted basket of currencies, and it will closely monitor movements in regional currencies, particularly the Japanese yen and the Chinese renminbi. Japan is one of Malaysia's main suppliers, especially of components, and China has become a competitor as well as a market for exports. The Malaysian Institute of Economic Research (the country's leading economic think-tank), however, sees the ringgit as still being undervalued and expects the currency to break the M$3.00:US$1 mark by end-2008.

The BNM states that it does not actively manage or maintain the exchange rate at any particular level. Hence, the BNM intervenes only "to minimise volatility" and to ensure that the exchange rate does not become "fundamentally misaligned". As the ringgit continued to appreciate against the US dollar in 2007 and early 2008, the BNM has consistently declined to comment on whether it has plans to intervene to prevent the currency from appreciating too rapidly. The ban on offshore trading of the ringgit remains and will help Malaysia control its currency's value and protect it from speculators. Many analysts had expected this ban to be lifted in 2007 or in 2008, but the BNM on several occasions in 2007–08 said it would scrap the ban only when Malaysia's foreign-exchange markets are "very developed".

State role in the economy

Malaysia has pursued a policy of state-led, capitalist economic development for more than three decades. This approach is broadly similar to that of other developing Asian nations, such as South Korea and Taiwan. The government is highly interventionist in many respects, but its actions usually favour the growth of private industry. Although it has gradually reduced its direct participation in enterprises, the government retains very large industrial and commercial holdings. Meanwhile, it has transformed a range of government institutions into profit-directed corporations, without directly privatising them.

Malaysia has carried out substantial deregulation since the mid-1980s, when it launched a major privatisation drive involving business activities in telecommunications, power generation and supply, ports, airports, highways, railways and sewage works. Deregulation of the financial sector (as part of Malaysia's effort to create a regional financial centre) was particularly significant.

The government drew up a Privatisation Master Plan in 1991 to guide the implementation of this programme. The private sector subsequently became a major engine of growth in the 1990s and has increasingly been co-opted into financing and even operating infrastructure projects, including power stations and roads. The public sector takes responsibility for planning and overseeing basic infrastructure and services to encourage economic development and private initiatives, but it has recruited private firms to provide a growing share of services.

Malaysia also aims to improve the economic position of the majority Malay population, which historically was rural and poor. As a result, national policies have discriminated in favour of *bumiputras* (ethnic Malays and other indigenous peoples) and against the minority ethnic-Chinese population that dominates commerce and industry. Big government contracts have usually, but not exclusively, been awarded to *bumiputra* and other domestic companies. Following the opposition's gains in the March 2008 general elections, these policies may be gradually loosened or replaced with policies benefiting the poor, regardless of race. This shift had started in two economically important states (Penang and Selangor) where opposition parties now control the state governments. Generally, international tenders are invited only when domestic goods and services are not available. In most procurements, foreign companies must take on a local partner to get their bids considered. Malaysia is not a party to the World Trade Organisation's Government Procurement Agreement.

State-owned enterprises. In April 2008 there were 33 non-financial public enterprises (NFPEs), or state-run enterprises, with annual sales of M$100m or more, according to the government's Economic Planning Unit (EPU). Government-linked companies (firms that are listed on Bursa Malaysia but in which the government holds a controlling stake, either directly through one of its holding companies, or indirectly, through pension funds, etc) accounted for only about 5% of the companies listed on Bursa Malaysia, the national bourse, in April 2008. Nevertheless, they made up about one-third of market capitalisation.

The three largest state-owned enterprises, Petronas (petroleum), Tenaga Nasional (electricity) and Telekom Malaysia (telecommunications) generated around two-thirds of the aggregate revenues of all NFPEs. More generally, the government is active in oil, utilities, transport, banking and public services, and it operates more than 200 industrial estates. Private participation in these (or any other) sectors is not formally restricted, but non-*bumiputras* may find barriers to entry unless they are associated with *bumiputra* firms (which sometimes contribute only their names).

In November 2007 authorities finalised the merger into one entity of three state-controlled plantation companies—Kumpulan Guthrie, Sime Darby and Golden Hope Plantations. The resulting Synergy Drive listed on Bursa Malaysia, the national bourse, on November 30th 2007 and is the world's largest listed palm-oil producer. The government may follow this model for other sectors, such as merging the various construction firms it controls, though no concrete proposals had been announced by April 2008.

Khazanah Nasional was established in 1995 to manage all the government's corporate holdings, including government shares in corporatised entities (state-owned corporations that run along the lines of commercial practices) and foreign reserves. Modelled after Temasek, the Singapore government's highly successful investment arm, Khazanah's role is to monitor performance—not to be involved in the daily administration of the corporatised entities. In 2005 the Ministry of Finance transferred its holdings in some 30 companies to Khazanah, which had assets valued at M$62.2bn at end-May 2007, the latest figures it has made available. Nearly all of Khazanah's assets at that time consisted of shareholdings in 26 publicly traded companies.

Permodalan Nasional Berhad (PNB) is Malaysia's largest institutional-investment company, with more than M$100bn in assets under management in April 2008. It invests in companies on behalf of the *bumiputra* community, buying shares from open-market institutions and corporations restructuring their equity. It sells the stronger shares in its portfolio to the Amanah Saham Nasional, its wholly owned subsidiary, which in turn sells the shares to individual *bumiputras*. Amanah Saham has investments in plantations, finance, industry, property and mining.

Perbadanan Nasional, another government-run holding company, participates in a wide range of commercial and industrial activities, making investments that are held in trust for *bumiputras*. It gives priority to export-directed companies with substantial local raw-material content in manufacturing, distribution (including importing and exporting), wholesale, services, information technology, telecommunications, energy and education. It also participates in start-ups, selected agricultural firms and technology-driven companies.

Petronas (the national petroleum company), an integrated energy company involved in all aspects of the oil and gas industry, has exclusive rights to Malaysia's oil and gas resources and a total monopoly over oil production. Its marketing arm, Petronas Dagangan, competes directly with major international oil companies in marketing and distribution. Foreign investors may participate as contractors to Petronas, under production-sharing agreements, or invest in downstream activities (refining, marketing and distribution) under licence from the Ministry of International Trade and

Industry. Petronas reports to the National Petroleum Advisory Council, which gives advice on overall energy matters to the prime minister, who has ultimate authority over petroleum. Petronas had revenues of US$51bn in 2007.

UDA Holdings is the result of the corporatisation of the Urban Development Authority (UDA). It was floated on the Bursa Malaysia in 1999 and is now involved in many businesses, including property development and management, the hotel business and retail stores.

The government also has a majority share in two of Malaysia's largest local commercial banks: Malayan Banking (Maybank) and Bumiputra-Commerce Holdings Group. The government has traditionally used them to help fund political programmes and to grant loans to cronies in exchange for political favours, though these practices are becoming less common as corporate governance improves. Other state enterprises also let politicians grant concessions or contracts to favoured entities. Public-private joint ventures with state economic-development corporations are common.

In March 2007 the Employees Provident Fund, Malaysia's state-owned pension fund, acquired 82% of RHB Capital, the holding company controlling the nation's fourth-largest, and debt-ridden, banking group. However, the fund is selling stakes to strategic investors. Abu Dhabi Commercial Bank will probably take a 25% shareholding in RHB in May 2008, and as at May 2008 talks with other potential investors continue. The EPF plans to retain 40% of RHB.

A total of 13 state economic development corporations (SEDCs) undertake land development, commercial and industrial ventures, and (in Sabah and Sarawak states) the construction of road, bridge and water-supply projects. The SEDCs are responsible for operating the local industrial estates; several have set up manufacturing enterprises, sometimes jointly with the federal government and sometimes with private (including foreign) investors. Most SEDCs also provide incentive packages to encourage investment in their states.

Privatisation. The government announced in March 2007 that it would continue to reduce its stakes in companies in which it has a high concentration of ownership, as part of its measures to maintain the competitiveness and efficiency of Malaysia's capital market. To avoid exaggerated market disruptions and to allow for strategic tie-ups, the government will use a combination of private placements and structured commitments, such as the placements of convertible bonds. Khazanah raised US$850m in June 2007, following a sale of Islamic bonds convertible into around 15% of PLUS, an expressway operator. In September 2006 Khazanah had placed M$2.8bn in five-year bonds convertible into shares of Telekom Malaysia, the national telecommunications firm. In early 2008 the government was considering the sale to strategic investors of "substantial" stakes in two troubled firms: Proton, a carmaker and Malaysia Airlines, the flag-carrier.

The government's Economic Planning Unit (EPU) reported no major privatisations in 2006–07, whereas 35 companies or projects were privatised in 2001–05. Sales of assets and equity netted the government only M$62.2m during this period, but the EPU estimates savings (in capital and operating expenditure) of M$28.7bn. According to the EPU's latest available figures, the government privatised around 450 entities between the start of the privatisation programme in 1983 and end-2006, totalling M$6.5bn in sales proceeds and saving itself an estimated M$161.7bn from costs related to operating the firms and running its projects. Of the privatised projects or companies during this period the construction sector accounted for 14.3% as did manufacturing (14.3%), followed by the transport, storage and communications (12%) sectors.

The privatisation programme stipulates that *bumiputras* should take up at least 30% of equity of a privatised entity. The privatisation plan does allow for some participation by multinational firms, as a way to upgrade efficiency, promote exports, create necessary international links and provide sufficient capital to absorb the shares offered. Foreign participation in a privatised entity is limited to 25% of share capital, though waivers may be granted.

Privatisation has been via a variety of methods, including the sale of equity and assets; the lease of assets; management contracts; management buy-outs; and build-transfer, build-operate-own and build-operate-transfer arrangements. The last option applies mostly to road projects. According to the Ninth Malaysia Plan, the government intends to introduce greater flexibility in the way the private sector participates in infrastructure development, though no details had yet been provided in April 2008.

As a prelude or an alternative to privatisation, some government agencies have been corporatised. Examples include the postal service (in 1992), the University of Malaya and the Maritime Academy (both in 1998), Penang Water Supply Corp (1999), and the Federal Land Consolidation and Rehabilitation Authority (in 2003). Corporatisations of the country's 5,000-odd co-operatives, the Agricultural Bank of Malaysia, Bernama (the national news agency), RTM (a broadcaster), the Malaysia External Trade Development Corp and the Human Resources Ministry's Skills Development Fund are being considered. No further corporatisations had been announced by April 2008.

Major state-owned enterprises

Fully state-owned firms

Alarm Monitoring and Communication Network System; Centre for Instructors and Advanced Skill Training; Dairy Products Centre, Veterinary Department; FAMA trading activities; Forest Research Institute of Malaysia; Industrial Training Institute; Ketengah Jaya; Ketengah Perwira; Khazanah Nasional; Kilang Sawit Panji Alam; Kuantan Port; Kumpulan Ladang-Ladang; Labuan Port; Malaysian Agricultural Park; Malaysian Army Armoured Workshop; MARA Holdings; Masjid Tanah Industrial Estate, Melaka; Medical Laboratories and Store, Ministry of Health; MIMOS; Nuclear Energy Unit; Pasaranika Oara; Pembangunan Leasing; Perbadanan Nasional; PERMINT Timber; Polytechnics; Prime Utilities; Printing Department, Dewan Bahasa dan Pustaka; Public Trustee Department; Radio Televisyen Malaysia; Sawira; Segamat–Tangkak Highway; Selangor Oil Palm Industries; South Klang Highway; SIRIM (formerly known as the Standard and Industrial Research Institute of Malaysia) and Teluk Mas Industrial Estate, Melaka.

Non-financial public enterprises with partial state ownership

Following the merger of three palm-oil companies in 2007, Malaysia had 33 so-called non-financial public enterprises (NFPEs) in April 2008. Prior to the government's privatisation drive, there were 56 NFPEs.
The NFPEs listed on the Bursa Malaysia are the following:

Bintulu Port; Cement Industries of Malaysia; Malaysian Airline System; Malaysia Airports; Petroliam Nasional (listed subsidiaries Petronas Gas and Petronas Dagangan); Synergy Drive; Telekom Malaysia; Tenaga Nasional; and UDA Holdings.
The unlisted NFPEs are as follows:
1st Silicon (Malaysia); Central Spectrum; Felda Agricultural Services; Indah Water Konsortium; Keretapi Tanah Melayu; Kontena Nasional; Kuching Port Authority; Kulim (Malaysia); MA (Sepang); Marconi (Malaysia); Multimedia Development Corp; Northport (Malaysia); Penang Port; Penerbangan Malaysia; PPES Works (Sarawak); Rakyat Berjaya; Sabah Energy Corp; Sabah Ports; Sarawak Electricity Supply Corp; Sebor (Sabah); Sergam; Silterra Malaysia; Sinora; Syarikat Prasarana Negara; and TH Plantations.

Other listed government-linked corporations

Bursa Malaysia lists 39 government-linked corporations. They include the listed NFPEs above and the following, which are either financial public enterprises or companies that the government controls through agencies like Khazanah, Permodalan Nasional Berhad or the Employees Provident Fund:
Affin; Avenue Capital Resources; Boustead Holdings; Boustead Properties; CIMB; Bumiputra-Commerce Holdings; Guthrie Ropel; Island & Peninsular; Kinta Kellas; Malayan Banking; Malaysia Building Society; Malaysia International Shipping Corp; Malaysia National Reinsurance; Malaysian Industrial Development Finance; NCB Holdings; PLUS Expressways; Pos Malaysia; MNI Holdings; Petaling Garden; Pharmaniaga; Proton; RHB Bank; Sime UEP; Time DotCom; Time Engineering; Tractors Malaysia; UEM Builders; UEM World; and UMW Holdings.

Foreign investment

According to the Malaysian Industrial Development Authority, approved foreign-investment applications soared to an all-time high of M$33.4bn in 2007, up by 65.3% from M$20.2bn in 2006. Foreign investments accounted for 55.7% of total investments approved in 2007. This sharp increase largely reflected increased expenditure by foreign investors in the electronics industry, which jumped by 59% year-on-year to M$13.7bn in 2007. The top sources of foreign investment in 2007 were Japan (M$6.5bn), Germany (M$3.8bn), Iran (M$3.1bn), the United States (M$3bn), Singapore (M$3bn) and India (M$3bn). These six countries together accounted for nearly two-thirds of total foreign investments approved. About 41% of the amount of foreign investment (M$13.7bn) approved was concentrated in the electronics sector, followed by petroleum and petrochemicals (M$5.3bn) and base-metal products (M$4.9bn). Investments in new projects accounted for just over half (M$17.3bn) of the foreign-investment approved; with expansion and diversification projects totalling M$16.2bn.

Malaysia welcomes foreign-investment projects that “add to the resources and potential of the country, engage in new activities and generally promote the development of the economy”—that is, projects involving transfers of technology, creation of skilled jobs and contribution of capital. In the words of the Foreign Investment Committee (FIC), “foreign investment with a balanced structure of ownership and control, therefore, which seeks to develop the vast potentials of the country’s natural resources, engages in new activities, provides training to Malaysians, adopts a balanced employment structure, provides management and technical expertise and export and marketing outlets, will continue to be actively encouraged. Foreign investment which acquires assets or any interests to gain ownership and control of companies and businesses in Malaysia, without giving visible benefits to the national economy, will be discouraged.” The government retains considerable discretionary authority over the approval of individual investment projects, which it has often used to restrict foreign equity and to extract favourable technology-transfer and joint-venture agreements. It eased equity restrictions and export requirements after the 1997–98 financial crisis and the economic downturn in 2001 in order to attract foreign investment.

The government has sought to promote foreign investment in manufacturing for export and in capital-intensive and high-technology industries. Electrical equipment and electronics, oil and gas, biotechnology, metallurgy and chemicals have been some of the most highly favoured sectors. It infrequently grants approvals for labour-intensive ventures, and the Ministry of International Trade and Industry (MITI) has taken the stance that the country will not promote “low-value-added and labour-intensive industries”. Nevertheless, the country’s less-developed areas—the Eastern Corridor in peninsular Malaysia and the states of Sabah and Sarawak—continue to welcome investments in labour-intensive, small and medium-sized manufacturing projects.

The government on August 18th 2006 presented the Third Industrial Master Plan, which serves as a guide for the country’s economic development for 2006–20. The plan has targeted 12 sub-sectors for further development and promotion: electronics, petrochemicals, pharmaceuticals, medical devices, textiles and apparel, transport, machinery and equipment, metals, wood-based products, rubber and rubber products, oil-palm-based products and food processing. Manufacturing is forecast to expand by about 6% annually during the plan’s period (it grew by 3.1% in 2007) and to contribute about 29% to GDP by 2020 (down from 31% in 2005 and 30.2% in 2007). The service sector is projected to expand by 7.5% annually and to increase its contribution to GDP from 51% in 2005 to 60% in 2020 (the sector expanded by 9.7% in 2007, and accounted for 53.4% of GDP in that year).

Malaysia has traditionally had great success in attracting foreign electronics firms, which use the country as an export base. This sector, mainly congregated on the west-coast island of Penang, continues to grow strongly (it attracted M$10bn in foreign investment in 2006) although it faces rising competition from China and other lower-cost nations. Malaysia has also lured foreign high-technology companies to the Multimedia Super Corridor (MSC), first set up in the south of Kuala Lumpur and its southern suburbs. The government extended the MSC to the Bayan Lepas area in Penang and the nearby Kulim Hi-Tech Park in 2005, and then to the entire Klang Valley (around Kuala Lumpur) in 2006. Smaller extensions are in southern Malacca and Johor states, and further additions are planned.

In May 2003 the Foreign Investment Committee relaxed its guidelines in order to provide greater flexibility for foreign-equity participation in local firms. For acquisitions by Malaysian and foreign interests, the only equity condition imposed is to maintain at least 30% *bumiputra* equity. Previously, foreign interests could hold a maximum of 30% equity; the remaining 70% was to be held by Malaysians, of which 30% was reserved for *bumiputras*. The government lifted its curbs on foreign investment in manufacturing, including equity and export conditions, from mid-June 2003. Foreign firms generally face no limits on their stakes in ventures in mining and processing of minerals.

The government has started to liberalise the capital markets. The Securities Commission (SC) gave permission in March 2005 to the following foreign stockbroking firms to operate in Malaysia: Credit Suisse First Boston and UBS from Switzerland; JPMorgan Chase of the United States; CLSA (Crédit Lyonnais Securities Asia, the Hong Kong-based emerging-markets arm of Crédit Lyonnais of France); and Macquarie Bank from Australia. The 2008 budget announced that Islamic fund-management companies can be wholly owned by foreigners. On March 31st 2008 Franklin Templeton Investments (US) received, for the time being, the last licence for a foreign (non-Islamic) fund manager to enter the domestic market. It joins Aberdeen Asset Management (UK), BNP Paribas Asset Management (France), Nomura Asset Management (Japan) and Crédit Agricole Asset Management (France). The SC has not indicated by mid-May 2008 whether it would allow more non-Islamic managers, but it appears unlikely it would allow more anytime soon. Fund-management companies may be 100% foreign owned if they provide services only to foreigners; they are limited to 70% foreign ownership if they provide services to both foreign and local investors.

The Ninth Malaysia Plan noted that liberalisation of the financial sector will continue as long as reform is "properly sequenced" to ensure stability. It also announced that the regulatory framework will be reviewed, along with the merger of the Securities Commission (which oversees the financial markets) and the Companies Commission of Malaysia (the registrar of companies). But no schedule for this merger had been announced by April 2008.

The 2005 budget, allowed foreign interests to own 100% stakes in futures brokerage firms, futures fund managers and futures trading advisers through the issuance of new licences or the purchase of equity in existing operations. It also permitted fully foreign-owned venture-capital firms and venture-capital management corporations. The 2008 budget, released in September 2007, announced that three new licences will be issued to leading stockbroking companies that can source, conduct business and order flows from the Middle East. However, by April 2008 no licences had been issued.

Foreign-equity participation in commercial banks and leasing companies generally remains limited to 30%. Foreign institutions can fully own Islamic banks and up to 49% of equity in investment banks.

New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies, and aggregate foreign shareholding in such companies initially may not exceed 30%, though this limit has been subject to negotiation. As part of the 1997 Financial Services Agreement of the World Trade Organisation, Malaysia agreed to allow existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51%.

The government also maintains limits on the equity holdings of foreign firms in other areas of the economy. Service sectors, in particular, have tight restrictions. The government introduced guidelines in December 2004 for foreign investment in the trade and distribution sectors. The regulations followed an influx of foreign retailers (such as Carrefour of France and Makro of the Netherlands) into the country, which has threatened the survival of smaller traditional retailers. The regulations stipulate, for example, that hypermarkets may not be within a radius of 3.5 km of residential areas and town centres and that only one hypermarket is allowed per 350,000 residents. Stores must reserve at least 30% of shelf space in their premises for goods and products manufactured by *bumiputra*-owned small and medium-sized industries. The guidelines also require that at least 30% of a store's sales consist of *bumiputra* products—a rule that does not take into account discretionary behaviour on the part of consumers. All proposals for foreign involvement in the distribution sector require the approval of the Committee on Distributive Trade, under the Ministry of Domestic Trade and Consumer Affairs. All distribution companies with foreign equity have to appoint *bumiputra* directors; hire personnel at all levels (including management) to reflect the racial composition of the Malaysian population; increase the use of local airports and ports in the export and import of the goods; and use local companies for legal and other professional services that are available locally.

In the automotive sector, foreign investors may have stakes of up to 51%, with approvals granted on a case-by-case basis. Approval is easier to obtain for manufacturers of automotive parts than for manufacturers or assemblers of vehicles, since the automotive market remains highly protected. The National Automotive Policy, introduced on March 22nd 2006, announced a temporary freezing of new manufacturing licences; new assembly facilities will be allowed on a strictly case-by-case basis only. Though the plan did announce incentives and grants for both local and foreign companies that "can contribute to the Malaysian economy" (measured in terms of the scale of operations, industry linkages and promotion of *bumiputra* participation), it strongly favours the domestic carmakers (Proton and Perodua).

Under the World Trade Organisation's Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecoms services and partially adopted the reference paper on regulatory commitments. Foreign companies are entitled to acquire only up to a 30% equity stake in existing fixed-line operations. Value-added service suppliers also are limited to 30% foreign equity. The US Trade Representative alleges that these caps constitute one of the most restrictive regimes of any economy of Malaysia's level of development, and they tend to benefit the dominant provider, government-controlled Telekom Malaysia. Malaysia has made marginal improvements to this regime, reflected in its January 2005 revised services offer to the WTO. The offer reflects new domestic licensing categories, but the changes are still disappointing. The new licensing categories allow for up to 49% foreign equity in suppliers categorised as "application service providers", but precisely what this category encompasses is not clearly defined. Telenor (Norway) in 2001 was allowed to take a 61% stake in DiGi.Com, the cellular telecoms provider, but had to cut its shareholding to 49% in 2007 (see Holding patterns).

Investment approval checklist

The following steps are necessary to gain approval for new foreign investments:

- Initial applications should be made to the Ministry of International Trade and Industry (MITI), including detailed information on a project's employment, environmental effects, estimates of projected profits, amount of local raw materials and components to be used, capital investment per (forecast) employee (CIPE; projects with a CIPE of less than M$55,000 are categorised as labour-intensive and discouraged), the extent to which output will replace imports and the contribution to Malaysia's exports. Projects involving technology transfer receive the best reception. Approval typically takes 6–8 weeks.

- Investors must choose one of the four types of business organisation in Malaysia (limited company, local branch of a foreign company, partnership or sole proprietorship) and submit an application for a company licence.
- Manufacturers with shareholder funds of M$2.5m or more, or at least 75 full-time paid employees, must obtain a manufacturing licence from MITI, with application either directly to the ministry's secretary-general in Kuala Lumpur or via the Malaysian Industrial Development Authority (MIDA).
- Technology transfers—including joint ventures, technical assistance and licensing—must be approved by MITI.
- Companies seeking incentives must apply to MIDA, which also considers applications for the creation of expatriate posts in manufacturing, tourism, hotel and agricultural projects.
- Though foreign-exchange regulations have been liberalised considerably, investors may need approval from Bank Negara Malaysia (the central bank) for some transactions.
- The Department of Environment requires environmental-impact assessments (EIAs) for many kinds of investment projects. EIAs are generally handled by private contractors and approved in five weeks.
- Given present constraints in many industrial estates, it is important to secure needed land or non-industrial property. Investors may need approval from the Foreign Investment Committee.
- Investors may need additional permits, such as those related to environment effects and building, from relevant state or local authorities. Approval may require 2–6 months. Applications for building permits come only after receiving basic investment approvals. Waits of around three months are normal.
- Companies should use individual written contracts, stating terms and conditions, when hiring workers.
- Under the Industrial Co-ordination Act, most manufacturers must obtain licences from MITI. Under the Optical Discs Act 2000, all makers of CDs, VCDs, DVDs and any other optical discs need licences from MITI. The licensing requirement often involves greater disclosure and may involve mandatory race ratios (for *bumiputras*, other Malaysians and foreigners) for management, labour and the board of directors.

International agreements

Malaysia signed its second free-trade agreement (FTA), with Pakistan, in November 2007. The agreement, implemented on January 1st 2008, encompasses liberalisation in trade in goods and services and in investment, as well as bilateral technical co-operation and capacity building in areas such as sanitary measures, intellectual-property protection, construction, tourism, healthcare and telecommunications. By 2012, Malaysia will eliminate import duties on 74.5% of its tariff lines, whereas Pakistan will eliminate duties on 43.2% of tariff lines involving agricultural and industrial imports from Malaysia. While waiting for the full FTA, an "early harvest programme" between the countries had started on January 1st 2006; another round of negotiations to extend the FTA is planned for 2009. Total trade between the two nations amounted to less than M$4bn in 2007.

Malaysia had signed its first FTA, with Japan, in December 2005. The pact, part of a broader Japan–Malaysia Economic Partnership Agreement provides that the two countries will eliminate tariffs on 97% of their trade by 2015; the pact either excluded or left for re-negotiation some sensitive agricultural products, such as rice. The FTA commits Malaysia to open its sensitive car sector to Japanese products. Japan remained Malaysia's third-largest trading partner (after the United States and Singapore) in 2007, with trade between the two countries valued at M$120.8bn, up from M$115.8bn in 2006, according to the Ministry of International Trade and Industry (MITI). Japan was Malaysia's largest source of imports in 2007 (valued at M$65.5bn) and its third-largest export market (valued at M$55.2bn).

Malaysia and the US started formal negotiations on an FTA in June 2006. Expectations at the time were to complete the talks by early 2007, but they continued in April 2008. The US hopes to wrap up negotiations before President George W. Bush leaves office, in January 2009, but Malaysian authorities have said they are in “no hurry” to sign an agreement. The major obstacle to the talks is Malaysia’s affirmative-action programme that awards government tenders to Malay-owned companies. Although some government contracts are open to bids from foreign companies, the US wants more clarity and transparency in the bidding process. Other sticking points in the negotiations are differences over liberalising Malaysia’s services sector and highly protected car industry, its ban on majority foreign ownership of banks, its poor protection of intellectual-property rights, and labour and environmental issues. The two countries had signed a trade and investment framework agreement (which provides only a forum for bilateral consultations on trade and investment issues) on May 10th 2004. The US was Malaysia’s single largest trading partner in 2007, with total trade between the two countries valued at M$149.2bn. Although that was a decrease from M$170.8bn in 2006, it still accounted for 14.8% of Malaysia’s global trade, according to the MITI. The US is Malaysia’s largest export destination, with total exports valued at M$94.5bn, or 15.6% of Malaysia’s global exports in 2007. The US was Malaysia’s fourth-largest source of imports in 2006, with total imports valued at M$54.7bn.

As at April 2008, Malaysia was negotiating FTAs with Australia, India and New Zealand. Authorities expect to complete the agreement with India later in 2008; talks with the other two nations are progressing much slower, and FTAs are not expected to be signed before 2009. Malaysia and Australia signed a memorandum of understanding in March 2006, separate from the FTA negotiations, to foster trade in agriculture, food processing, livestock and fisheries. The government launched FTA negotiations with Chile in November 2006 and was studying the possibility of FTAs with Sri Lanka, Canada and the Gulf Co-operation Council (comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates).

Malaysia is a member of the Asia–Pacific Economic Co-operation (APEC) group and the Association of South-East Asian Nations (ASEAN), both of which commit it to increasing economic openness. It has agreed to tariff reductions under the terms of the Uruguay round of the General Agreement on Tariffs and Trade (now the World Trade Organisation), the Multi-Fibre Agreement and the Information Technology Agreement.

ASEAN signed an FTA with China in November i2004, which went into partial effect in July 2005. Tariffs on non-sensitive products are to end in 2012, and those on sensitive products, in 2018. ASEAN and Japan agreed on November 20th 2007 to put 70 categories of goods on an intensive-tariff-reduction list, as a prelude to a full FTA, which is expected to be signed in 2009. (This deal has little direct effect on Malaysia, given the FTA between both countries.) ASEAN is also pursuing FTAs with South Korea, the European Union (talks started on May 4th 2007 though Myanmar’s membership of ASEAN is complicating procedures), and India (an agreement may be reached later in 2008).

Malaysia and the Islamic Development Bank signed a memorandum of understanding in June 2004 containing provisions to encourage the 55 member countries to adopt FTAs and to promote the use of insurance instruments for trade and investments. But by April 2008 Pakistan was the only member state of the bank with which Malaysia had negotiated an FTA.

Malaysia is also a member of the Preferential Tariff Arrangement of the Group of Eight Developing Countries (with Bangladesh, Egypt, Indonesia, Iran, Nigeria, Pakistan and Turkey), which signed an agreement in May 2006 to accord preferential tariff concessions on selected goods among the participating countries. Malaysia ratified the agreement in July 2006 though modalities of the arrangement were still being worked out in April 2008.

With the same goal in mind, Malaysia signed a Trade Preferential System agreement under the Organisation of the Islamic Conference (OIC) in June 2004. Thirteen other countries—Bangladesh, Cameroon, Egypt, Guinea, Iran, Jordan, Lebanon, Libya, Pakistan, Senegal, Tunisia, Turkey and Uganda—have signed the deal, which accords preferential tariff concessions to selected goods among the participating countries. Discussions on the modalities of tariff reduction continued in April 2008.

By April 2008 Malaysia had signed investment-guarantee agreements with more than 70 countries, including all fellow members of ASEAN and the OIC. These agreements protect against expropriation, provide for prompt and adequate compensation in the event of nationalisation, and ensure freedom to transfer profits, capital and other payments. At that time, the country also had signed double-taxation agreements with 62 countries.

Malaysia has also ratified the provisions of the Convention on the Settlement of Investment Disputes, established by the World Bank for cases that cannot be settled locally. The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee; it provides a system to settle disputes between parties engaged in trade, commerce and investments with and within Asia.

Recent foreign direct investment

Q-Cells (Germany), a producer of solar-power cells, announced in February 2008 that it would invest more than M$1bn to establish a manufacturing complex in Selangor state. Q-Cells is the world's largest manufacturer of solar cells; the Malaysian plant is its seventh worldwide. The first phase of the project is to start operating in the first quarter of 2009. The company said it also will invest in the development and commercialisation of new thin-film technologies.

Eurocopter (EU—headquartered in France), a wholly owned subsidiary of European Aeronautic Defence and Space (EADS), said in April 2008 that it would invest about M$20m during 2008 to expand its facilities in Malaysia, to train staff and to increase its spare parts inventory. Eurocopter has invested around M$45m since setting up its first facility in Malaysia in 2002.

Chery Automobile (China) said in April 2008 that it, together with its local partner Alado, would invest an initial US$12m in the first stage of making Malaysia its hub for the manufacturing of right-hand-drive vehicles. The joint-venture plans to have produced 5,000 vehicles by May 2009. Chery, the fourth-largest vehicle manufacturer in China, said it was phasing out the production of right-hand-drive vehicles at its plants in China.

Panasonic (Japan), a consumer-electronics manufacturer, received approval in May 2007 to expand its facilities in central Selangor state to manufacture LCD television sets. Panasonic has budgeted M$379m for the project, which is to create more than 1,100 jobs.

Technip (France), an engineering firm, said in July 2007 that it would invest M$693m in its Asiaflex Products (its new, fully owned subsidiary) to manufacture flexible pipes for the offshore oil-and-gas industry. Asiaflex Products, which is to start operating by 2010, will focus on serving markets in Asia and the Middle East. It will employ around 300 workers and produce the complete range of Technip flexible pipes at its plant in southern Johor state. Technip's Asia Pacific head office in Kuala Lumpur has more than 3,200 employees.

Organising an investment

Basic investment approval

The Companies Act 1965 includes rules for organising, incorporating and expanding companies in Malaysia; the Industrial Co-ordination Act 1975 covers manufacturing activities. The Malaysian Industrial Development Authority (MIDA) helps with applications for foreign investment and manufacturing enterprises. To facilitate the implementation of projects, MIDA has senior representatives from the Ministry of Finance, Ministry of Human Resources, Immigration Department, Department of Environment and other government agencies to provide advice and assistance. Most foreign investors start with preliminary enquiries to MIDA's head office in Kuala Lumpur, one of its ten other offices in Malaysia, or one of its 19 overseas offices.

The government in February 2007 set up the Special Task-Force to Facilitate Business, better known by as Pemudah (from Pasukan Petugas Khas Pemudah cara Perniagaan). By April 2008 Pemudah had announced the following results: time to approve business registrations was cut from three days to one hour; time to renew a business licence was reduced from one day to 15 minutes; time to review requests for incorporation and approval of a company's name was reduced from five days to one; and time needed to register a company's prospectus was shortened from 14 days to three days. Registration of mortgages can be completed within two days (from five previously), and registration of deeds will be done within five days (from 14 days). Approval procedure for expatriate work permits have been streamlined and review time has been shortened (see Employment of foreigners); the review time or environmental-impact assessments has been shortened (see Environmental law); and Customs forms have been streamlined (see Foreign trade, Overview).

For the remainder of 2008, Pemudah is focusing on improvements in the following areas: export clearance; property registration; taxation; recovery rates following bankruptcies; hearing and ruling of commercial legal cases.

Virtually all industries are at least nominally open to foreign capital. But the government has blocked foreign investment in the news media, lotteries and the printing of security paper.

Faced with increasing competition from neighbouring countries, Malaysia's government fully liberalised equity holdings in all manufacturing projects beginning on June 17th 2003. Foreign investors may hold 100% equity in all investments in new projects and investments in expansion or diversification projects by existing companies, irrespective of the level of exports. The equity policy also applies to companies that operated prior to the changes but only recently became large enough (that is, exceeded shareholders' funds of M$2.5m) to apply for a manufacturing licence, or those that engage 75 or more full-time employees and are thus need a licence.

Malaysia will maintain the equity and export conditions imposed on companies prior to June 2003, although companies can request removal of these conditions. The government has said it "will be flexible" in considering these requests, which are handled on a case-by-case basis. Companies that export can apply for approval from MIDA to sell in the domestic market up to 100% of their output for those products with zero duty or those not produced locally; or up to 80% of their output if the domestic supply is inadequate or there has been an increase in imports from members of the Association of South-East Asian Nations (ASEAN) for products with Common Effective Preferential Tariff (CEPT) duties of 5% and below.

New ventures involving extracting, mining or processing mineral ores may have foreign-equity participation of up to 100%. The precise maximum depends on the following: the level of investment, technology and risk involved in the project; the availability of Malaysian expertise in exploring, mining and processing the minerals concerned; and the project's degree of integration with the local economy and amount of value added. These guidelines do not apply to sectors where prescribed limits on maximum foreign-equity ownership have already been established.

New foreign investments, including expansions, automatically come under the provisions of the National Vision Policy (NVP) of 2001. Manufacturing investments, however, may keep their approved initial levels of foreign ownership indefinitely if they continue to comply with the original conditions of approval and retain the original features of the project.

The NVP relaxed some provisions of the previous National Development Policy (of 1990) and the National Economic Policy (of 1970), putting more emphasis on wealth creation and economic growth than on redistribution and the details of ownership. Still, it maintains the target for *bumiputra* (ethnic Malays and other indigenous peoples) ownership of 30% of all domestic corporate equity by 2010, up from 19% in 2001. (In practice, companies generally need only present evidence of having actively looked for *bumiputra* staff.) The NVP focuses on strengthening the capacity of *bumiputras* to own, manage and operate businesses effectively. Contrary to what many observers had expected, the Ninth Malaysia Plan extended the policies favouring *bumiputras* through 2010. But the gains by the opposition parties in the March 2008 elections may lead to a review of these policies, especially in the states that the opposition now controls. The newly installed leadership of Penang and Selangor, states which attract a large amount of investment, have said they would seek to replace pro-*bumiputra* policies with ones benefiting poor people regardless of race. Although no official announcements had been made by mid-May 2008, the pro-*bumiputra* policies will probably be less strictly enforced.

Malaysia's Foreign Investment Committee (FIC) has representatives from the prime minister's office, the Ministry of Finance, Bank Negara Malaysia (the central bank), the Ministry of International Trade and Industry (MITI), MIDA and other agencies. It monitors the following types of transactions: (1) acquisitions, restructurings, mergers or takeovers that would transfer ownership or control of ventures; (2) acquisitions by foreign interests of fixed assets in Malaysia; (3) purchase of 15% or more of the voting power in any Malaysian company by a foreign company or group, or 30% or more by aggregate foreign interests; (4) joint-venture, technical-assistance or other arrangements resulting in the control of a Malaysian company being transferred; (5) all mergers and takeovers by foreign and Malaysian interests; and (6) acquisitions of assets or interest exceeding M$10m by foreign and Malaysian groups (raised from M$5m in May 2003).

Since August 2004 companies have had to disclose only the fact that they have complied with FIC requirements; they no longer need to wait for the FIC's approval. The FIC's role is to monitor companies and ensure that they comply with the regulations. The change was in response to complaints from foreign investors that the FIC approval process could take up to two months. Investors in the new Iskandar Development Region will be exempt from FIC rules and from employment restrictions (see Incentives).

The FIC judges disclosures against three main guidelines: (1) compared with the existing pattern of ownership, the proposal should result in more-balanced Malaysian participation in ownership and control; (2) the proposal should lead to net benefits in areas such as the extent of Malaysian—particularly *bumiputra*—participation, ownership and management, income distribution, growth, employment, range and quality of products and services, economic diversification, processing and upgrading of local raw materials, training, efficiency, and research and development; and (3) the proposal should not adversely affect national policies in areas such as defence, environmental protection or regional development. The FIC also notes that the onus of proving that the proposals do not contravene the objectives of the NVP and its preceding policies is on the acquiring parties.

MITI now processes proposals for acquisitions from licensed manufacturing companies; the Securities Commission processes corporate proposals involving securities or property assets. Since May 2003 these proposals have not required the FIC's consideration.

All firms require a company licence to operate in Malaysia. The Industrial Co-ordination Act 1975 requires manufacturers with paid-up capital of M$2.5m or more, or at least 75 full-time paid employees, to obtain a manufacturing licence from MITI, with application either directly to the ministry's secretary-general in Kuala Lumpur or via MIDA. (Entities undertaking certain activities in the palm-oil, rubber and unmilled-rice industries are exempt.) Existing licensed companies need to apply to MIDA to expand or diversify production.

MITI and MIDA must approve all technology transfers, including joint ventures, technical-assistance and licensing contracts. Companies seeking incentives must apply to MIDA, which considers applications for creating expatriate posts in manufacturing, tourism, hotel and agricultural projects. The central bank provides approvals for remitting funds and information on financing.

Investments involving the extraction of natural resources usually require approval from the concerned state governments, whose laws vary. Petroleum activities are reserved for the federal government, and interested investors must deal with Petronas, the state oil company.

Straightforward, well-prepared foreign-investment applications generally receive approval in 6–8 weeks by MIDA. More complicated proposals (such as those requiring tariff protection, import substitution or a high percentage of foreign equity) may require more time. Initial applications should include detailed information. For example, employment opportunities should be given, broken down by nationality and category—that is, the number of managerial, research, supervisory, technical, sales, office (clerks, typists), skilled and unskilled workers.

Applicants should also estimate the proposed venture's profits, the amount of local raw materials and components to be used, the extent to which its output will replace imports and, particularly, its contribution to Malaysia's exports. Projects involving technology transfer receive the best reception.

The desirability of projects involving high technology and high capital-to-labour ratios was formalised into a system of requirements at end-1995. The aim is to discourage labour-intensive applications and to accelerate modernisation and income growth. MITI set out standards in 1995 against which MIDA judges investment applications. The main measure of labour intensity is capital investment per (forecast) employee (CIPE), whose threshold has been set at M$55,000. MIDA will normally not approve applications with CIPE ratios below this level, but exemptions are allowed on one or more of five grounds:

- Location—low CIPE projects may be approved for the Eastern Corridor of peninsular Malaysia, Perlis, Sabah or Sarawak, which are relatively underdeveloped;
- Added value—low CIPE forecasts may be overlooked if a project is expected to add value of 20% or more (as determined by MIDA);
- Continuity—existing companies that had been exempt previously may be allowed to start low CIPE projects;
- Industry—an activity or product on the approved list of high-technology industries (such as a project supplying a local electronics assembly line with a component now imported at significant cost) would earn MIDA approval; and
- Payroll structure—new projects with a high proportion of management, technical and supervisory (MTS) jobs will be approved without high CIPE scores. MITI applies an MTS index, and it would approve a project with a value of 15% or more.

According to MIDA, the average CIPE for approved projects in 2007 stood at M$613,600, 18.7% higher than the average of M$517,054 the previous year. MIDA attributed the higher CIPE ratio in 2007 mainly to capital intensive projects in the petroleum and petrochemicals industries.

MITI's secretary-general is authorised to impose additional conditions on a licence, including restrictions on the proposed venture's location, equity structure, board of directors, employment structure, distribution patterns, use of local professional services, construction date, quality standards, pricing, anti-pollution measures, use of local raw materials, technical agreements and marketing arrangements.

Additional permits are needed from relevant state or local authorities (for example, state or city planners and the public-works department) for original investments and expansions. From April 2007 local governments have set up "one-stop centres" to simplify the approval process of development projects; applications are reviewed in 3–6 months. By end-2007, 103 such centres had been established. Investors must also satisfy the legal requirements of the Companies Commission of Malaysia.

MITI is the sole authority for implementing the NVP and thus for setting equity conditions, which depend mainly on the amount of capitalisation. Firms that have less than M$2.5m in shareholders' funds and that have not been granted pioneer status or an investment-tax allowance under the Promotion of Investments Act 1986 are exempt from the 30% *bumiputra* equity conditions imposed on larger firms (with more than M$2.5m in shareholders' funds). This concession is intended principally to allow smaller businesses run by Malaysian-Chinese to remain under family control. Companies not seeking manufacturing licences or any other government permits or approvals, regardless of their size, need not comply with NVP equity recommendations.

Acquisition of an existing firm

The Securities Commission (SC) has jurisdiction over most acquisitions and takeovers. It rules on the valuation of securities, protection of minority shareholders and maintenance of an orderly securities market. The Companies Commission oversees compliance with the provisions of the Companies Act.

The Malaysian Code on Takeovers and Mergers of 1998 introduced greater transparency and provided a level playing field in mergers and acquisitions. It also imposes criminal liability for false and misleading information. The code aimed to improve poor corporate governance, which contributed to the financial crisis of 1997–98. In particular, the SC now endeavours to ensure that shareholders—especially minority shareholders—are treated fairly. Amendments to the code came into force on March 25th 2004, further increasing the responsibilities of the directors of the acquirer.

The SC has set 33% of voting shares as the trigger point for takeovers. Under the Code on Takeovers and Mergers, a single shareholder that acquires 33% of the voting rights of a company or any single shareholder that owns 33–50% of such shares and acquires another 2% within a six-month period must immediately send written notice of a takeover offer to the company's board of directors, the relevant stock exchange and the commission. The acquirer must also issue a press notice, laying out terms and conditions of the takeover offer, the identity of the acquirer and other parties acting in concert with it, and the total number of voting shares held by the acquirer.

On March 20th 2007 the SC enhanced the requirement for announcements of potential takeovers and mergers. Immediate announcement is now required in the following instances: where a company is the subject of a rumour or speculation of being taken over; where there are sudden shocks in share price or significant large purchases due to a potential merger or acquisition exercise; or the company is the subject of a takeover offer. (The SC had not provided more-specific details of these requirements by mid-May 2008.) At the same time, the SC also reduced the timetable for the approval of mandatory-offer exemptions to one working day, from 21 working days previously, in the following circumstances: the issuance of new securities for, among others, purchase of assets or subscription of new shares for cash; where the majority shareholder intends compulsorily to acquire the remaining shares of a company; or when the company purchases shares that hold voting rights. The SC estimates that more than 60% of applications for mandatory-offer exemptions fall under these categories. For the remaining applications, the timetable remains 21 working days.

The SC approved 401 applications made under the Code on Takeovers and Mergers in 2007, up from 223 in the previous year.

Elements from the previous legal code on takeovers (from 1987) that still apply include the following: (1) it defines an acquiring institution, specifically excluding public authorities, government agencies and state corporations; (2) it forbids companies from making a general offer deemed by the takeover panel to be against the national interest; and (3) it requires certain information on the acquiring firm to be submitted to the takeover panel at least 21 days ahead of an offer.

Government approval is required for non-resident companies acquiring significant interests in domestically owned companies. Application to the Foreign Investment Committee is necessary in the following circumstances: any time that one foreign interest acquires 15% or more of a company's voting power, or a group of foreign interests acquires 30% or more; control of a company is gained through any form of joint-venture agreement, management agreement, technical-assistance agreement or other arrangement; any merger or takeover of any company, whether by domestic or foreign interests; any other proposed acquisition of assets or interests exceeding M$10m, whether by Malaysian or foreign interests.

Foreign investors have had limited experience with Malaysia's acquisition and takeover rules. The government has been sensitive about foreigners acquiring plantations, even for transfers between foreigners.

Building and related permits

Building permits are the responsibility of state and local authorities. They usually take about three months to obtain, depending on the state government involved. Once the higher authorities have approved ventures, investors generally encounter no special difficulties in obtaining building permits. Permit applications may be filed only after receiving basic investment approval. According to a World Bank survey, approval to build a warehouse in Kuala Lumpur took 25 steps and 285 days at a cost of around 10% of per-capita income in 2007.

Malaysia has more than 200 industrial estates in operation. Locating within these estates or in the country's high-tech parks greatly facilitates the permit-approval process.

Holding patterns

Avocet Mining, a British mining and exploration company, completed the divestment of one of its Malaysian subsidiaries, Damar Consolidated Exploration, to Monument Mining in July 2007. This was part of its corporate restructuring plans. Avocet Mining had signed an agreement in April 2007 with Monument (then named Moncoa) to sell Damar in two tranches for a total of US$6.5m. Damar owns the Buffalo Reef prospect and adjoining Selinsing gold mine, which hold an estimated 185,300 ounces of gold.

Telenor, a Norwegian telecommunications company, reduced its 61% stake in Malaysia's cellular services provider DiGi.Com to 49% in November 2007 to comply with requirements for Malaysian equity ownership. Telenor had received temporary permission in 2001 to take its majority stake in DiGi. In the exercise, Telenor sold 76.5m DiGi shares for M$1.6bn to unnamed Malaysian investors, widely believed to be Khazanah, the government's main investment arm.

Royal Dutch Shell, a Dutch/UK conglomerate, announced in February 2008 that it would sell its Autoserv car-maintenance chain in Thailand and Malaysia to units of Bridgestone (Japan). The company did not disclose financial terms of the deal. The Autoserv business, of which there are eight branches in Malaysia, provides car-maintenance services that include sales of tyres and lubricants.

Environmental law

The National Vision Policy of 2001, the Eighth Malaysian Plan (2001–05) and the Ninth Malaysian Plan (2006–10) have highlighted official concern over environmental issues. For 2006–10 the government plans to emphasise preventive measures to mitigate and minimise pollution. It says it will promote sustainable natural-resource management and co-operate more closely with stakeholders and non-governmental organisations. The government plans to expand the use of economic instruments and market-based measures (such as the "polluter pays" principle) to address environmental issues. But the country had made little tangible progress by April 2008, and significant environmental problems persist, caused primarily by industrialisation and the exploitation of the vast natural-resource base. Deforestation, depletion of fisheries, air and water pollution, and contamination by industrial waste have in recent years become serious concerns in Malaysia. In one example, the World Health Organisation in April 2007 called the Sungai Juru in northern Penang state the dirtiest river in south-east Asia.

Parliament passed the Bio-safety Bill in mid-2007, which mandates labelling of products derived from genetically modified (GM) organisms. In April 2008 the Ministry of Natural Resources and Environment was in the process of drafting regulations stipulated in the bill. Malaysia places no restrictions on the import of bio-engineered food, though as at April 2008 the only GM product officially approved for import into Malaysia is "Roundup Ready" soyabeans.

The Department of Environment (DOE), under the Ministry of Natural Resources and Environment, is responsible for environmental-impact assessments (EIAs), other aspects of environment-related business licensing and enforcement of environmental standards. However, the DOE may not act against companies disposing of scheduled toxic waste on their own properties. The DOE started remote monitoring of the scheduled waste movements of nearly 50,000 companies in January 2006. The new system issues warnings when contractors fail to transport their waste within an expected period.

A company needs a DOE certificate to commence business. Both the federal and relevant state environmental offices are involved in approvals, so it is advisable to submit applications in duplicate to both. The DOE uses a three-step process to consider industrial applications. Step one divides applicants into those with non-harmful, or “prescribed”, activities and those with “non-prescribed” activities. Applicants in the “prescribed” group generally must only provide preliminary EIAs for approval. Applicants with “non-prescribed” activities will move on to step two, which examines air- and water-pollution effects, and step three, which determines suitability of the industrial lot, especially for crude-palm-oil mills, natural rubber factories and scheduled-waste facilities.

The DOE generally requires applicants in the “non-prescribed” group to submit detailed EIAs, which continue during project planning until that plan is finalised. Detailed EIAs are always required for the following projects: iron and steel industry, pulp and paper mills, cement plants, construction of coal-fired power plants, construction of dams and hydroelectric-power schemes, land reclamation, incineration plants (dealing with both scheduled waste and solid waste), landfills, development projects in which at least half the land area consists of slopes exceeding 25 degrees (except quarries), and logging of any area exceeding 500 hectares. The DOE says it reviews a detailed EIA for these projects within five months of submission.

At least a preliminary EIA must be completed, usually by a private environmental consultancy, as part of a feasibility study. This is then submitted to the relevant state environmental office to obtain plant-site approval for all new investments in the following sectors: agriculture, airports, cement, chemicals and petrochemicals, drainage and irrigation, fisheries, forestry, housing, infrastructure, iron and steel, land reclamation, lime, maritime jurisdiction, mining, natural gas, non-ferrous metals, palm oil, paper and pulp, petroleum, ports, power generation and transmission, quarries, railways, resort and recreational development, rubber processing, sewage and industrial effluents, shipyards, soil conservation, transport, waste treatment and disposal, waste management, water supply and wildlife. The DOE by end-2007 had shortened the timetable in which it reviews a preliminary EIA for these projects from three months to five weeks from the date of submission.

The frequency of the required EIAs varies by industry. Palm-oil processing, electroplating and other heavily polluting facilities require frequent EIAs, but in most other industries, EIAs are demanded only at commencement. A typical initial EIA adds less than 0.1% to the total project cost; the government asks developers to reveal the cost of an EIA in order to gauge the quality of the assessment. If EIAs do not adequately address the environmental effects of a project, the DOE will request additional studies. Foreign investors in existing enterprises or assets are potentially liable for previous environmental damage.

Other types of licences and approvals (including site-suitability evaluations, building licences for projects producing effluent discharge and contravention licences) can generally be approved in 1–3 months. Licences are reviewed and renewed annually for certain activities, including palm-oil production and refining raw natural rubber.

The DOE approved 224 EIAs (including five detailed EIAs) in 2007, compared with 207 (including four detailed EIAs) in 2006.

To step up environmental protection and pollution control, the government introduced certain incentives and fiscal advantages and, in 1996, enacted substantial amendments to the 1974 Environmental Quality Act with stricter regulations and stiffer penalties for environment-related offences. Among the provisions in the Environmental Quality (Amendment) Act 1996 are the following:

- The government may close factories to protect public health and the environment and compel polluters to pay mandatory compensation to victims as a result of environmental damage;
- The penalty for agricultural-waste discharges is M$50,000 in fines and/or two years imprisonment;
- The maximum fine for contravening a prohibition order under the act is M$100,000, and the daily fine for pollution is M$5,000;
- Import, export, production, storage, transport or use of hazardous chemicals is banned;
- Eco-labelling is mandatory;
- Environmental "auditing" is mandatory. This includes determining the overall environmental risk of the premises and compliance with environmental regulatory requirements;
- Contributions to an Environment Fund may be demanded from anyone engaged in the exploration, extraction, refining, production, bulk movement, distribution and storage of oil, environmentally hazardous substances and waste. This is in addition to "cess" payments, based on volume, composition and types of waste generated.

Other environmental legislation includes the following:

- Environmental Quality (Dioxin and Furan) Regulations of 2004.
- Environmental Quality (Clean Air) Regulations of 2000 (amended);
- Environmental Quality (Halon Management) Regulation of 2000;
- Environmental Quality (Sewage and Industrial Effluents) Regulations of 2000 (amended);
- Environmental Quality (Refrigerant Management) Regulation of 1999;
- Environmental Quality (Compounding of Offences) (Amendment) Rules of 1999;
- Environmental Quality (Control Of Emission From Petrol Engines) Regulations of 1996;
- Environmental Quality (Prohibition on the Use of Chlorofluorocarbons and Other Gases as Propellants and Blowing Agents) Order of 1993;

- Environmental Quality (Scheduled Wastes) Regulations of 1989;
- Environmental Quality (Prescribed Premises, Scheduled Wastes Treatment and Disposal Facilities) Regulations of 1989;
- Environmental Quality (Prescribed Activities, Environmental-Impact Assessment) Order of 1987, which identifies industries for specific controls;
- Environmental Quality (Prescribed Premises, Raw Natural Rubber) Regulations of 1978; and
- Environmental Quality (Prescribed Premises, Crude Palm Oil) Regulations of 1977.

Malaysia is a signatory to the Basle Convention on Hazardous Waste, the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

Malaysia's constitution leaves substantial powers over land use and natural resource management to the respective states, and guarantees certain unique rights and privileges to Sabah and Sarawak. Parliament has jurisdiction to legislate for the states only in those areas that the constitution has explicitly identified. Hence, certain major matters relating to land use and natural resources remain within the exclusive jurisdiction of state legislation; consequently, the DOE can assume only a liaison and co-operative role concerning the state organs. The implementation of international treaty obligations further compounds problem. Whereas the federal government has the prerogative to accede to international treaties, implementing these treaty obligations remains with the states if these impinge on issues over which states have jurisdiction.

Acquisition of real estate

Each Malaysian state has a development corporation that communicates with the central government's Malaysian Industrial Development Authority (MIDA) on land matters. State authorities need to approve any acquisition, but the ultimate authority lies with the Foreign Investment Committee (FIC), which must approve all property purchases by foreigners, regardless of value.

For the acquisition of non-industrial real property, the national land code (as amended) requires non-Malaysian companies or individuals to obtain approval from state authorities. Authorities are reluctant to allow such property to pass into the hands of non-nationals. Foreigners may not purchase existing farmland to cultivate products such as rubber and palm-oil trees.

In general, industrial land can be freely obtained, although an application must be filed with the state authorities. Some states, however, prohibit all landholding by non-residents.

The state governments exercise two additional forms of control over certain land transactions: non-transferability without the state government's approval and the requirement to start and finish development within a specified period. Most industrial land is leased on 33-/66-/99-year lease periods, with grace periods of 6–9 months for the physical development of the land.

According to a 2007 World Bank survey, it takes an average of five procedures and 144 days to register property, at a cost of 2.4% of the overall property value. Though the cost compares favourably with the region's average, the processing time is significantly longer than the regional average.

The FIC relaxed restrictions on foreigners purchasing Malaysian property, from August 2004. Foreigners may now purchase all types of Malaysian commercial property costing more than M$250,000 without having to form a Malaysian company and include a Malaysian partner. In addition, they may borrow from a Malaysian bank to finance the purchase. Previously, they were allowed to buy only certain types of property, and domestic financing was prohibited. Foreign individuals and companies from member countries of the Association of South-East Asian Nations had enjoyed these relaxed guidelines since 2002.

Companies awarded operational-headquarters status may own offices and office branches without any restrictions on the number of units, and without imposition of equity conditions (if each unit costs more than M$250,000).

In recent years, the government has introduced several measures to encourage foreign ownership of residential properties. New FIC regulations implemented on August 1st 2004 allow foreigners to acquire nearly all types of residential properties costing M$80,000 or more, though limitations exist on use and resale and depend on the type of property and the cost. For example, condominiums and flats costing M$80,000–300,000 may not be sold within three years of the FIC's approval of the purchase if the unit is for the buyer's own use; this holding period is five years if the unit is for rental. No resale conditions apply to units costing more than M$300,000.

Local-content requirements

There are no local-content requirements. The only such requirements left are implicit. Since imports of rice, for example, are highly restricted, companies needing rice for their products have no choice but to purchase locally produced rice.

The government continues to favour Malaysian firms and joint ventures over wholly-foreign-owned firms when awarding public works and service contracts. If there is no tender from a Malaysian firm, a joint venture with active Malaysian participation gets preference over a foreign company. For all firms bidding on government tenders, at least 30% of Malaysian equity must be in the hands of *bumiputras* (ethnic Malays and other indigenous peoples).

Business associations

There are no business associations that foreign investors must join. But voluntary memberships in the Federation of Malaysian Manufacturers (FMM), the relevant chamber of commerce and any relevant specialised industry group (like the Car Parts Association) afford numerous benefits. Membership costs for the FMM, which includes more than 2,100 companies (including about one-quarter of those listed on Bursa Malaysia, the national stockmarket), include an entrance fee of M$500 and a variable annual subscription fee (M$2,600 for an affiliate membership for non-manufacturing firms; M$900 for sole proprietorships or partnerships; and M$900–6,000 for companies, depending on the amount of issued capital).

Requirements of public and private limited companies

Capital. Minimum M$2m. No legal reserve requirements. Contribution in the form of machinery is allowed, with valuation made by an impartial party.
Founders, shareholders. Public: Minimum two founders. No residency or nationality requirements. ***Private:*** Minimum two founders. Maximum 50 shareholders, excluding employees and some former employees. No nationality or residence requirements.
Board of directors. At least two directors, each of whom have their principal or only place of residence within Malaysia (though they need not be Malaysian citizens).
Management, labour. There are no rules for including labour in management or on the board of directors. Management may be group or individual. There are no nationality or residency requirements.
Disclosure. Public: Company must issue annual reports with profit-and-loss statement and balance sheet (certified by government-approved auditors). Certain production figures must also be filed with the Department of Statistics. Outside auditors are required. ***Private:*** Annual reports and an outside auditor are required.
Taxes and fees on incorporation. Registration fees vary with the amount of authorised share capital, as follows:

Share capital	Fee (M$)	Share capital	Fee (M$)
0–100,000	1,000	over 10m–25m	20,000
100,001–500,000	3,000	over 25m–50m	40,000
500,001–1m	5,000	over 50m–100m	50,000
over 1m–5m	8,000	over 100m	70,000
over 5m–10m	10,000		

The formation of a company involves legal and printing costs of about M$2,000 for private companies and M$3,500 for public companies. There are no taxes on the issuance of shares, bonds or other issues.
Types of shares. Shares must be registered; they may be common or preferred. All ordinary shares must carry equal voting rights. Control through arrangements such as special management shares is not permitted.
Control. Decisions are always by simple majority of capital.

Establishing a local company

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

The procedures for establishing a company in Malaysia present no particular problems. Applications must be made to the Companies Commission on the prescribed form (13A) to ensure the availability of the proposed company's name, along with an M$30 fee. Thereafter, the following documents, together with registration fees, should be filed with the commission within three months: (1) a certified copy of its certificate of incorporation (or a document of similar effect) from the country of origin; (2) A certified copy with stamp duty of M$100 of its charter, statute or memorandum and M$100 of its articles of association or other instrument constituting or defining its constitution; (3) a list of its directors and certain statutory particulars regarding them (Form 79); (4) where there are local directors, a memorandum stating the powers of those directors; (5) a memorandum of appointment or power of attorney authorising one or more Malaysian resident to accept on behalf of the company, service of process and any notices required to be served on the company; and (6) statutory declaration of compliance (Form 80).

According to a 2007 World Bank survey, entrepreneurs can anticipate nine steps to launch a business, taking an average of 24 days.

The Companies Commission incorporated 39,107 local companies and 60 foreign companies in 2007, bringing the total number of registered companies in Malaysia to 799,585 at end-2007, of which 4,232 were foreign owned. By that time, the commission also had 3,568,095 businesses on its register.

Establishing a branch

Branches may be established in the same way as companies, except that prior approval is required from the Ministry of International Trade and Industry. Copies of the parent company's incorporation, charter and details of its directors are required, together with the registration fees, upon filing at the Companies Commission. A branch must also supply the name and address of at least one resident of Malaysia who is authorised to accept notices served on the company.

It should be noted that the government is often reluctant to approve branch registration unless the company has been invited to participate in a government project. Establishing a branch rather than a corporation has the advantage of retaining control.

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

The tax consequences of setting up a branch rather than a local subsidiary can depend a great deal on the taxation system of the home country. Where the latter taxes the overseas income of its residents, it is generally advisable initially to open a branch (during the loss-making period) and subsequently to incorporate a company (when the business begins to turn a profit).

Companies can also opt to establish a regional office or a representative office in Malaysia to provide services to their head offices overseas. These offices usually perform co-ordinating activities for the corporations' affiliates, subsidiaries and agents in Malaysia and in the region. Other activities performed include information gathering and feasibility studies pertaining to investment, sourcing and business opportunities in Malaysia and in the region. As at end-2007, a total of 642 regional offices and 1,430 representative offices had been approved.

Incentives

Overview

Malaysia offers a wide range of attractive incentives for companies seeking to invest in new projects or expand existing ones. These include pioneer status, special investment capital allowances, a variety of tax deductions, access to government-sponsored industrial estates, and concessional grants and loans from government agencies. Incentives, both direct and indirect, are provided for in the Promotion of Investments Act (1986), Income Tax Act (1967), Customs Act (1967), Sales Tax Act (1972), Excise Act (1976) and Free Zones Act (1990). A total of 397 projects with investments valued at M$38.8bn were approved with incentives in 2007, compared with 456 projects worth M$30.3bn in 2006.

On March 22nd 2007 the government announced its initial incentive package for the new Iskandar Development Region (IDR), a 2,200-sq-km special economic zone in southern Johor state, which borders Singapore. The IDR will target six specific service sectors: creative industries; educational services; financial advisory and consulting services; healthcare services; logistics services; and tourism-related activities. Approved projects will enjoy the following benefits: exemption from the rules of the Foreign Investment Committee; freedom to source capital globally; the ability to employ foreign employees freely within the approved zones, depending on the amount of space occupied in these zones; exemption from corporate income tax for ten years from the start of operations for activities within the zone and outside Malaysia if these operations commence before the end of 2015; and exemption from withholding tax on royalties and technical-fee payments to non-residents for ten years from commencement of operations. The IDR is managed by the Iskandar Regional Development Authority, established on February 17th 2007 under the IRDA Act. By April 2008 the IDR had attracted M$33bn in investment commitments, mainly from investors from Singapore and the Middle East. The government hopes the IDR will emulate the success of other such zones in the region, specifically the one in Shenzhen, China.

Following the launch of the IDR, the government established four more economic zones, though these are more models for regional economic development. The Northern Corridor Economic Region (NCER), an area with 4.3m people, covering the states of Perlis, Kedah, Penang and Perak, was launched on July 30th 2007. The plan for the area, which was drafted by Sime Darby, a government-linked company, envisages investing M$177bn over 2007–25 to improve the infrastructure, boost higher-value-added manufacturing, raise educational standards, stimulate tourism and modernise agriculture. The government will make one-third of the planned investments; the balance is to come from private finance initiatives and private-sector funds. The plan looks to spread manufacturing activity by encouraging a move towards higher-value-added production in Penang (now a main hub of the electronic- and electrical-goods industry) and spinning off lower-value activities to other parts in the NCER. Modernising agriculture is another important aspect of the plan.

The government rolled out the East Coast Economic Region (ECER) in October 2007. The ECER sprawls across 51% of the Malaysian peninsula, through the north-eastern states of Kelantan, Terengganu and Pahang to Mersing in southern Johor. The ECER is to focus on upgrading infrastructure, investments in petrochemicals and plastics, and farming, energy and tourism. Authorities expect to raise one-fifth of the needed M$118bn for the corridor from the private sector, another 27% from public-private initiatives and the rest from government. The government expects the ECER to create 560,000 new jobs by 2020. Terengganu is the state that produces the most oil; state energy firm Petronas and ExxonMobil (US) are the biggest operators in the state. Petronas, which drafted the plan, has said it would invest in the region.

The government launched the Sabah Development Corridor in January 2008. The 18-year plan is expected to bring in M$105bn in investments, mostly from private funding, to bridge the rural-urban divide, reduce the poverty rate, and focus on sustainable management of the state's natural resources.

The Sarawak Corridor of Renewable Energy (SCORE) was inaugurated on February 11th 2008. A total area of about 70,000 sq km is slated to be developed, affecting more than 600,000 people. According to the development plan, the core projects will involve setting up power generation plants to churn out at least 20,000 mw of electricity. Other high-priority sectors include petroleum, aluminium, metal production, glass production, tourism, palm-oil plantations, livestock, fishing, timber plantations, aquaculture and marine engineering. The government has allocated an initial sum of M$5bn in federal funds towards SCORE; private investors have announced investments totalling M$500bn.

The government has targeted a number of economic sectors for incentives, mainly high-technology companies in the Multimedia Super Corridor Malaysia (MSC), Islamic financial services, biotechnology firms, and small and medium-sized enterprises. Other favoured activities include venture capital, services, tourism, certain types of agriculture, petroleum, car-component manufacturing, specialised machinery and equipment, and energy conservation and environmental protection. Recent budgets have added incentives to bolster domestic economic development and spur exports. The 2008 budget specifically targeted Islamic financial services, renewable energy, and energy conservation.

Investments in less-developed areas qualify for many of the same programmes, but they receive additional benefits for bringing business activity to these areas. The 2007 budget added the state of Perlis to the Eastern Corridor of peninsular Malaysia, which is one of the promoted areas, along with the states of Sabah and Sarawak.

The government is also keen to promote exporters, offering them a variety of tax exemptions and deductions. Particularly broad benefits flow to firms that qualify to create international procurement centres and regional distribution centres. Offshore financial services are favoured on the island of Labuan.

Applications for non-tax incentives and pioneer status go to the Malaysian Industrial Development Authority; applications for tax incentives go to the Inland Revenue Board. Incentives depend on factors such as export status and value-added production; the level of technology and sophistication of the production process; the amount of skill development and research and development involved; and the level of local participation.

General incentives

Malaysia offers companies a wide variety of general investment incentives. Unless otherwise specified, all the following incentives are available to foreign-invested projects.

Pioneer status is available to any company in any manufacturing, agricultural, hotel, tourism, or other industrial or commercial sector that participates in a promoted activity or form of production. Pioneer status granted after November 1991 limits tax liability to just 30% of a firm's statutory income—hence, an effective tax rate of less than 10%—for five years (though specified promoted activities qualify for longer periods). The exemption period starts from the company's "Production Day" (defined as the day its production level reaches 30% of its capacity). In addition, dividends to shareholders are tax exempt if they are paid out of tax-exempt income.

Moreover, the government may award more-favourable tax relief on a case-by-case basis to strategic projects of national importance (like heavy capital investment and high-tech projects that can generate extensive linkages); this relief includes up to 100% exemption and extension of the tax-relief period by another five years. The 2006 budget announced that companies whose pioneer period expired after September 30th 2005 could carry forward unabsorbed losses and deduct these from post-pioneer income from a business relating to the same promoted activity or product. Previously, companies awarded pioneer status had to ensure that all capital allowances were used during the pioneer period. Investments in promoted areas (the states of Sabah and Sarawak and the Eastern Corridor of peninsular Malaysia) can apply for more-favourable relief.

Pioneers status was granted to 150 projects in 2007. These involved investments of M$3.5bn.

Investment tax allowance. This ITA is an alternative to pioneer status for firms participating in a promoted activity or form of production. The ITA affords a tax deduction equivalent to 60% of qualifying capital expenditure incurred within five years from the date of approval. The firm may used the allowance to offset up to 70% of statutory income in the year of assessment; it can carry forward any unused balance to subsequent years. To discourage companies from taking advantage of loss-making companies, the 2006 budget announced that a company may not carry forward accumulated losses and unabsorbed capital allowances if there is a change of more than 50% in its shareholdings. Dividends paid to shareholders out of tax-exempt income are tax free.

Once all planned capital expenditures have been incurred, firms granted the ITA may give up the incentive before its expiration in order to qualify for other incentives, such as income abatement for exports. ITAs offer greater deductions for certain types of investments in less-developed areas, including Sabah, Sarawak and the Eastern Corridor of peninsular Malaysia, and also to strategic projects in other regions.

The government granted ITAs to just 18 projects in 2007. These involved investments of about M$700m.

Generally, neither pioneer status nor ITAs are granted to companies that previously enjoyed these incentives for similar products or activities. However, exceptions are made for certain promoted sectors and areas, such as research and development and projects in the less-developed areas of Malaysia.

Small-scale manufacturing companies face looser criteria in qualifying for pioneer status or ITA. These firms are defined as having shareholder funds of less than M$500,000 and at least 60% local equity. They must be active in one of the many promoted sectors. Moreover, their value-added ratio must be at least 15%, or they must contribute to rural development.

Reinvestment allowances (in addition to normal capital allowances), at the rate of 60% of capital expenditure, are available to manufacturing companies investing in plant, machinery and industrial buildings for approved expansion of capacity, modernisation of facilities and diversification into related products. The allowance can be offset against 70% of statutory income for the year of assessment (100% if the reinvestment concerns projects in promoted areas or if the company attains a productivity level exceeding that determined by the Ministry of Finance). A company can carry forward any unused allowance to subsequent years until fully used. The company must have an operating history of at least one year, and assets acquired from a reinvestment allowance may not be disposed of for two years.

The 2002 budget extended the term of allowances incurred following the capital expenditure to 15 years (from five years). To encourage local food production, these reinvestment allowances apply to many agricultural activities. Companies may also obtain accelerated allowances on capital expenditures upon expiry of the reinvestment allowance. Tax-exempt amounts may be distributed as tax-exempt dividends.

A company that intends to reinvest before its pioneer status expires can apply to have that status cancelled and be eligible instead for a reinvestment allowance. Applications for reinvestment allowances go to the Inland Revenue Board; applications for the surrender of pioneer status go to MIDA.

Accelerated capital allowances. After the 15-year period of eligibility for reinvestment allowances, companies that reinvest in the manufacture of promoted products are eligible to apply for accelerated capital allowances. There is an initial allowance of 40% and an annual allowance of 20%, which must be used within three years.

Industrial building allowances of 10% in the first year and 3% annually thereafter are granted to firms for the cost of buildings used for manufacturing, agriculture, mining, infrastructure facilities, research, approved service projects, and hotels that are registered with the Ministry of Arts, Culture and Heritage or with the Ministry of Tourism. Warehouse buildings used for export and re-export of imported goods, and buildings used for training, accommodation or child care get a special allowance of 10% per year for ten years. The 2005 budget changed the basis for computing the allowance from residual value of its construction cost to current purchase price. The 2006 budget extended the allowance to buildings in the high-technology enclave of Cyberjaya that are occupied by companies holding Multimedia Super Corridor Status (see below).

Research-and-development tax deductions are available for expenditures incurred on scientific research undertaken by a taxpayer or related to a taxpayer's business. The Ministry of Finance may approve certain expenditures for double deductions. Beginning in the year of assessment 2004, researchers who focus on "value creation" research (to be verified by the Ministry of Science, Technology and Innovation) are given a 50% tax exemption for five years on the income they receive from the commercialisation of their findings. The 2005 budget extended certain benefits to commercialisation of R&D findings by public-sector research institutes.

R&D companies are eligible for an investment tax allowance (ITA) of 100% on capital expenditure incurred within ten years. The allowance can be offset against 70% of income in the year of assessment. Should an R&D company opt not to avail itself of the allowance, its related companies can enjoy a double deduction for payments made to the R&D company for services rendered. Contract R&D companies (those that provide R&D services in Malaysia to companies to which they are not related) are eligible for pioneer status with a 100% tax exemption for five years, or an ITA of 100% on capital expenditure incurred within ten years, which can be offset against 70% of income in the year of assessment.

Both types of R&D companies need to fulfil certain criteria to be eligible. A company that undertakes in-house R&D to further its business can apply for an ITA of 50% on capital expenditure incurred within ten years. The company can offset the allowance against 70% of its income in the year of assessment. Since May 2003, (contract) R&D companies and in-house R&D have been eligible for a second round of pioneer status for another five years, or ITA for another ten years.

In 2007 seven R&D projects involving investment of M$18.9m received pioneer status or ITA incentives. The value of foreign investments in these R&D projects amounted to M$12.5m.

R&D projects may be eligible for one of six government funds or grant schemes established to spur the sector. The latest additions were made in 2006: the Science Fund provides funding from basic research to the development of laboratory-scale prototype; the Techno Fund is a grant scheme to develop technologies for commercialisation.

Value-added manufacturing-services deductions encourage manufacturers to invest in value-added activities, such as logistical support, integrated market support services and the establishment of utility service centres. Companies can apply for pioneer status providing a tax exemption on 70% of statutory income (100% for projects in Sabah and Sarawak or in the Eastern Corridor of peninsular Malaysia) for five years, or ITA of 60% of capital expenditure (100% for projects in the promoted areas) to be offset against 70% of statutory income (100% for projects in promoted areas) for five years. They may also enjoy import duty and sales tax exemptions on equipment for such investments.

Training deductions have been granted since 1993 for approved training programmes that resident companies sponsor for their full-time Malaysian employees. Firms enrolling their employees in training institutions approved by the Ministry of Finance or in training programmes approved by the Ministry of Tourism (for the tourism industry) may claim double deductions on costs.

Manufacturing companies employing at least 50 Malaysian workers, and those that employ 10–49 workers and that have paid-up capital of at least M$2.5m, are eligible for assistance from the Human Resources Development Fund if the companies contribute to the fund for at least six months at the rate of 1% of employees' wages. Companies that do not contribute to the fund qualify for double deduction on training expenses. For manufacturing firms, the training is allowed to be in-house or at approved institutions. For non-manufacturing companies, only training at approved institutions is deductible.

Overseas acquisitions. Capital expenditure to acquire patents, designs, models, plans, trademarks or brands and other similar rights from foreigners qualify as a deduction in the computation of income tax. This deduction is in the form of an annual deduction of 20% over five years. A Malaysian-owned company that acquires a foreign-owned company abroad to obtain high technology for production within Malaysia or to gain new export markets for local products qualifies for a deduction equivalent to the acquisition costs for five years.

Industrial linkage programme. The Small and Medium Industries Development Corp (Smidec) established an industrial linkage programme in 1998 to help small and medium-sized enterprises (SMEs) supply industrial components to larger or multinational companies. SMEs must manufacture promoted products or undertake promoted activities to qualify for pioneer status with tax exemption of 100% on statutory income for five years, or an ITA of 60% on qualifying capital expenditure incurred within a period of five years. For large companies, expenses incurred in developing SMEs (such as training, factory auditing and technical assistance to ensure the quality of vendors' products) are allowed as deductions in computing income tax. Specialised industrial estates have also been established.

Operational headquarters (OHQ) status. Companies granted OHQ status are exempt from paying income taxes for ten years on business income, interest income and royalties received. OHQ status is available to any company residing in Malaysia fulfilling the following criteria: having minimum paid-up capital of M$500,000; having minimum total business spending of M$1.5m per year; appointing at least three senior professional/management personnel; serving at least three related companies outside Malaysia; having a sizeable network of companies outside Malaysia; and having a well-established network of companies that employ substantial numbers of qualified professionals and technical and supporting personnel.

Such companies must also conduct at least three of the following activities for themselves or on behalf of related companies: (1) management and administration; (2) business planning and co-ordination; (3) procurement of raw materials, components and finished products; (4) technical support and maintenance; (5) marketing and sales-promotion planning; (6) data or information management and processing; (7) research and development; (8) training and personnel management; (9) treasury and fund-management services; or (10) corporate financial advisory services. However, some activities under categories nine and ten are restricted. A "related company" is one that the OHQ does or can control, or by which the OHQ is or can be controlled, directly or indirectly.

OHQs may take the following actions: (1) borrow up to M$50m in ringgit from residents for any purpose in Malaysia without restrictions; (2) borrow any amount in foreign currency for treasury and fund-management operations of their related overseas companies without the approval of Bank Negara Malaysia (the central bank); (3) invest in foreign securities and lend to related overseas companies if the domestic borrowing in ringgit is within the M$50m limit and the remittances are in the foreign-currency equivalent; (4) open foreign-currency accounts with local commercial banks to retain export proceeds in foreign currency up to an aggregate overnight balance equivalent to US$70m (regardless of the amount of export receipts); and (5) open foreign-currency accounts for crediting foreign-currency receivables, other than export proceeds, with no limit on the overnight balances.

Beginning in the year of assessment 2003, income from qualifying services provided by an OHQ to its related companies in Malaysia during its ten-year incentive period is tax exempt if such income does not exceed 20% of the OHQ's income from qualifying services.

OHQs can obtain approval for expatriate posts based on the needs of the company. Expatriates working in an OHQ are taxed only on that portion of their chargeable income attributable to the number of days that they are in the country.

By end-2007, 150 companies with total paid-up capital of M$669.3m and estimated annual business spending of M$1.8bn had received OHQ status, though only 96 OHQs had actually started operations at that time. Of these 150 firms, 30 were from the United States, 14 each were from Japan and Germany, 11 were from the UK and ten each were from Australia and the Netherlands. A total of 1,835 expatriates were approved to be employed in these OHQs. A total of 17 OHQs with projected annual business spending of M$323.7m were approved in 2007.

Industry-specific incentives

Strategic projects of national importance can qualify, on a very selective case-by-case basis, for highly favourable tax relief (up to 100%). These include projects with heavy capital investment and advanced technology that can generate extensive linkages to the Malaysian economy. Three projects received such incentives in 2007; these projects were engaged in petroleum and petrochemicals, specialised scientific measuring equipment, and non-metallic mineral products, and they involved total investments of M$246.5m.

Customised incentives. In view of the competition for global direct investment, the government can grant special discretionary packages of customised incentives (both tax and non-tax based) for selected projects. The projects considered for these incentives are those that are technology intensive, capital intensive, knowledge- and skills-driven, and capable of generating significant linkages and also contributing to the development of manufacturing-support services, such as research and development, procurement, marketing and distribution. A total of 36 manufacturing projects with total investment of M$33.1bn received this type of incentive in 2007. Of the 36 projects, 12 were in the electronics industry (with total investments of M$8.2bn), five involved basic-metal products (M$8.9bn), and three were in the petroleum and petrochemicals sector (M$10.9bn).

On a more general basis, the government uses industry-specific incentives liberally to bolster areas it sees as a national boon or developmental necessity.

High-tech industries, for example, were bolstered by the official launch in mid-1996 of the Multimedia Super Corridor Malaysia (MSC; renamed from Multimedia Super Corridor in April 2006) in and around Kuala Lumpur. The plan has mobilised more than US$3bn for construction projects alone, including the Kuala Lumpur City Centre, whose first phase was completed in 1998 with the construction of two of the world's tallest buildings (the Petronas Towers) and several other facilities. These include Putrajaya, Malaysia's new electronic government administrative centre (the first phase is now complete and its final completion is set for 2015–20), and Cyberjaya, an M$2bn development of "smart" buildings to house information-technology (IT) enterprises in suburban Sepang (about 64 km south of Kuala Lumpur). Besides these development projects, the MSC includes the M$9bn Kuala Lumpur International Airport, which opened in 1998. In early 2005 the government extended the MSC to Bayan Lepas on the northern island of Penang and the nearby Kulim High-Tech Park. These two areas have been very successful in attracting foreign electronics companies. In December 2006 the MSC expanded to include the entire Klang Valley metropolitan area (which includes Kuala Lumpur, Putrajaya and Cyberjaya). The Ninth Malaysia Plan, which is to guide the country's development through 2010, plans four other "cyber-cities"—one each in Perak, Sarawak, Malacca, and Johor states (one location in each of the latter two states has a similar "cyber-centre" status). The plan has allocated nearly M$13bn for IT-related programmes and projects.

The government has targeted seven "flagship applications" for development in the MSC. These are electronic government; tele-medicine; "smart" schools, which emphasise IT as part of both the educational process and the curriculum; R&D clusters; worldwide manufacturing webs; "technopreneur" development; and the development of a "Government Multipurpose Card" that would serve as a credit card, identification document, driving licence and storage medium for medical records. By April 2008 progress had been made mainly in the multipurpose card, electronic government and "smart" schools applications. The government's development plans (such as the National Biotechnology Plan and the National Automotive Policy) is slowly leading to more clusters, but it has had few substantial achievements in tele-medicine and "technopreneur" development. The government started issuing multipurpose cards—the MyKad—in January 2003; all citizens are expected to carry this card.

The Multimedia Development Corp (MDeC) had approved 1,994 MSC companies by end-2007. The government intends to mix domestic talents with foreign expertise, creating an environment in which a group of local investors can reap the benefits of co-operation with foreign technology leaders. Malaysian investors are majority shareholders in nearly three-quarters of MSC companies; investors from Australia, Europe, India, Japan, North America and Singapore account for most of the rest. Just over 42% of all MSC companies are engaged in software development; others are active in embedded software and hardware, Internet-based businesses and "creative multimedia". In 2007, 266 companies, with approved investments worth M$3.7bn, received MSC status.

The MDeC, as a one-stop agency, processes all applications for MSC status. The following criteria apply: (1) providing or heavily using multimedia products and services; (2) employing a substantial number of knowledge workers; (3) providing technology transfer and/or contributing towards the development of the MSC or supporting Malaysia's knowledge-economy initiatives; (4) establishing a separate legal entity for the MSC-qualifying multimedia business and activities; (5) being in an MSC-designated cyber-city; and (6) complying with environmental guidelines.

A number of benefits are available to high-tech companies entering the site, including the following: (1) pioneer status for five years (which can be extended another five years) or an investment tax allowance (ITA) of 100% for a new company or an existing company on the income the firm receives after gaining pioneer status; (2) a 100% ITA; (3) duty-free import of multimedia equipment; and (4) more-liberal guidelines on foreign-currency transactions and loans. Small and medium-sized industries undertaking R&D activities receive some special funding allocations for seed capital if they are at least 51% Malaysian owned. These companies can now obtain up to 70% funding for their R&D activities through the MSC Research and Development Grant Scheme.

Non-financial incentives for MSC firms include: (1) unrestricted employment of foreign knowledge workers; (2) exemption from local-ownership requirements; and (3) no censorship of the Internet.

The 2008 budget announced that the government wants to centralise high-technology companies in cyber-cities. Companies relocating to these centres will be eligible for full MSC status incentives. At the same time, the government discontinued incentives for information and communications technology companies and for software developers outside the cyber-cities.

Even those not in the MSC can qualify for pioneer status or for an ITA of 50–70% (depending on their activity); this percentage is on the qualifying capital expenditure incurred within five years of the first such expenditure if the company is engaged in promoted activities or in producing promoted products in areas of new and emerging technologies. In addition, the company must fulfil two criteria: (1) the proportion of local R&D expenditure to gross sales must be at least 1% on an annual basis (the company has three years from commencement of business to comply with this requirement); and (2) scientific and technical staff with degrees or diplomas and a minimum of five years experience in related fields should make up at least 7% of the company's total workforce.

The 2006 budget announced that high-technology firms outside the MSC areas can qualify for one of the following if they are recommended by the MDeC: (1) pioneer status with a 50% tax exemption on statutory income for five years; or (2) an ITA of 50% on the qualifying capital expenditure incurred within five years (to be set off against 50% of statutory income for each year of assessment). Incentives in 2007 under these schemes were granted to 11 high-technology projects outside the MSC, involving investment worth M$242.4m.

Companies have been able to apply for Strategic Knowledge-based Status since September 2002. They must have the following characteristics: (1) potential to generate knowledge content; (2) high-value-added operations; (3) use of high technology; (4) large number of knowledge workers; and (5) corporate knowledge-based master plan. Such companies are eligible for pioneer status with a 100% tax exemption for five years, or an ITA of 60% on the qualifying capital expenditure incurred within five years. The allowance can be offset against 100% of the statutory income in the year of assessment.

Companies that develop original software or significantly modify existing software are eligible for pioneer status with a tax exemption of 70% of income for five years if (1) the software is for a general purpose and not for a specific customer, and (2) for those companies undertaking modifications, the cost of acquiring the existing packages does not exceed 25% of the modification expenditure.

Information-technology companies can apply for a tax exemption on their income, equivalent to 50% of the value of increased exports.

The government also provides various funds that high-tech companies can draw on; the two most prominent are the M$600m Science Fund (for scientists and experts carrying out fundamental research) and the M$1.2bn Fund for Industry, to assist companies to bring technology into the market. The Ministry of Science, Technology and Innovation administers both funds.

Small and medium-sized enterprises (SMEs) incorporated in Malaysia with shareholders' funds of up to M$500,000 and at least 60% Malaysian equity qualify for pioneer status with a tax exemption of 100% of income for five years or an ITA of 60%. To qualify for the incentive, the company has to be active in a promoted sector and comply with either of the following criteria: (1) the value added must be at least 15% or (2) the project must contribute to the socio-economic development of the rural population. In 2007, 146 small-scale projects received incentives, with investments worth M$290.4m.

Beginning in 2007, SMEs have faced the same corporate income tax rate (of 27%) as other companies. SMEs with paid-up capital of up to M$2.5m had been eligible for a reduced tax of 20% on the chargeable income of up to M$100,000, with the tax rate on the remaining chargeable income maintained at the prevailing level.

The SME Bank—a development-finance institution that serves SMEs in manufacturing and services sectors—started operations on October 3rd 2005. The bank is a subsidiary of the Development Bank of Malaysia, which formed through a merger of the Industrial and Technology Bank of Malaysia and the Development and Infrastructure Bank.

SMEs can draw from more than 100 programmes from by various government departments; in 2006 total expenditure on these schemes reached M$16.4bn and helped more than 248,000 such enterprises.

Venture capital has been one of the government's main targets for growth in recent years. The 2007 budget announced that venture-capital companies investing at least 50% of their investment funds in venture companies in the form of seed capital would receive income tax exemption for ten years (down from 70% previously). The 2004 budget had increased the fund for its Malaysian Venture Capital Management (Mavcap) by M$300m, to M$800m. Its Malaysian Debt Venture has a fund of M$650m. The 2003 budget had established the Malaysian Technology Development Corporation, with a fund of M$1bn, to finance investment in areas such as logistics and the modernisation of agriculture.

In addition, the 2004 budget extended tax exemptions for private venture-capital management companies on income received from profit-sharing agreements with venture-capital companies. To encourage high-risk investments, the 2001 budget made investments in venture companies at the start-up, seed-capital and early financing stages fully tax deductible. If the investing company does not have sufficient statutory income to offset the investment, the deductions may be carried forward. This incentive is conditional upon the investing company retaining equity in venture companies until they are listed.

Biotechnology. The government has identified biotechnology as another driver of future growth, and the 2007 budget introduced the following incentives for the sector: (1) a company awarded "bio-nexus" status by the Malaysian Biotechnology Corp will receive a concessionary tax rate of 20% on income from qualifying activities for ten years upon the expiry of its ten-year tax exemption period; (2) a company or an individual investing in a bio-nexus company will be given a tax deduction equivalent to total investment made in seed capital and early stage financing; (3) a bio-nexus company undertaking a merger or acquisition with a biotechnology company will be given exemption of stamp duty within a period of five years until end-2011; and (4) buildings used solely for the purpose of biotechnology research activities will qualify for an industrial building allowance for ten years. The government in April 2005 launched its National Biotechnology Plan, which covers the development of biotechnology in agriculture, healthcare, industry and bio-informatics. The plan centres on the "Bio-Valley" in the MSC and is overseen by the Malaysian Biotechnology Corp. The government has allocated M$2bn to the programme, of which 46% has been earmarked for developing physical infrastructure and the balance for research and development, product commercialisation and business development. The 2006 budget, released in September 2005, announced the establishment of an M$100m Malaysian Life Sciences Capital Fund, a venture-capital fund specifically for biotechnology firms. The government hopes its biotechnology plan will have created some 280,000 jobs by 2020. By April 2008, 51 companies, with a combined investment value of

M$1bn, had received bio-nexus status. The Malaysian Biotechnology Corp is targeting 70 bio-nexus firms by end-2008.

Islamic finance sector. The government has identified Islamic finance as a high-priority sector. The 2008 budget extended the incentives available to the fast-expanding sector, including: making all fees received for managing Islamic funds fully tax exempt until year of assessment 2016; making licensed non-resident experts in Islamic finance exempt from personal tax until year of assessment 2016; and improving tax treatment for *takaful* companies (which provide insurance conforming to Islamic principals). The 2007 budget had introduced a wide range of incentives, such as full tax exemption until year of assessment 2016, to Islamic banks and to *takaful* on income derived from business conducted in foreign currencies, including transactions with Malaysian residents. Other incentives were a 20% stamp-duty exemption on Islamic financial products approved by the *sharia* advisory council of either Bank Negara Malaysia or the Securities Commission (SC) between September 2nd 2006 and December 31st 2007, and allowing local and foreign companies managing SC-approved *sharia*-compliant funds of foreign investors to receive full income tax exemption on the management fees in year of assessment 2007 until year of assessment 2016. Profits or interest income received by non-residents from financial institutions established under the Islamic Banking Act 1983, and other Islamic financial institutions approved by the Minister of Finance, have been tax exempt since September 2006. (Previously, only interest income received by non-residents from banking and financial institutions established under the Banking and Financial Institutions Act 1989 had been exempt from tax.)

Service-sector investments are eligible for certain tax incentives to promote staff training and R&D, industrial building allowances and infrastructure allowances. Approved service-project status is available for utilities, transport and communications projects, which may choose (corporate) income tax relief directly (to be applied yearly during the life of the relief) or in relation to ITAs (any unused allowance may be carried forward to offset future tax liabilities). Companies providing services in transport and telecommunications, power plants and port operators can apply for exemption from import duty and sales tax on spares and consumables that are not produced locally. In 2007, eight logistics projects involving total investments of M$1.3bn received incentives, as did two market-support projects (comprising branding, market research and/or customer relationship management) worth M$11.1m.

Income derived from the operation of Malaysian ships by resident entities is tax exempt, as are dividends distributed to shareholders from such income. Since 1998 companies providing health, education, publishing and professional services have received an across-the-board income tax exemption equivalent to 10% of the increase in export value.

Tourism also offers numerous tax incentives, such as pioneer status or an ITA for five years for the following types of investment projects: construction of mid-priced or budget hotels; construction of holiday camps and recreation projects; construction of convention centres with hall capacities of at least 3,000 participants; and expansion or modernisation of existing hotels.

Companies in the promoted areas or on the island of Labuan have enjoyed 100% tax exemption under pioneer status or ITAs (the exemption is 70% for other areas) since September 2003.

An industrial building allowance of an initial 10% and an annual allowance of 2% are granted in tourism. Annual capital allowances of 10% over eight years also apply to furniture and fittings used in the hotel industry, and general machinery has an annual allowance of 14% over six years. Tourism also benefits from other incentives. Approved tour operators that annually bring in at least 500 foreign tourists or 1,200 local tourists through group tours are exempt from tax on income related to such business until 2011 (following an extension in the 2007 budget); a double tax deduction is granted to hotels and tour operators for expenses incurred for overseas promotion and for approved training programmes. Hotels and restaurants are eligible for exemption from the service tax under a spending plan that aims to support businesses.

Companies that construct, repair or provide chartering services of luxury yachts are eligible for pioneer status or exemption from income tax.

Arts and cultural performances by local artists held in the Federal Territory of Kuala Lumpur, Labuan and Putrajaya receive full exemption on entertainment duty if the Ministry of Arts, Culture and Heritage has approved the performances. The 2006 budget announced exemptions from import duty and sales tax on equipment used in stage shows and performances. It also granted exemption from withholding tax (which was 10% previously) to non-resident individuals who provide training in the arts.

Private higher-education institutions that provide technical and vocational courses are eligible for a tax deduction equivalent to the full cost of qualifying capital expenditure incurred within ten years, which may be used to offset up to 70% of statutory income. This incentive is also available to existing institutions that upgrade their equipment or expand their capacity to conduct such courses. The 2006 budget extended this incentive to institutions offering certain science courses, mainly relating to biotechnology, medicine and food technology.

Agricultural projects are eligible for pioneer status or an ITA for certain capital expenditures, such as clearing and preparing land and planting crops, and the construction of access roads, residences or other buildings on a farm. Agricultural projects applying for an ITA are eligible for an additional five years for expenses incurred in processing and manufacturing operations. Exporters of fresh and dried fruits, fresh and dried flowers, ornamental plants, and ornamental fish may take a tax allowance of 10% of the increase in export value. To reduce dependence on labour and to promote mechanisation and automation, the 2005 budget made capital expenditure on machinery and equipment used in agriculture (including plantations) eligible for accelerated capital allowance for two years, thereby increasing the annual allowance from 10–20% to 40%.

Expenses incurred by companies in obtaining *halal* (suitable for consumption by Muslims) certification are allowed as double income tax deductions (the 2005 budget increased this from a single deduction). Other quality certification and accreditation expenses are allowed as single income tax deductions. Companies that have obtained *halal* certification since September 11th 2004 qualify for an ITA of 100% for five years.

The Ninth Malaysia Plan in September 2006 authorised the government to set up the Halal Industry Development Corp to streamline and co-ordinate the development of the industry. It introduced a M$25m fund for the *halal* products industry, and *halal* food parks are being developed, though none were operational as at April 2008.

Companies engaged in food production qualify for pioneer status or an ITA under the Promotion of Investments Act 1986, or 100% capital allowance under Schedule 4A of Income Tax Act 1967. Those that reinvest for expansion or diversification are eligible for the Reinvestment Allowance under the Income Tax Act 1967.

In the 2000 budget, the government introduced incentives for food distributors that provide cold-food processing and storage facilities. These incentives include exemption from income tax for ten years, beginning in the first year of profitability; the right of holding companies to deduct losses incurred by subsidiaries; and pioneer status or an ITA of 60%. The 2003 budget granted another round of income tax exemption: 70% for five years, or an ITA of 60% for five years, to locally owned food-processing companies that reinvest. Reinvestment allowances and accelerated capital allowances are available as well.

The 2005 budget reduced the equity condition for a company that invests in its subsidiary from 100% to at least 70%. This was done to increase food production and to attract more companies to participate in sectors such as cultivation of vegetables, fruits, herbs and spices; aquaculture; raising of cattle, goats and sheep; deep-sea fishing; and kenaf (a fibre crop). Companies have to apply for this incentive to the Ministry of Agriculture before end-December 2010.

To ensure a regular supply of rubberwood for the furniture industry, a non-rubber plantation company that plants at least 10% of its plantation with rubberwood trees is eligible for the accelerated agriculture allowance. This allowance accelerates the write-off period on the capital expenditure incurred for land preparation, planting and maintenance from two years to one year.

Automotive component manufacturers that are active in the design, R&D and production of qualifying modules or systems are eligible for pioneer status, with a tax exemption of 100% of the statutory income for five years, or ITA of 60% on the qualifying capital expenditure incurred within five years from the date that the company first incurs the capital expenditure.

Manufacturers of specialised machinery and equipment. Incentives are available for manufacturers of the following: machine tools, plastic-injection machines, plastic-extrusion machinery, material-handling equipment, packaging machinery, robotics and factory-automation equipment, specialised/process machinery or equipment for specific industries, and parts and components of the mentioned machinery and equipment. The incentives include pioneer status, with a tax exemption of 100% of the statutory income for ten years, or ITA of 100% on the qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred.

Since September 2003 existing locally owned companies that reinvest in the production of certain types of heavy and specialised machinery have been eligible for pioneer status with a tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years, or ITA of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within five years. During 2007, 21 projects in this sector, with investments worth M$179.8m, were approved for incentives.

Since September 8th 2007 companies investing in a new laboratory for testing medical devises are eligible for pioneer status, with a tax exemption of 100% of the statutory income for five years, or ITA of 60% on the qualifying capital expenditure incurred within five years. Firms upgrading an existing laboratory can qualify for ITA of 60% on the qualifying capital expenditure incurred within five years.

Environmental incentives. The government began offering tax breaks for energy conservation and environmental protection in the 2001 budget and has amended the incentives in most subsequent budgets, most recently in the 2008 budget. The government is targeting 350 mw of electricity to be generated from renewable sources of energy by 2010. Companies generating energy from renewable sources, such as biomass, hydroelectric power (not more than 10 mw) and solar power are now eligible for pioneer status, with a tax exemption of 100% of statutory income for ten years or an ITA of 100% on the qualifying capital expenditure incurred within five years, and import duty and sales-tax exemptions on machinery used in the projects. The 2006 budget also extended these incentives for five more years, until end-2010. The 2005 budget had granted accelerated capital allowance of 80% in the first year for equipment using renewable energy. In 2007 ten such projects, involving total investment of M$338.5m and a combined estimated energy generation capacity of 24 mw, had been granted pioneer status or ITA incentives.

To encourage companies to invest in projects that reduce greenhouse-gas emissions, the 2008 budget announced that income derived from trading of certified emission-reduction certificates will receive income tax exemption from year of assessment 2008 until year of assessment 2010.

The 2004 budget enhanced the incentives for companies using oil-palm biomass to produce value-added products such as particleboard, plywood, pulp and paper. New companies are eligible for pioneer status with a tax exemption of 100% of statutory income for ten years, or an ITA of 100% on the qualifying capital expenditure incurred within five years. The allowance can be used to offset 100% of statutory income for each year of assessment. Existing companies that reinvest are eligible for pioneer status with a tax exemption of 100% on the increased statutory income arising from the reinvestment for ten years, or an ITA of 100% on the additional qualifying capital expenditure incurred within five years. The allowance can be used to offset 100% of statutory income for each year of assessment. Ten such projects, involving total investment of M$332.8m, were granted pioneer status or ITA incentives in 2007.

Companies providing energy-conservation services are eligible for pioneer status with a tax exemption of 100% of statutory income for ten years (increased from 70% for five years in the 2008 budget) or an ITA of 100% (increased from 60%) on the qualifying capital expenditure incurred within five years, with the allowance to offset 70% of the statutory income for each year of assessment. These firms are also eligible for exemptions of sales tax and of import duty on equipment not produced locally. The 2006 budget extended these incentives for five years, until end-2010. Companies that incur capital expenditures for conserving energy for their own consumption are eligible for an ITA of 100% (increased from 60% in the 2008 budget) on the qualifying capital expenditure incurred within five years, with the allowance to offset 100% (increased from 70%) of statutory income for each year of assessment. Four such projects, worth a total investment of M$4.1bn got pioneer status or ITA incentives In 2007. When fully implemented, these projects will be able to conserve about 147 mw of electricity per year.

Companies using environmental-protection equipment receive an initial allowance of 40% and an annual allowance of 20% on the capital expenditure incurred on such equipment. Incentives are also offered to companies providing energy-conservation services; recycling waste; converting vehicles to run on natural gas; or setting up facilities to store, treat and dispose of toxic and hazardous waste.

Regional incentives

Since September 2nd 2006 the northern state of Perlis is part of the promoted area of the Eastern Corridor of peninsular Malaysia (which also includes the states of Kelantan, Terengganu and Pahang, and the district of Mersing in Johor state) as well as Sabah and Sarawak states.

Projects eligible for pioneer status in these areas get an exemption of 100% of their statutory income (compared with 70% for other areas). Those that qualify for the investment tax allowance (ITA) are allowed 100% of qualifying capital expenditure incurred within five years (compared with 60% in other areas), and the maximum amount that can be abated for each year is not limited, as it is in other areas, to 70% of the profits after the deduction of capital allowance. Since September 11th 2005, projects have been allowed a second round of these incentives.

Moreover, a reinvestment allowance (RA) of 60% on qualifying capital expenditure (compared with 70% of statutory income in other areas), which can offset the RA against the statutory income without any restriction, is available to manufacturing and agricultural companies.

Infrastructure allowances of 100% are available for expenditures incurred by companies in the promoted areas that reconstruct, extend or improve any permanent structure. Companies can offset the allowance against 85% of their income in the year of assessment; any unused allowance can be carried forward to subsequent years until fully used. The 2006 budget extended the deadline for applications for this incentive by five years, to end-December 2010.

Manufacturers that ship their goods from Sabah and Sarawak to peninsular Malaysia qualify for a double income-tax deduction on freight charges. Those that export rattan and wood-based products (excluding sawn timber and veneer) from the two states also qualify for a double deduction on freight charges.

Despite these incentives, investments in these promoted areas remain largely confined to projects involving extraction or processing of natural resources. In 2007, 115 projects, with total investment of M$12.6bn, were approved for these promoted areas. Of these projects, 41 were proposed for Sabah and 23 for Sarawak. The more-developed states of Selangor, Johor and Penang, meanwhile, attracted 640 projects in 2007, or just over two-thirds of all approved projects in the year.

Malaysia also offers free zones for exporting firms and numerous industrial estates. Indeed, it has more than 200 industrial estates, and the spill-over from existing ones is prompting the development of adjacent industrial parks. New estates are being developed, such as in Sabah, where developed land is in short supply.

Various state governments actively promote industrial estates by providing financial assistance to establish them and by building to order for each occupant. For example, the Penang state government has been pushing its electronics industry into high technology. Firms may lease property on negotiated terms but may not buy property outright. Lease periods are 60–99 years.

Export incentives and zones

Malaysia offers many incentives for exporters and other companies earning foreign currency. Export incentives include the following:

- Manufacturing companies qualify for a tax exemption equivalent to 10% of the value of increased exports if the goods exported attain at least 30% value added, or 15% of the value of increased exports if the goods exported attain at least 50% value added. Moreover, Malaysian-owned companies with local equity of at least 60% that record an increase in exports qualify for an income tax exemption of 30% on the increased exports; those companies that penetrate new markets qualify for a 50% exemption. Firms that record the highest increase in exports in certain categories qualify for full income tax exemption. Companies in selected services sectors receive 50% tax exemption on the value of increased exports.

- A double tax deduction is allowed for expenses incurred by resident companies seeking export opportunities for manufactured and agricultural products. Among the deductible items are expenditures for overseas advertising, supply of free samples abroad, market research, preparation of tenders for the supply of goods overseas, supply of technical information abroad, public-relations work connected with exports, exhibits and/or participation in trade or industrial exhibitions, overseas travel fares and accommodation, and the maintenance of an overseas sales office. Companies with pioneer status may accumulate deductions to be used against their post-pioneer income. Since assessment year 2003, some partnerships and sole proprietorships registered with the Companies Commission of Malaysia have also been eligible for this incentive if they provide one of the following services: legal, accounting (including taxation and management consultancy), architectural (including town planning and landscaping), engineering (including valuation and quantity surveying), or medical and dental.

- The following service sectors are eligible for tax exemption of their statutory income equivalent to 50% of the value of increased exports: legal, accounting, engineering consultancy, architecture, marketing, business consultancy, office services, construction management, building management, plantation management, private health and education, publishing, and information and communications technology.

- Firms producing or assembling products 100% (less in exceptional cases) for export may apply to be within one of Malaysia's 25 designated free zones. These are designed for manufacturing and trading establishments that export all their products and enjoy minimum customs control and formalities in their import of raw materials, parts, machinery and equipment, as well as in the exports of their finished products. In exceptional cases, the Ministry of International Trade and Industry may allow companies exporting at least 80% of their products to be in a free zone. If goods are sent out of the zone for domestic consumption, they are subject to normal customs duties as though imported from a foreign source (though firms may apply to the Ministry of Finance for exemption of such sales from import duties). Goods exported from Malaysia to a free zone are eligible for duty drawbacks. Firms seeking to set up operations in such a zone should apply to the appropriate state's economic development corporation. Exporting firms that find it impractical to set up operations within one of the free zones may apply to establish a licensed manufacturing warehouse, which offers the same benefits.

- Firms manufacturing finished products for export are eligible for full exemption from customs duty on imported raw materials if the materials are not available locally at an acceptable quality and price. (Similar exemptions exist for manufacturing goods for the domestic market if the company has observed equity ratios stipulated in its manufacturing licence.)

- Malaysian brands that outsource manufacturing activities received extended exemptions on import duty and sales tax on raw materials that are not manufactured locally and semi-finished goods imported from foreign contract manufacturers in the 2005 budget.

- Exporters may claim exemption from customs duty and sales tax on spare parts and consumables that are not produced locally. To qualify, the company's level of exports should be at least 80% of its production, or the spares and consumables should have limited demand, without the potential for domestic production, or the import duty on such items should exceed 5%.

- Manufacturers of export items may claim drawback of excise duty, customs duty and sales tax for parts, ingredients and packaging material and for sales tax on any goods used to produce the items. Delivery of goods to a free zone, a licensed manufacturing warehouse or to the islands of Langkawi, Tioman or Labuan is considered an export for the purpose of qualifying for drawback.

- A double tax deduction is permitted on premiums paid for export-credit insurance, and official schemes are available to refinance, insure and guarantee export credits.

Malaysian international trading companies enjoy a five-year income tax exemption of 20% of income from increased export sales. To qualify, a company must fulfil the following conditions: (1) be incorporated in Malaysia; (2) be 70% Malaysian owned; (3) achieve an annual sales turnover of more than M$25m; (4) market manufactured goods, especially those from small and medium-sized industries; and (5) be registered with the Malaysia External Trade Development Corporation (Matrade), the national trade-promotion agency.

International procurement centres (IPCs). Companies may set up IPCs, which offer centralised purchasing of manufacturing goods and services. The incentives allow IPCs to do the following: (1) open foreign-currency accounts with any licensed commercial bank to hold unlimited export proceeds; (2) enter foreign-exchange contracts with any licensed commercial bank to sell forward export proceeds based on projected sales; (3) be exempt from the guidelines of the Ministry of Domestic Trade and Consumer Affairs on foreign-equity ownership and retail trade; (4) bring raw materials, components or finished products—without payment of custom duties—into free zones or licensed manufacturing warehouses for repackaging, cargo consolidation and integration before distribution to the final consumers; (5) obtain approval more easily for expatriate posts; and (6) source goods from outside Malaysia for shipment to overseas destinations for up to 30% of their annual sales turnover.

The Ministry of International Trade and Industry processes and approves all applications for IPC status, for which the following criteria apply: (1) local incorporation under the Companies Act 1965, with a minimum paid-up-capital of M$500,000; (2) minimum total business spending of M$1.5m per year; (3) minimum annual business turnover of M$50m by the third year of operation; and (4) goods handled through Malaysian ports and airports.

As a general rule, sales by an IPC company to the domestic market are limited to not more than 20% of its annual sales value (if they do exceed 20%, the additional sales are not tax exempt). IPCs are eligible for full tax exemption for ten years if sales turnover is at least M$100m. By end-2007, 203 companies with forecast annual sales turnover of M$66bn and estimated annual business spending of M$5.3bn had been granted IPC status. Of the IPCs approved, nearly 60% serve the electronics industry. Almost half of the approved IPCs were for companies from Japan. A total of 12 projects to establish IPCs were approved in 2007; these projects have forecast annual sales turnover of M$2.7bn and estimated annual business spending of M$289.3m when the IPCs become fully operational.

Regional distribution centres (RDCs) The criteria for setting up RDCs are virtually identical to those for establishing IPCs, as are the benefits and incentives. An RDC is defined as a collection and consolidation centre for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries, or to other unrelated companies inside or outside the country.

RDCs must be in free zones (free industrial zones or free commercial zones) or licensed warehouses and make incremental use of Malaysian ports and airports (that is, an increasing percentage of their volume has to go through local ports/airports). Only 18 such RDCs had been approved by end-2007 (one more than a year earlier), and just 11 of those had started operations. These 18 approved firms have a proposed annual sales turnover of M$3.4bn and estimated annual business spending of M$285.7m.

Labuan offshore centre. The Malaysian government is also keen to boost international services-sector activities that increase foreign-exchange revenues. In 1997 it began to offer improved incentives for businesses in the Labuan offshore centre, with the aim of promoting Malaysia's bid to become a regional capital-markets hub.

The Labuan International Offshore Financial Centre (IOFC), established in 1990, is home to companies engaged in banking, insurance, corporate funding, investments and trust management, professional services and related activities. The centre is under the regulation of the Labuan Offshore Financial Services Authority (LOFSA), which is a one-stop agency for the IOFC. LOFSA administers and enforces the Offshore Companies Act, the Labuan Trust Companies Act, the Offshore Banking Act, the Offshore Insurance Act and other laws that relate to offshore financial activities.

By end-2007, 6,297 offshore companies had registered in Labuan (619 more than a year earlier), though about 40% of these were not actually operating at that time.

There were 56 IOFC-licensed banks at end-2007, 53 of which were operating and 15 of which were domestically owned. Total assets held by the 53 offshore banks increased by 28%, to US$27bn at end-2007, from US$21.1bn a year earlier. The banks reported a pre-tax profit of US$170m in 2007, down from US$239.2m a year earlier. They attributed the lower profit to higher provisions and lower interest margins. Of the 53 operating offshore banks, nine were offshore investment banks, with total assets of US$684.9m at end-2007 (compared with eight such entities holding US$361.1m in assets a year earlier).

In addition, Labuan had 104 factoring and leasing companies (with assets of US$14.1bn); 31 fund managers (overseeing US$5.4bn in funds); and 130 insurers, reinsurers and insurance-related companies (with assets of US$2.1bn) at end-2007, according to LOFSA.

No tax is imposed on the income of offshore companies that are not trading companies, and net profits from offshore trading activities conducted from Labuan are taxed at a concessionary rate of 3% or a fixed sum of M$20,000. The 2008 budget announced that offshore companies can also opt to be taxed under the Income Tax Act. Other advantages include the following:

- No inheritance, death or estate duty is levied.
- No taxes are withheld for dividends paid by an offshore company, distributions from an offshore trust, royalties received from an offshore company

by a non-resident, interest earned on deposits with offshore banks and interest earned on loans to Malaysians.

- Providers of services—including legal, accounting, financial, secretarial and other services—are exempt from up to 65% of tax on income derived from an offshore company in Labuan.

Licensing

Overview

Although Malaysia's government encourages pure licensing (especially as an alternative to imports), it is practised infrequently. The country's economic expansion has been accompanied by a steady rise in pure technical assistance, which transfers technology for new ventures; this is still the dominant type of agreement.

Malaysia unveiled its first National Intellectual Property Policy on April 27th 2007, with an initial funding of M$5bn, earmarked for a fund to promote awareness of intellectual property, an academy to educate more experts in the field (expected to open in 2009–10), to launch incentive packages (provisionally slated for 2011–12) and a special court to deal with disputes. This Intellectual Property Court opened on July 17th 2007. Authorities have stated they would like to see more Malaysians file for copyright protection.

The government passed amendments to its copyright laws in July 2003 and to its patent and trademark laws in 2000. It passed new legislation in 2000, safeguarding integrated circuits, optical discs and geographical indications. These legislative initiatives strengthened local protection of industrial property and encouraged technology transfers through licensing arrangements. Nevertheless, most transfers have been limited to subsidiaries and to affiliates of the foreign licenser.

The Malaysian Industrial Development Authority (MIDA) must approve all technology-transfer agreements, including joint ventures, technical assistance, licensing and engineering services.

A technology transfer to a subsidiary incorporated in Malaysia (as opposed to an unrelated Malaysian entity) affords tax advantages. As a Malaysian resident, the subsidiary may claim tax relief through dividend imputation and double-taxation treaties. Another advantage is the existence of a skilled, reasonably priced workforce in Malaysia. However, strict guidelines from MIDA—particularly on the terms and size of royalty payments—are a disincentive to licensing.

MIDA generally prefers capital-intensive technology-transfer arrangements with high technological content. Firms considering licensing technology to Malaysian entities should ensure that the recipient can maintain confidentiality and protect trade secrets.

The Multimedia Development Corp, which supervises the Multimedia Super Corridor Malaysia, signed a collaboration agreement on March 29th 2005 with Creative Commons (US), a non-profit organisation that enables copyright holders to grant some of their rights to the public while retaining others through a variety of licensing and contract schemes. Malaysia is the first South-east Asian country to embrace the Creative Commons initiative.

Protection of intellectual property

Theft of intellectual property is still a concern in Malaysia, but the country has made significant improvements in both legislation and enforcement. The Intellectual Property Court opened on July 17th 2007, six laws to protect intellectual property were passed in 2000, and corresponding measures for their enforcement were put into place. After implementation of these laws, the Office of the US Trade Representative in October 2001 removed Malaysia from its Priority Watch List (its highest level of concern), moving it down one tier to its Watch List, where it remained in April 2008. The office noted again in early 2008 that "the piracy of copyrighted materials, particularly those stored on optical media, is a serious concern in Malaysia" even as the country "continued to show a strong commitment to strengthening [intellectual-property rights] protection and enforcement". Intellectual property is one of the sticking points in the ongoing negotiations for a free-trade agreement (FTA) between Malaysia and the United States.

Software and optical-disc piracy is the recent focus of Malaysia's enforcement actions. Malaysian law threatens fines of up to M$20,000 for every illegal copy made and up to five years in prison for those using pirated software. The Ministry of Domestic Trade and Consumer Affairs had set a deadline of May 1st 2006 for businesses to validate their software or risk enforcement raids. During this so-called Sikap Tulen campaign, M$4.5m worth of hardware and unlicensed software was seized from 55 companies in 2007. The crackdown is the latest in a series of "Ops" actions initiated since 2003, targeting illegal software producers and retailers, as well as corporations illegally using unlicensed copies of software. The Business Software Alliance, a private industry group, offers rewards of up to M$20,000 for informants to the Sikap Tulen crackdown.

Industry groups note that Malaysia's production capacity for compact discs (CDs) and digital video discs far exceeds local demand plus legitimate exports—excess capacity is estimated at 10–20 times that needed for the legitimate market. The Ministry of Domestic Trade and Consumer Affairs withdrew the licences of five optical-disc factories found to have been involved in piracy activities in 2007, taking the number of licensed plants to 27 by year-end. Still, more than 158 production lines remain, able to produce at least 519m discs per year.

The International Intellectual Property Association estimates that piracy caused industry losses in Malaysia of US$174m in 2007, down by 25% from US$218m the previous year. The association estimated 2007 piracy rates at 60% for business software (unchanged from 2006), 45% for music (unchanged) and 83% for entertainment software (down from 90%). The Business Software Alliance, meanwhile, estimated the rate of piracy of business software at 60% in 2007, the same as the previous year; the industry grouping contends that a decrease in the use of pirated software to 50% during 2008–11 would create an extra 2,587 jobs and increase spending on information technology by an additional US$660m over that period.

To combat rising sales of counterfeit pharmaceuticals, the Ministry of Health has required all medicines and healthcare products to be affixed with a hologram label since May 1st 2005. The labelling policy applies to pharmaceuticals and traditional medicines, though over-the-counter medicines and cosmetics remain exempt. However, industry reports of out-of-sequence numbering of hologram labels have raised concerns about the existence of counterfeit labels.

Since April 2007 the Ministry of Health has provided data protection for pharmaceuticals for five years for new chemical entities, and three years for new indications. However, the country does not have an effective patent linkage mechanism to prevent the regulatory approval of versions of pharmaceutical products that are still covered by a patent, and the pharmaceutical industry has reported several cases involving the registration of generic versions of pharmaceuticals that are still subject to patent protection.

Malaysia is a member of the World Intellectual Property Organisation (WIPO) and a signatory of the Bern Convention for the Protection of Literary and Artistic Works; it has some of the most stringent anti-counterfeiting provisions of any country in the Association of South-East Asian Nations (ASEAN). Unlike most of its fellow ASEAN members, Malaysia is a signatory to major international conventions on intellectual property, has strong laws with adequate civil and criminal penalties, and takes a proactive approach to enforcement. It is the only ASEAN member with an official enforcement squad to investigate complaints on counterfeiting from private businesses.

The Intellectual Property Court that opened in July 2007 comprises15 Sessions Courts, one in each state including the federal territory of Putrajaya, and six High Courts, in Kuala Lumpur, Selangor, Johor, Perak, Sabah and Sarawak. No aggregate figures have been released but by end-2007 the Sessions Court in Kuala Lumpur had settled 163 of the 236 cases brought before it. Intellectual-property cases used to accumulate in the regular courts, which considered these cases to be of low priority. The Ministry of Domestic Trade and Consumer Affairs has also set up a specialised prosecution unit focusing on complex intellectual-property litigation.

Malaysia has not ratified the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, which extend traditional copyright principles to the digital environment. But the Ministry of Domestic Trade and Consumer Affairs indicated in December 2007 that Malaysia was preparing legal amendments for full implementation of the treaties and was considering acceding to the conventions in 2008, though it had not done so by April 2008.

Malaysia signed the Uruguay round of the General Agreement on Tariffs and Trade agreement on Trade-Related Aspects of Intellectual Property (TRIPs) in April 1994. The TRIPs agreement, which went into effect on January 1st 1995, sets stringent standards for protecting intellectual property. In order to fulfil its obligations under the agreement, Malaysia's parliament passed several important acts during 2000 to protect intellectual property: Copyright (Amendment) Act, Trade Marks (Amendment) Act, Patents (Amendment) Act, Layout-Designs of Integrated Circuits Act, Optical Disc Act and Geographical

Indications Act. In June 2004 parliament passed the Protection of New Plant Varieties Act 2004 in line with the requirements of Article 27.3 of the TRIPs agreement.

The Intellectual Property Corp of Malaysia has regulated these acts and other matters relating to intellectual property since January 2002. This is a corporatised entity formerly known as the Intellectual Property Division of the Ministry of Domestic Trade and Consumer Affairs.

The Patents (Amendment) Act 2003, which parliament approved in July 2003, aligned Malaysia with the WIPO's Patent Co-operation Treaty (PCT). Malaysia became the 131st signatory of the PCT on May 16th 2006; the treaty became into force in Malaysia on August 16th 2006. The PCT system offers patent applicants, national patent offices and the general public patent protection in multiple countries, a cheaper and faster system of filing applications, and better access to national patent systems.

The Patents Act (dating from 1983) allowed the submission of applications like those used by foreign patent offices that are known for their rigorous examination standards—such as those in the US, the UK, Australia and the European Patent Office. The reinstatement period for an unrenewed patent is two years. Other provisions include the following:

- Utility-innovation applications may be readily converted to patent applications and vice versa, within six months of the issue of a substantive examination report, which is the first step in the application process;
- New medical uses for existing equipment or drugs may be patented; and
- Amendments are allowed after a patent is granted, but only in specified circumstances.

Amendments in 2000 had extended patent protection to 20 years (from 15), fine-tuned and streamlined provisions on compulsory licensing to comply with stipulations of the TRIPs agreement, and generally strengthened and solidified the conditions of patent protection.

The Industrial Designs Act 1996 allows local registration of all new industrial designs (defined as the shape, form, pattern or decoration of products that have gone through an industrial process). Previously, all designs were registered in the UK, which required a lengthy and expensive process.

Local registration has shortened the process and reduced the cost, but it covers only designs for the local market. Export products need to be re-registered in the countries to which they are exported. Local registration is valid for five years and may then be extended twice, each time for a five-year period.

The Trade Marks (Amendment) Act 2000 seeks to provide protection for well-known trademarks and to comply with other requirements of the TRIPs agreement. Since trademarks are purely territorial, international firms with no dealings in Malaysia have little chance of preventing local registration of their marks by Malaysian entities (although the registrar must deny a registration that would result in public deception). The only basis for a challenge to such an action would be if the multinational company involved were already active in a neighbouring country, such as Singapore, and had plans to begin operations in Malaysia.

The Geographical Indications Act 2000 provides for protection of geographical indications (indications on products that have a specific geographical origin and possess qualities that are attributable to that place of origin) and the institution of civil proceedings to prevent their misuse.

The Layout Designs of Integrated Circuits Act 2000 provides for the protection of layout designs of integrated circuits. It offers protection for ten years from the date the layout design is first commercially exploited in Malaysia or elsewhere, but it does not cover any idea, procedure, process, system, method of operation, concept, principle or discovery incorporated in a design. The act does not require registration of the design. The act also necessitated amendments to the Industrial Designs Act 1996.

The Optical Disc Act 2000 aims to reduce piracy of intellectual property by requiring all makers of optical discs to obtain licences from both the Ministry of International Trade and Industry and the Ministry of Domestic Trade and Consumer Affairs. It also requires optical-disc makers to place source-identification codes on each disc and to allow regular inspections of their operations.

In March 2008 the US Trade Representative again asked the government to amend this law to ensure that the inspection authority covers all locations where optical-media production may occur, and also include as offences acts such as tampering with the source-identification codes and "burning" of recordable discs. In 2007 the ministry withdrew the licences of five optical-disc factories and conducted 11 raids on unlicensed facilities, in which authorities seized 19 DVD or VCD replicating lines that were suspected of having been used to manufacture pirated optical discs.

The Copyright (Amendment) Act 2003, which parliament approved in July 2003, provides for stiffer punishments for copyright violators and gives enforcement officers greater powers to combat infringements of intellectual property. The amended act doubled fines for making, selling, hiring, distributing, possessing (other than for domestic use) or importing any infringing works to M$20,000 for a first offence and to M$40,000 for subsequent offences. Fines for making or possessing any equipment used or intended to be used for the purposes of making infringing copies or works were doubled to M$40,000 for a first offence and to M$80,000 for subsequent offences. It also allowed the arrest of offenders without a warrant, and lengthened the term of imprisonment for circumventing any effective technological measures pertaining to rights-management information to five years (from three years) for a first offence and to ten years (from five years) for subsequent offences.

Amendments in 2000 now protect performers from unauthorised recording and reproduction of live performances. Malaysian law had previously allowed anyone making an unauthorised reproduction of a live performance to be the owner of the copyrights of that fixed work; that person could legitimately make and sell copies of it.

The act, combined with a series of high-profile raids, has deterred piracy to a great extent. It empowers a special enforcement team within the Ministry of Domestic Trade and Consumer Affairs to enter and search premises and seize infringing copies and equipment. The ministry conducted 2,432 copyright enforcement raids in 2007; all but 99 of these were directed against retail sellers of pirated films. In 2006 the ministry added more than 700 enforcement officers to its ranks, which surpassed 2,100 officers at end-2007.

Malaysia's status as a signatory to the Bern Convention guarantees reciprocal copyright recognition with 162 other nations for literary and artistic works.

Patents, industrial designs and models, trademarks and copyrights are legally recognised in Malaysia. However, the onus of protecting intellectual-property rights lies with the owners of such property. In general, licensers must take action to prevent infringement of their rights, although licensees may sometimes commence their own action (usually when the licensers fail to do so). The usual method is to seek an injunction to prevent continued sale of the infringing products.

Legal actions related to patents (but not trademarks or copyrights) must be conducted through a locally incorporated agent. Enforcement normally involves the simultaneous search of premises, seizure of infringing items and a civil suit for damages. Both criminal and civil penalties may be imposed. Nevertheless, successful legal actions often encounter enforcement difficulties, particularly when the infringement arises in the black market.

The Arbitration Act 1952 (Act 93) applies where parties have entered a commercial contract or an international trade agreement that provides for the dispute resolution via arbitration and where it is agreed that Malaysian law will apply.

Patent holders in Malaysia receive the right to the exclusive exploitation of their invention; others are barred from using the invention, or a very similar one, without permission. Patent law also establishes something similar to the doctrine of equivalents, a standard in Western patent law, which allows courts to rule on whether minor changes to the invention constitute infringement. Individuals may institute court proceedings for patent infringement but must take legal action within five years of the start of infringement. Individuals may also take action for imminent infringement by seeking an injunction. To file suit, one must proceed via a legal entity (a company or patent agent) domiciled in Malaysia.

Protection from passing-off is a common-law right to protect a mark associated with a particular product. The Trade Descriptions Act 1972 (Section 16 in particular) provides for remedies. Some protection is available for confidential information, notably trade and technological secrets or commercial records obtained in certain circumstances.

Intellectual-property law

Conventions. Paris Convention for the Protection of Industrial Property (1989), Bern Convention for the Protection of Literary and Artistic Works (1990), Convention establishing the World Intellectual Property Organisation (WIPO) and the Uruguay-round agreement of GATT (now the World Trade Organisation) on Trade-Related Aspects of Intellectual Property (TRIPs; 1994), WIPO's Patent Co-operation Treaty. Malaysia is a signatory to the Association of South-East Asian Nations Framework Agreement on Intellectual Property Co-operation, which covers many co-operative activities.

Basic laws. The main laws, based on the British system, are the Patents (Amendment) Act 2003 (amendments to accord with the WIPO's Patent Co-operation Treaty were approved in July 2003) and Patents Regulations 1986 (amended 1995); the Trade Marks (Amendment) Act 2000 (amendments to accord with TRIPs agreements were made in May 2000); Chapter 142 in Sabah (GNS 188/50), Chapter 62 in Sarawak (GNS 42/57), Trade Mark Rules 1983; Trade Descriptions Act 1972 and Trade Mark Regulations 1997; Copyright (Amendment) Act 2003 (previously amended in 1990 and 1996 to conform with requirements of the Bern Convention, and again in 2000); the Copyright Regulations and Orders 1987 and the Copyright Regulations 1990; the Industrial Designs Act 1996; the Computer Crime Act 1997; Geographical Indications Act 2000; Layout Designs of Integrated Circuits Act 2000; and the Optical Disc Act 2000.

Patents

Types and duration. Patents are available for products or processes for 20 years. Once granted, they can be renewed every year on payment of a fee. Also available is renewable five-year protection for utility innovations (any innovation that creates a new product or industrial process or that improves a known product or industrial process and includes an invention). It can be extended for up to five years.

Novelty. An invention (product or process) or utility innovation must advance the existing publicly disclosed state of the art. Novelty may be denied based on written material, whether published in Malaysia or elsewhere, use, oral disclosure or disclosure in any other way anywhere.

Unpatentable. Discoveries, scientific theories and mathematical methods; plant or animal varieties or essentially biological processes for their production (TRIPs allows man-made micro-organisms, including human cell-lines and DNA fragments to be patented); schemes, rules or methods for doing business, performing purely mental acts or playing games; and diagnostic, surgical or therapeutic methods for treating humans or animals (though the products used in such methods may be eligible for protection).

Fees. Filing, about M$1,000 (excluding search and legal fees); renewal, from M$200 in year one to M$2,000 in year 20. Compulsory licensing may be granted under Section 49 of the Patents Act 1983 if a registration has not been acted upon within three years. A licence may be obtained on an earlier patent if a new patent cannot be worked without it, particularly if the later invention constitutes an important technical advance. The Malaysian government itself may expropriate a registered patent.

Industrial designs and models

Industrial design covers shape, configuration, design and pattern of a product. Protection is granted to the registered proprietor or the proprietor's assignee. An industrial design registered in Malaysia is protected only in Malaysia. In order to have designs protected in other countries, applications for registration must be filed within six months from the earliest date when it was first filed in any of the Paris Convention member-countries.

Duration. A registered industrial design is given an initial protection period of five years from the date of filing and is renewable for another two consecutive terms of five years each. An infringer can escape liability by proving that, on the date of infringement, no reasonable means existed for learning of the design registration. Therefore, an important practical step is to advertise a registration.

Legal effect. The Layout Designs of Integrated Circuits Act 2000 gives special protection to integrated-circuit designs in Malaysia, but it does not cover any idea, procedure, process, system, method of operation, concept, principle or discovery that is incorporated in a design. It does not require registration, but it offers protection for ten years from the date the layout design is first commercially exploited in Malaysia or elsewhere.

Fees. Application for registration of an industrial design is M$400 (excluding all legal and search fees); application for renewal of registration costs M$600 for the first extension and M$800 for the second.

Trademarks

Duration. Registration of a trademark is valid for ten years, extendible indefinitely for ten-year renewals. A law passed in 1995 (implemented in 1996) extended protection to service marks, but it ended the protection of defensive and certification marks (since protection for them was very rarely sought).

Legal effect. Registration confers proprietary rights. For unregistered marks, there may still be common-law recourse to passing-off.

Not registrable. Marks likely to deceive or cause confusion to the public; contrary to law or containing scandalous or offensive matter; containing the words "patent", "patented", "by royal letters patent", "registered", "registered design" or "copyright" in any language; or specifically prohibited by the minister. In exceptional circumstances, such as honest concurrent use, the registrar may allow more than one registration of the same mark.

Fees. Application for registration of a mark is M$250 (excluding all legal and search fees); application for renewal of registration costs M$420. Advertisement for registration is M$450; an application to restrict the import of counterfeit trademarked goods costs M$300.

Copyrights

Types and duration. Protection is automatic on fulfilment of eligibility requirements (eligibility of the creator of the work and place of first publication, as provided under the Bern Convention) and for fixed periods, depending on the nature of the work. No renewals. Literary, musical or artistic works are protected for the duration of the life of the author plus 50 years. Published editions, sound recordings, broadcasts, photographs, films and works of the government, governmental organisations and international bodies are protected for 50 years from the year in which the works were first published or broadcast. Protection is extended to foreign works published in a Bern Convention signatory within 30 days of their first publication in a country that is not a signatory to the Bern Convention; to works of an author who has a personal connection (such as nationality) with a Bern Convention signatory; and to authors who are not such nationals but whose works are first published in a signatory country.

Legal effect. The Copyright (Amendment) Act 2000 closed a loophole in Malaysian copyright law by offering performers protection against the sale and distribution of unauthorised reproductions of live performances. The Optical Disc Act 2000 made explicitly illegal the unauthorised reproduction of CDs, VCDs, DVDs and all other optical discs. The law also keeps tabs on optical-disc makers by requiring them to be registered.

For literary, musical or artistic works, films and sound recordings, national laws grant exclusive control in Malaysia over reproduction in any material form; performance, showing or playing to the public; broadcasting; communication by cable; and distribution of copies to the public by sale, rental, lease or lending. For architectural works, laws grant exclusive control over the erection of any building reproducing the work. For broadcasts, they confer exclusive control over recording, reproducing and rebroadcasting. Copyright regulations allow the government to enter premises to search and seize infringing copies and contrivances.

Fees. Since registration is unnecessary for copyright protection, the only likely expenses would be for fees to obtain legal opinions.

Registering property

Patents and trademarks are registered with the Intellectual Property Corp of Malaysia (MyIPO). In the application process, preliminary examinations ensure that all the criteria and formalities have been met. Third parties have the opportunity to object.

Particularly with trademarks, few applications fail to provoke objections from the registrar or third parties. Application amendments are generally allowed, though the longer the application has been pending, the more reluctant the registrar is to accede to alterations.

Patent and trademark applications are not difficult or costly unless disputes arise. MyIPO reports that processing time for patent applications had decreased by little more than a year in 2006–07, to nearly four years by early 2008. The decrease came after MyIPO hired more patent examiners during that period; it employed 72 such examiners as at April 2008. The government aims to reduce the patent-processing time to 3.5 years by 2009. Also by that year, the government aims to reduce the processing time for trademark applications to 12 months, from 2–2.5 years in early 2008. There is no copyright registration.

Patents. An application for a patent must be on the appropriate forms and submitted to the MyIPO along with the following: appropriate fees, a description of the invention, drawings (where applicable), an abstract, a statement justifying the applicant's right to a patent, claims defining the scope of protection sought, and a request for a preliminary and substantive examination. If priority is claimed based on other applications or patents, this must be stated at the application stage, and all details relating to the earlier application or patent must be provided.

The registry responds by sending an official receipt, including the filing date and number; the date may be important for priority purposes. Subsequently, the registry sends a copy of the examiner's preliminary report, which may consider information relating to foreign applications and patents. Based on the report, the applicant may amend the application. Following receipt of amendments, the examiner conducts a substantive examination involving an analysis of the novelty, inventiveness against prior art (the state of the art on the priority date) and industrial applicability, and it then submits a final report to the registrar. Search reports from foreign-granted patents may be used in domestic patent examination. If the application is successful, the patent is granted, and the patent particulars are recorded in the register.

The Patents Board, under the MyIPO, is responsible for issuing patents for utility inventions, considering and approving applications for compulsory licences, appointing examiners and advising the minister in charge of industrial property.

According to the MyIPO, 6,983 patents were granted in 2007, compared with 6,749 granted patents in 2006. Though only 337 patents in 2007 went to Malaysian citizens or companies, this was nearly double the 187 granted the year before and up sharply from the 37 granted in 2005. Most of the patents granted in 2007 were in the fields of chemistry and metallurgy (1,748), electronics (1,223), and logistics and transport (1,213). In 2007 the MyIPO also received 93 applications for registration under the Patent Co-operation Treaty, which Malaysia signed on May 16th 2006 and implemented on August 16th 2006.

Trademarks. application forms for trademarks for a particular class of goods, accompanied by copies of the proposed mark, should be submitted to the Trademark Registry of the MyIPO. The registry sends an official receipt that includes the filing date and number. The registry then examines the proposed mark to ensure that it does not infringe any provisions of the Trademark Act and compares it with marks already on the register to determine whether it could provoke any public confusion. If objections are raised, the applicant must pursue the application through legal submissions to the registrar, alter the application or abandon it. If there are no objections, the registrar requests the applicant to submit artwork reflecting the final form of the mark for advertisement. The applicant must respond to third-party objections in the same manner it does to registrar opposition. If no complaints are raised within two months of advertisement, the application proceeds to registration, and the registrar subsequently issues the registration certificate. The entire process from application to registration takes about one year.

Before a trademark application is submitted, trademark searches (at M$10 per hour spent at the registry, excluding agents' fees) are advisable to ascertain if identical marks are registered or pending. There were three separate registries before 1983, and each should be searched.

Foreign applications for trademarks are usually made through local agents (legal or specialist firms offering intellectual-property-protection services). If the applicant and the agent are not residents of Malaysia, the applicant must provide an address for an office in Malaysia. Agents may represent the applicant in all proceedings before the registrar.

According to the MyIPO, 25,894 trademark applications were received and 25,490 trademarks registered in 2007, compared with 24,049 applications and 15,759 registrations in 2006. Of the registered trademarks in 2007, Malaysian citizens or companies received 8,108, compared with 5,651 in 2006.

By end-2007, five products (all Malaysian) had received protection under the Geographical Indications Act: Sabah seaweed, Tenom coffee, Borneo virgin coconut oil, Sabah tea and Sarawak pepper. At that time, another six products (all from Malaysia as well) had applied for protection.

The MyIPO also handled 1,920 applications under the Industrial Designs Act in 2007, compared with 1,033 the previous year; it registered 1,232 designs in 2007 (1,222 in 2006).

Recent licensing agreements

Cincinnati Thermal Spray (CTS), a coating specialist based in the US, signed a cross-licensing deal in September 2007 with Frontken, a surface-treatment engineering firm. The agreement allows each company to use technologies developed by the other party for their respective customers. CTS, with four facilities across the US, supplies coating services to all major aviation-engine manufacturers. CTS is primarily recognised for its thermal-spray service to the aerospace industry. Frontken, listed on the MESDAQ bourse, provides surfacing services mainly to the semiconductor, oil and gas, power generation and petrochemical industries in Asia. Financial details of the agreement were not announced.

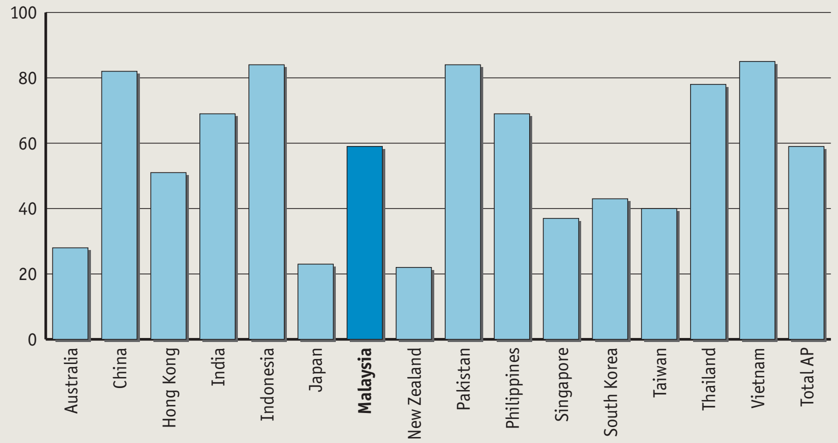
GETECH Group, a British service provider to the oil-and-gas industry, in May 2007 licensed its global gravity database to Petronas Carigali, the exploration arm of Malaysia's national oil company, to assist with its worldwide exploration programme. The deal, details of which were withheld, allows Petronas Carigali to use GETECH's dataset of the earth's continental margins.

Negotiating a licence

Potential licensers in search of Malaysian licensees can seek the assistance of the Registry of Investors and Contract Manufacturers (Ricom), a division of the Malaysian Industrial Development Authority (MIDA). Malaysian firms interested in various sectors provide their details and requirements to Ricom, which issues bulletins based on this information through MIDA offices worldwide. Once contact has been established, potential licensers negotiate directly with locals on particular projects. Certain embassies (such as Japan's) provide a similar service to potential licensers from the home country.

Most technology-transfer agreements are confidential and tailored to particular transactions. MIDA's regulations generally aim to keep terms favourable to the licensee, stating they should have access to improvements in licensed technologies, including new patents, and that transfer agreements should be long enough for full absorption of the technology. MIDA also monitors royalty and fee amounts, for which its approval must be secured.

Software piracy in Asia/Pacific, 2007
as % of software in use in each country



Source: Business Software Alliance/IDC 2008 *Global Piracy Study*.

Administrative restrictions

The Malaysian Industrial Development Authority (MIDA) assesses all technology-transfer agreements, often in conjunction with other agencies, including the Standards and Industrial Research Institute of Malaysia, the Economic Planning Unit, the Ministry of Finance and Bank Negara Malaysia (the central bank). If agreements involve a transfer of funds overseas, approval might also be required from the controller of foreign exchange (governor of the central bank).

Applications to MIDA should include two copies of the draft agreement, which should detail the principal features of the technology involved, anticipated production, quality and specification of products, particulars of assistance and services provided, latest developments known in the area, and access to innovations (including new patent applications). If relevant, the application should also contain information on the equity structure of the parties. Export potential also is important since many licensing agreements involve exporting industries (such as electronics). The application process usually takes two or three months, depending on the prompt provision of the above information. MIDA does not charge application fees.

Agreements should ensure confidentiality of information, preferably be exclusive, include clauses calling for arbitration in the event of a dispute (preferably at Kuala Lumpur's Regional Centre for Arbitration) and be governed by Malaysian law. The licensee must be entitled to innovations or breakthroughs in licensed technology, including new patents, and preferably enjoy continued use of the patent after the agreement's expiration. Both the supplier and the local plant must provide adequate training. The agreement's duration should be adequate for full absorption of technology, taking into account the life of any patent involved. However, the normal maximum term for a licence is five years, renewable for successive five-year periods with approval from MIDA. MIDA discourages capitalisation of know-how fees and separate agreements for related services, and it generally does not allow tie-in clauses, territorial restrictions on exports or licences that outlast the underlying patent right.

MIDA also aims to ensure that an agreement does not impose unfair restrictions on the local party, is not prejudicial to the national interest and sets "appropriate" fees. Payments for technology may as a lump sum, as a running royalty or both. Automatic approval is granted for agreements in which (1) royalties are no greater than 3% of net sales, (2) the one-time fee is no greater than M$500,000 or (3) the one-time fee plus royalties do not exceed 3% of net sales.

Payments of royalties and fees abroad are subject to a 10% withholding tax, which may be reduced or waived if the foreign licenser is from a country with a double-tax agreement with Malaysia. Individual residents who receive royalty income or payment from the use of any artistic works (other than any original painting) receive an exemption on income tax of up to M$10,000 a year (up from M$6,000 in the 2006 budget). Resident companies may deduct the following expenses in computing income tax: costs to acquire patents, designs, models, plans, trademarks or brands, and other similar rights from foreigners.

Licensing agreements (but not technical-assistance contracts) must be recorded to have legal effect. A licensee may sue in its own name against infringements to its agreements in certain circumstances.

Competition and price policies

Overview

Malaysia does not have a national competition policy. Only two sectors, energy and communications, have made legal provisions for competition policy. The Communications and Multimedia Act 1998 and the Energy Commission Act 2001 contain provisions for competition policy in their respective sectors; the mechanisms for competition regulation in the former piece of legislation are more advanced than those in the latter. In other sectors, competition regulation is mostly at the sectoral level via control over prices and entry conditions (such as permits and licences). Most of these controls were put in place to advance social goals (such as the affirmative-action programmes benefiting *bumiputras*) rather than to enhance competition. Business terms and transactions are entirely a matter of negotiation between the participating parties.

The government does step in, however, to assist Petronas (the government's petroleum-production monopoly) in distribution and marketing—such as in the location of petrol stations. Authorities argue that since Petronas must compete with well-established oil companies, it should be granted "blanket approval authority" in distributing and marketing oil and gas.

Similarly, local commercial banks have received protection via restrictions on foreign bank branches; foreign banks interested in entering the Malaysian market must incorporate local companies. Islamic banks which transact in currencies other than the Malaysian ringgit, however, have been allowed since April 1st 2007 to be 100% foreign-owned.

Malaysia has a number of laws to regulate the activities of enterprises and protect consumer interests. The Ministry of Domestic Trade and Consumer Affairs, formed in October 1990, administers most of these laws. Its responsibilities include the following: fixing and monitoring prices of certain goods; controlling the production, distribution and sale of essential goods; offering services for consumer affairs; registering and supervising companies; formulating policies on intellectual property; and regulating the petrochemical and gas industries.

A long-delayed new national competition policy remained with the Ministry of Domestic Trade and Consumer Affairs in April 2008. The ministry now expects the policy, which will include the long-awaited Fair Trade Act, to be discussed by the newly installed parliament later in 2008. When it becomes law, the act will establish a Fair Trade Commission to improve consumer protection. This body will centralise co-ordination and enforcement of Malaysia's 30-odd consumer-related laws.

The Consumer Protection Act 1999 extended consumers' rights, raised standards on the types of information disseminated by companies and established a Tribunal for Consumer Claims. The tribunal was created as part of the ministry as a cheap and efficient recourse for consumers in the face of unfair business practices resulting in damages of not more than M$10,000, especially on the part of manufacturers or suppliers. Before the tribunal was established, such disputes could be settled only in civil courts, which often meant high costs and protracted trials. For disputes of M$5,000 or less, the public has recourse to small claims courts, administered by individual states.

Other laws on domestic business practices and consumer rights include the Companies Act 1965, the Trade Descriptions Act 1972, the Control of Supplies Act 1983, the Food Act 1983 and the Direct Sales Act 1993.

Monopolies and market dominance

Malaysia does not have antitrust legislation or any formal definition of monopoly. However, the government drafted a Competition Act in February 2006, which will be incorporated into the proposed Fair Trade Act. It promises to cover the entire spectrum of trade and industry, and its provisions would bar "restrictive business practices" and abuse of dominant market position arising from vertical and horizontal business integration. The business community has eyed this move towards greater regulation warily. The act remained with the Ministry of Domestic Trade and Consumer Affairs in April 2008.

The government is actually quite accommodating of market dominance. Given its active participation in business and its desire to nurture infant industries, it provides protection from competition to specific enterprises through government procurement and trade licensing. Furthermore, one of the avowed aims of the Industrial Co-ordination Act 1975 is to eliminate what the government called "excessive and unhealthy" competition within established industries. The act allows the government, if necessary, to assure new investors that there will be no additional investments in the same area. Some manufacturing activities are specifically exempt from this provision, such as the processing of palm oil, fresh fruits and raw rubber.

Mergers

The Securities Commission reports that the total value of Malaysia's announced merger-and-acquisition (M&A) deals, both locally and abroad, dropped to US$21.2bn in 2007, from US$25.3bn in 2006, as the total number of deals dropped from 884 in 2006 to 825 in 2007. The 2006 figure included the US$8.8bn three-way merger between Sime Darby, Golden Hope Plantations and Kumpulan Guthrie, which led to the large total figure for that year. The main drivers of M&A activity in Malaysia in 2007 were the oil and gas and the finance sectors. Petronas, the national oil company, was particularly active; it acquired overseas assets worth US$2.3bn.

To further the objectives of the various national policies, the latest being the National Vision Policy (NVP) of 2001, the Foreign Investment Committee periodically reviews guidelines on mergers, takeovers and the acquisition of assets of existing companies. Investors contemplating a merger need to be familiar with NVP objectives, keeping in mind that the tie-up should provide economic benefits to *bumiputras* (ethnic Malays and other indigenous peoples)—for example, through increased ownership or management—and to the country as a whole, for example, through an increase in economic diversity or the processing and upgrading of local raw materials.

A new code on takeovers and mergers, implemented from the beginning of 1999, makes it a criminal offence to disseminate false or misleading information. Analysts say that the code is now being observed and is roughly in line with those in more-developed markets.

The government has used stamp-duty exemptions to encourage corporate restructuring. Mergers of stockbroking companies have been exempt from stamp duty on merger documents since January 2001. Similar exemptions apply to merging banks and insurance companies. The 2006 budget expanded the exemption to all companies listed on Bursa Malaysia, the national stockmarket. To be eligible for the exemption, which also covers the tax on real-property gains, mergers need approval from the Securities Commission (the markets supervisor) before year-end 2010 (extended from year-end 2007 in the 2008 budget), and must be completed by year-end 2011.

Freedom to sell

The Control of Supplies Act 1961 (revised in 1973) prohibits the purchase, sale or barter of any "controlled" article without written permission of the controller of supplies. Controlled articles include rubber, sugar, cement and bread. Price controls apply to a few goods, but most laws do not specify to whom, at what price or in what quantities a company may sell its products.

Manufacturers may sell the same merchandise to different dealers at varying prices. Producers can sue unauthorised dealers.

Resale-price maintenance

No Malaysian laws permit or prohibit resale-price maintenance. No precedents have been established in this area.

Price controls

Under the Price Control Act 1946, the Ministry of Domestic Trade and Consumer Affairs controls prices of selected essential foods and commodities and also certain manufactured products. In April 2008 the prices of the following items were controlled: petroleum, diesel, liquid petroleum gas (LPG), steel bars, cement, wheat flour, cooking oil, sugar, milk, bread and chicken meat. Price controls apply at the retail level (and via excise and *ad valorem* duty for imports). Applications for exemptions or price increases may be presented to the ministry. Retailers must, by law, display price labels for all their goods. The ministry usually sets ceiling prices for an extended list of essential foods during major holidays.

The government estimated that it spent M$43bn on subsidies in 2007 and would spend at least M$40bn in 2008; the biggest burden is the cost of helping to keep fuel prices among the lowest in Asia. It was considering reducing subsidies for fuel and a few other controlled items, but had not done so by end-April 2008.

A Price Surveillance Bill, based on Australian legislation of the same name, had been under consideration for some time, but was revoked in early 2003. It was deemed incompatible with the draft competition policy.

The government acknowledges that the high import content of many of the manufactured goods sold in the domestic market exposes producers and dealers to exchange-rate fluctuations. This is particularly important for motor vehicles. Whether assembled from knocked-down kits or manufactured locally, many use Japanese components sold under yen-priced contracts, which have fully reflected the wide fluctuations in the ringgit-yen exchange rate. Manufacturers of other products have felt similar, though less severe, effects. The Ministry of International Trade and Industry has mostly allowed the cost to be passed on in higher prices. The effect on living costs and the adverse balance-of-trade effects of dependence on yen-denominated imports have prompted a search for non-Japanese sources and technology.

Exchanging and remitting funds

Overview

Malaysia in recent years has relaxed or abolished several foreign-exchange policies in line with the Capital Markets Masterplan launched in February 2001. Of the exchange controls introduced by the government in September 1998, the ban on offshore trading of the ringgit was the last substantial measure remaining in May 2008. Many analysts had expected this ban to be lifted in 2007 or in 2008, but Bank Negara Malaysia (BNM), the central bank, said on several occasions in 2007–08 that the ban will end only when Malaysia's foreign-exchange markets are "very developed". The 1998 controls, established following the Asian financial crisis, never affected the operations of long-term investors in manufacturing and related services. Repatriations of capital, profits, dividends, interest, rental and commissions had been freely permitted, and foreign investors in manufacturing could maintain foreign-currency accounts to carry out their normal operations.

To provide greater flexibility to licensed onshore banks to undertake foreign currency business, BNM liberalised the following policies as from April 1st 2007: (1) the net open position limit of licensed onshore banks was abolished (previously, the open position limit was capped at 20% of the banks' capital base); (2) investment banks may be allowed to undertake foreign-currency business, subject to a comprehensive review on their capacity and capability.

The main exchange-control measures are as follows:

Overseas payments. All ringgit held outside Malaysia was to have been remitted to resident accounts by end-September 1998; thereafter, the ringgit was no longer convertible offshore. Residents may freely make payments to non-residents for any purpose, up to M$10,000 in ringgit or its equivalent in foreign currency; this does not include payments for imports of goods and services, which must be in foreign currency (except the currency of Israel, since Malaysia does not have relations with Israel).

Currency held by travellers. Since October 1998, travellers may not import or export ringgit currency exceeding M$1,000 per person. There are no limits importing foreign currencies by resident or non-resident travellers. The export of foreign currencies by resident travellers is permitted, up to M$10,000 (equivalent); the export of foreign currencies by non-resident travellers is permitted, up to the amount brought into the country. Non-resident travellers must declare the import of foreign currency exceeding US$10,000 (or the equivalent).

Investments abroad. Since April 1st 2005 residents without domestic credit facilities could invest abroad in a foreign currency, funded either from their own foreign currency holdings or from conversion of ringgit funds. Since April 1st 2007 corporations with domestic credit facilities may use their foreign-currency funds or convert ringgit, up to M$50m per year, for investment in foreign-currency assets (up from M$10m). To qualify, companies must have shareholders funds of at least M$100,000 and must have been operating for at least one year. Individuals with domestic credit facilities may invest abroad any amount of their foreign-currency funds or convert up to M$100,000 per year for such purposes.

Resident unit-trust management companies may invest abroad up to the full amount of their net asset value (NAV) subscribed by non-residents and up to 50% of their NAV per fund subscribed by residents (up from 30% prior to April 1st 2007); since October 1st 2007 they may also invest the total amount of Islamic funds under their management in foreign-currency assets. Resident insurance companies may invest abroad up to 5% of their margin of solvency; *Takaful* (insurance based on Islamic principles) companies may invest abroad up to 5% of their total assets. Both resident insurance companies and *Takaful* companies may also invest abroad up to 50% of the NAV of investment-linked funds that they market (up from 30% prior to April 1st 2007). Fund and asset managers may invest abroad up to the full amount of their investments by non-resident clients, and up to 50% of their investments by resident clients with domestic credit facilities (up from 30% prior to April 1st 2007).

Sinxe April 1st 2007 resident and non-resident corporations listing shares through initial public offerings on the Main Board of Bursa Malaysia (the national bourse) may use any amount of the proceeds abroad.

Foreign currency accounts (FCAs) held by residents. The limits imposed on onshore banks for FCAs maintained by residents ended on April 1st 2007. Prior to that date, a resident corporation with domestic credit facilities was allowed to convert up to M$10m per calendar year for credit into its FCA. Resident individuals with domestic credit facilities may now convert up to M$1m per year into FCAs (from M$100,000 before April 2007).

Credit facilities to non-residents. Since April 1st 2004 all ringgit lending by banking institutions to non-residents (excluding stockbroking companies, custodian banks and correspondent banks) has had an aggregate limit of M$10m. The non-resident may use the ringgit credit facilities for any purpose in Malaysia, excluding financing or refinancing the purchase or construction of immovable properties. Residents (banks and non-banks) may extend ringgit credit facilities in aggregate up to three property loans to non-residents to finance or refinance the purchase or construction of immovable properties in Malaysia, excluding only the purchase of land. (Before April 1st 2004 only financial institutions and employers were allowed to extend property loans to non-residents.)

Since April 1st 2007 onshore licensed banks can extend an overnight overdraft facility of any amount to non-resident stockbroking firms or custodian banks for settling or purchasing shares listed on Bursa Malaysia (the previous limit was M$200m). Resident stockbroking companies may extend margin-financing facilities to non-resident clients for buying shares listed on Bursa Malaysia. Non-bank residents may extend credit facilities in ringgit to a non-resident up to an aggregate of M$10,000.

Licensed onshore banks may extend credit facilities in foreign currency to non-residents for any purpose. Since April 1st 2007 non-residents can obtain any number of residential or commercial property loans (up from three such loans previously).

Hedging. Residents may enter hedging arrangements with licensed onshore banks for payments and receipts for import and export of goods and services either based on a firm underlying commitment or on an anticipatory basis if the amount entered does not exceed the total amount paid or received in the preceding 12 months. Residents may hedge capital-account transactions with licensed onshore banks based on committed capital inflows or outflows and are also allowed to hedge their existing holdings of foreign currency assets. Non-residents are allowed to hedge any inflow or outflow of funds for firmly committed transactions.

Bank Negara Malaysia (BNM) stipulates that the maturity date of the forward foreign-exchange contract should be the expected date of receipt or payment of the underlying transaction. If the foreign-currency receivables are received earlier, the resident can sell the foreign-currency receipts for ringgit on a spot basis or temporarily retain the receipts in an onshore foreign-currency account, pending maturity of the forward foreign-exchange contract. For forward sale of export proceeds, the maturity date of the forward foreign-exchange contract should not be later than six months after the intended date of export. For forward foreign-exchange contract involving two foreign currencies, the use or retention of the foreign currency purchased by the resident must be for permitted purposes.

A non-resident is free to enter into a foreign-exchange contract on a spot or forward basis with a licensed onshore bank to buy ringgit to make payment to a resident or to sell ringgit funds arising from a committed transaction in Malaysia. The maturity date of the foreign-exchange contracts should be the expected date of payment or receipt of the underlying committed transactions, and the total amount of the foreign-exchange contracts should not exceed the expected sum of payments or receipts of the underlying committed transactions.

Swaps. A resident with a firm underlying commitment may enter into interest-rate swaps with licensed onshore banks and licensed offshore banks in Labuan.

Companies accorded special status. Offshore entities in the Labuan International Offshore Financial Centre are considered non-residents for foreign-exchange administration purposes. As a non-resident, the offshore entity may undertake the following actions: obtain any amount of foreign-currency credit facilities; invest any amount in foreign-currency assets; enter foreign-exchange contracts involving foreign currencies with licensed onshore banks, licensed offshore banks in Labuan and any overseas counterparty; buy or sell foreign currency (other than the currency of Israel) against ringgit with licensed onshore banks for permitted purposes; maintain external accounts with licensed onshore banks to facilitate the defrayment of statutory and administrative expenses in Malaysia; receive payments in ringgit from residents arising from fees, commissions, dividends or interest from deposit of funds with onshore financial institutions; and invest in ringgit assets that are transacted directly with onshore banking institutions or resident brokers for its own account or, from April 1st 2007, on behalf of its non-resident clients.

In addition, an offshore insurance entity in Labuan may receive reinsurance premiums and pay claims arising from reinsurance of domestic insurance business in ringgit.

A company with Multimedia Super Corridor Malaysia status is exempt from foreign-exchange administration requirements for transactions undertaken on its own account. An operational headquarters (OHQ), regional distribution centre or international procurement centre is subject to policies applicable to a resident. In addition, an OHQ is allowed to obtain any amount of foreign-currency credit facilities from licensed onshore banks in Malaysia, and from any non-resident, as long as the OHQ does not on-lend to, or raise the funds on behalf of, any resident; invest any amount in foreign-currency assets to be funded with foreign-currency funds or borrowing; and use proceeds of any amount from the issuance of ordinary shares through an initial public offering on the Main Board of Bursa Malaysia for investment in foreign-currency assets.

Since September 24th 2007, resident corporations approved under the Iskandar Development Region framework and biotechnology companies approved under the National Biotechnology Policy (for both, see Incentives) are allowed to: pay and receive payments in foreign currency, other than the currency of Israel, with residents; borrow any amount of foreign currency from licensed onshore banks and non-residents; invest any amount in foreign-currency assets onshore and offshore; and retain export proceeds offshore.

In recent years, the central bank has simplified and streamlined its foreign-exchange registration requirements. From October 1st 2007 registration of the following generally permitted transactions was abolished: forward foreign-exchange contracts entered by residents; ringgit-denominated loans extended by a resident to a non-resident for purchase or construction of immovable properties in Malaysia; investment in foreign-currency assets by residents; foreign-currency borrowing by resident corporations from licensed onshore banks, non-residents, or another resident company within the same corporate group using proceeds from an initial public offering on foreign stock exchanges; and repayment of permitted foreign-currency borrowing (without fixed schedule of repayments) or prepayment. As from January 1st 2008, the requirement for submission of the following reports also was abolished: (1) Overseas Account Statement (Statement OA) for accounts maintained by resident corporations with offshore banks; and (2) Inter-Company Account Statement (Statement IA) for accounts maintained by resident corporations with non-resident corporations. The individual reporting threshold for payment and receipts between residents and non-residents was increased from October 1st 2007 to M$200,001 (or its equivalent in foreign currency) from M$50,001 per transaction. This reporting and registration form (and those for the few other remaining registration requirements) can be filled in online at http://www.bnm.gov.my/fxadmin.

The Anti-Money-Laundering Act 2001, the country's first legislation to combat the movement of illegal funds, came into force on January 15th 2002. The act provides for punishment of the offence of money-laundering, including the forfeiture of property derived from, or involved in, money-laundering. It also set requirements for recordkeeping and reporting of suspicious transactions by reporting institutions (including banks, insurers, stockbrokers, futures brokers, money changers and others). They must take measures to verify the identity of customers. The reporting requirements override other secrecy laws or restrictions on the disclosure of information.

Repatriation of capital

No controls exist for repatriating invested capital, including reinvested profits, other than nominal transfer approval by Bank Negara Malaysia. Transfers may be in any currency except the ringgit and the New Israeli shekel.

Profit remittances

These corporate transactions do not require permission from Bank Negara Malaysia. Commercial banks may approve and handle overseas payments of any amount.

For portfolio investments, the September 1998 exchange controls allow the repatriation of funds by non-residents arising from the receipt of dividends, interest, rental, fees, commissions or profits.

Loan inflows and repayment

Since April 1st 2007 resident corporations (on a per-corporate-group basis) have been able to obtain foreign-currency credit facilities up to the aggregate of the equivalent of M$100m (up from M$50m). The company may use the foreign-currency borrowing to finance overseas investment up to the equivalent of M$10m. The aggregate limit for foreign-currency borrowing by individuals was doubled from the equivalent of M$5m to the equivalent of M$10m; the funds may be used for any purpose, including financing overseas investments.

There is no restriction on a resident to repay or prepay permitted credit facilities. Any prepayment exceeding the equivalent of US$10m has to be registered with Bank Negara Malaysia (BNM) prior to the prepayments.

Residents may obtain any amount of foreign-currency trade financing with an original tenor of 12 months or less from Malaysian banks. Residents may also receive any amount of financial guarantees from Malaysian banks or licensed offshore banks in the Labuan International Offshore Financial Centre, and from non-residents that are not financial institutions and are either shareholders, subsidiaries, or related or associated companies.

The central bank stipulates that any transfer of funds from Malaysia to or from foreign-currency accounts maintained with a licensed offshore or overseas bank must be in the foreign currency in which the account is maintained, not in ringgit.

Residents must seek prior permission from the central bank to obtain any amount of credit facility in ringgit from non-residents, including from non-resident shareholders or directors. Residents can obtain foreign-currency credit facilities from non-residents up to an aggregate of M$10m (equivalent) per individual or M$100m (equivalent) on a corporate-group basis. Since April 1st 2007 residents may use foreign currency to purchase financial products denominated in foreign currencies but offered onshore.

Remittance of royalties and fees

The procedure for remitting royalties and technical-assistance fees is similar to that for repatriating capital, profits, dividends and interest. Such transfers are freely permitted, and licensees have reported no problems as long as the original arrangement had received the required official approval.

Withholding tax on royalties and technical fees is 10%, though it may be lower under bilateral double-tax treaties. Tax deductions are available for expenditures incurred in acquiring patents, designs, models, plans, trademarks or brands and other similar rights from foreigners.

Restrictions on trade-related payments

Export proceeds may be received in foreign currencies, except the New Israeli shekel, or in ringgit from an external account. Payment must be received within six months of the date of export. Export proceeds can be retained in foreign-currency accounts with banks in Malaysia or at overseas branches of Malaysian-owned banks. Since November 28th 2007, a resident corporation with export earnings has been free to pay another resident corporation in foreign currency for settlement of goods and services. Residents may enter a forward foreign-exchange contract with an onshore licensed bank to sell foreign-currency export proceeds for ringgit if the maturity of the forward contract is less than six months after the intended date of export.

The limits on the amount of foreign currency exporters may maintain overnight were abolished from April 1st 2005. Only exporters with annual gross exports exceeding M$50m need to submit quarterly export reports.

Malaysia does not impose restrictions on import leads and lags, or on export leads. But payments for exports must be received within six months of the shipment date.

Corporate taxes

Overview

Corporations in Malaysia are receiving some relief in 2007–09: the corporate income tax rate is being reduced from 28% in 2006 to 25% by 2009 (by 1 percentage point in each year), dividends are tax exempt from 2008 onward, and the real-property gains tax ended on April 1st 2007. Malaysia's corporate tax rate still compares unfavourably with Singapore, its neighbour (and competitor), which cut its corporate rate to 18% in 2007. Nevertheless, the wide range of incentives, credits and allowances available in Malaysia makes the total corporate tax burden comparable to that in neighbouring countries.

The 2005 budget had planned to institute a single consumption tax, the goods and services tax (GST), to replace the sales and service taxes on January 1st 2007. But in February 2006, the Ministry of Finance deferred implementation of the GST to an unannounced future date. By April 2008 the authorities had still not announced a target date and introduction of the GST is not expected before 2009. High global prices for oil, food and other commodities make it harder for the government to introduce the GST, especially since it is looking to reduce its subsidies for various products (see Price controls). The introduction of the GST and the changes in the tax rates are part of an ongoing review of the present tax system by the eight-member Taxation System Review Panel, which was installed following the reading of the 2005 budget.

The Inland Revenue Board (IRB), a division of the Ministry of Finance, administers taxes. It is responsible for direct taxes under the Income Tax Act of 1967, Petroleum (Income Tax) Act of 1967, Real Property Gains Tax Act of 1976, Promotion of Investment Act of 1986, Stamp Act of 1949 and the Labuan Offshore Business Activity Tax Act of 1990.

Income tax has been assessed since 2000 on income derived in the current year. Before 2000 the tax was assessed on income derived in the previous year. To accommodate the changing system, income received in 1999 was waived from income tax, and losses incurred in 1999 were allowed to be carried forward.

The government initiated a move from the Official Assessment System to a Self-Assessment System in 2000. Under the Self-Assessment System, companies must provide estimates of tax payable for the current year; these estimates should not be less than 85% (reduced from 100% in the 2006 budget) of the estimates or the revised estimates of the preceding year. Companies are allowed to revise their estimates in the sixth and the ninth months of their financial year.

In late 2004 the government established the Fund for Tax Refunds to expedite refunds for taxpayers who make excess payments under the Self-Assessment System. On January 1st 2006 the scope of the fund was extended to include refunds for petroleum income tax, real-property gains tax and stamp duty. By mid-2007 the IRB had reduced the time to refund excess tax paid to individuals and companies from one year to 14–30 days for those who filed their tax returns electronically.

The government collected M$96.2bn in taxes in fiscal year 2007 (ended September 30th 2007), up by 11% from M$86.6bn in fiscal year 2006. Corporate income tax contributed M$30.8bn; special tax on petroleum-producing companies brought in M$22.6bn; individual income tax added M$12.2bn; excise revenues reached M$8.5bn; and sales and service taxes contributed M$7.1bn. The government has targeted tax collections of M$102bn in fiscal year 2008.

Tax morality in Malaysia is fairly high among both corporations and individuals. Companies are subject to periodic audits, which have become more thorough in recent years. The Income Tax Act 1967 (Section 80) gives the IRB the right to search business premises and private residences without a warrant. Moreover, the government has become stricter on deadlines for submitting company accounts. To spur further corporate compliance, the 2006 budget allowed audit fees to be deducted from corporate income tax. The main areas of the IRB's updated framework for tax investigation, implemented on January 1st 2007, are criteria for audit and investigation selection; tax audit and investigation methodology; rights and responsibilities of taxpayers and tax agents, audit and investigation officers; settlement upon completion of an audit or investigation; and offences and penalties. The text of the framework is available at http://www.hasil.org.my/english/pdf/TIFW.pdf.

From year of assessment 2008, tax agents are allowed to file their clients' returns electronically; previously, taxpayers who wanted to file their income tax returns electronically had to do so themselves.

Corporate tax rates

The 2008 budget, announced on September 7th 2007, lowered the basic corporate income tax rate for 2009 by 1 percentage point, to 25%. The 2007 budget had lowered the basic corporate income tax rate for 2007 also by 1 percentage point, to 27%, and the rate for 2008 by another percentage point, to 26%. These rates also apply to small and medium-sized enterprises with a paid-up capital of up to M$2.5m that had previously been subject to a corporate income tax of 20% on taxable income up to M$500,000, with the excess taxed at 28%. In addition to the cut in corporation tax, the 2008 budget also announced the implementation of a single-tier tax system for companies from year of assessment 2008. Previously, both profits and dividends were taxed, whereas dividends are exempt under the new system.

The 2006 budget introduced relief for companies within a group. The group relief allows 50% of a company's current-year losses to be offset against the profits of other companies in the same group.

Tax is levied on petroleum income at the special rate of 38%. Insurance companies are taxed as follows: 8% on investment income and capital gains of life funds, and 28% on the income of shareholders' funds (including surpluses actually transferred from the life fund). Co-operative societies are taxed on a sliding scale from 0% for the first M$20,000 to 28% for income exceeding M$500,000.

No local taxes apply on corporate income. There is no excess-profits tax (it was abolished in 1991). There is no alternative minimum tax, though companies in the offshore tax haven of Labuan may choose between paying a 3% rate on chargeable profits or a flat rate of M$20,000.

Corporate taxes, 2008

The following is a hypothetical calculation for a resident company with a net pre-tax accounting profit of US$2m.

Pre-tax accounting profit	2,000,000
Additions:	
Non-deductible expenses[a]	450,000
Interest income	1,000,000
Malaysian dividend income	400,000
Subtotal	3,850,000
Deductions[b]	(850,000)
Taxable income	3,000,000
Income tax at 26% on US$3m	780,000
Net tax payment	780,000
Total tax burden as a percent of taxable income	26%

(a) Includes unapproved donations, certain legal fees, expenses for entertainment and leave travel, depreciation charged in accounts, and certain legal provisions. (b) For example, profit on sale of fixed assets, expenditure charged against provisions, capital allowances and approved donations.

Source: Ministry of Finance.

Taxable income defined

Taxable corporate income includes all earnings derived from Malaysia, including gains or profits from any trade or other business, dividends, interest, rent, royalties, premiums or other current earnings. These rules apply to branches as well as to entities incorporated in Malaysia.

Deductions are allowed for expenses incurred wholly and exclusively in the production of income, including interest, royalty payments and certain taxes. Recent budgets have expanded the scope of allowable deductions. Three new categories of deductible expenses have been in effect since 2002: costs of developing websites, at 20% annually for five years; expenses incurred in providing practical training to residents who are not employees of the company; and bonuses paid to employees. For five years from 2003, expenses incurred in the issuance of private debt securities that adhere to certain Islamic principles also are deductible. The 2004 budget extended deductions to incorporation expenses of companies with authorised capital up to M$2.5m (up from M$250,000). The 2005 budget allowed the payment of *zakat*, an Islamic religious tithe, as a deduction, up to 2.5% of aggregate income. The 2006 budget allowed deduction of audit fees, and the 2008 budget allowed full deductions for professional indemnity-insurance premiums. The 2008 budget also allowed full deductions for community infrastructure projects that "significantly benefit the public" and are approved by the Ministry of Finance.

The 2006 budget also allowed investment holding companies listed on Bursa Malaysia, the national bourse, to treat their income as business income and hence permit full deduction of the expenses. Previously, the income of an investment holding company was treated as passive income; hence, only 25% of permitted expenses were deductible. But losses and unabsorbed capital allowances may not be carried forward. An investment holding company is defined as a company that derives at least 80% of its gross income from investment holdings.

Donations to approved organisations established exclusively for the protection and conservation of the environment are deductible. Other deductible items include certain expenses for fully furnished living accommodation; expenses for sponsoring any arts or cultural activity approved by the Ministry of Culture, Arts and Tourism (up to M$500,000); and contributions to equip libraries. The 2007 budget added contributions to approved sport activities and bodies as deductible items, and increased the limit on deductions on contributions by companies for charitable activities from 5% to 7% of aggregate income. The cost of entertainment provided to employees is not deductible unless it is part of the provision of entertainment for clients or customers.

There are no deductions for contributions to non-approved provident funds (allowable deductions for the employer's contribution to the Employees Provident Fund is 19%, 7 percentage points over the 12% mandatory minimum contribution); preliminary or pre-operating costs, apart from a single deduction on pre-operational training expenses; capital expenditures; costs of flotation, registration, winding up or liquidation of a company; mortgages; or costs in connection with the protection of title to real property.

Losses may be carried forward for an unlimited period but may not be carried back. They may offset income from all business sources.

Foreign-sourced income of a resident company is not subject to tax in Malaysia, though tax applies on worldwide income for a few activities, such as banking, insurance, and air- and sea-transport operations. Under the Income Tax Act 1967, unless profits or gains are attributed directly to activities conducted outside Malaysia, they are assumed to derive from Malaysia. Consequently, the onus is on a branch to prove which part of its income is not attributable to a Malaysian source.

Depreciation

The government sets depreciation rates for various assets, with favourable rates for some items to promote their sale or use. Since year of assessment 2000, there have been three general classes of annual capital allowances for plant and machinery (down from 16). For office equipment, furniture and fittings, an annual depreciation allowance of 10% over eight years is allowed. For general plant and machinery, it is set at 14% over six years. For heavy machinery and motor vehicles, it is 20% over four years. Certain types of plant and machinery such as computers (which have special annual allowances exceeding 20%) will continue at the higher rate.

Under the standard rates, new industrial buildings (principally factories and warehouses but not office buildings) are depreciated at 10% in the first year and at 2% annually thereafter on a straight-line basis. This allowance also applies to buildings used for education and training.

No initial allowance is given on purchased buildings but is granted on the construction cost of new buildings. A reinvestment allowance of 60% is granted to resident manufacturing companies that incur capital expenditures on qualifying plant, machinery and factory buildings. The 2003 budget extended the reinvestment allowance to pioneer companies, but they have to give up their pioneer status.

Capital expenditures for constructing public roads qualify for an initial allowance of 10% and a subsequent annual allowance of 6%.

There are no provisions for depreciating patents, trademarks, copyrights, goodwill or leases (except mining leases).

Schedule for paying taxes

The Inland Revenue Board (IRB) sends out annual tax assessments during the first half of the calendar year for the current year. Tax is due 30 days after issue of the assessment notice; people who fail to pay taxes within this time receive penalties. Companies must pay tax in monthly instalments based on estimates of tax payable. Instalments must be paid on or before the 10th of each month; late or insufficient instalments may incur a 10% penalty. Since January 1st 2007, taxpayers (both corporations and individuals) have been allowed to apply for advance rulings from the IRB.

Since 2001, companies have had to furnish a return in the prescribed form to the IRB within six months of the end of their accounting periods. This is used to report actual tax liabilities, and it may result in additional assessments or refunds from tax paid in the accounting period.

The government has come down harder on firms that are late in filing their annual statements of accounts. Approvals for extensions are increasingly difficult to obtain. The onus is on company directors to ensure that their auditors finish the job on time to avoid fines. However, the 2005 budget extended the deadline for sole proprietors, partnerships, clubs and associations to file tax returns from April 30th to June 30th each year, beginning from year of assessment 2004.

Capital taxes

There are no capital taxes in Malaysia.

Treatment of capital gains

Malaysia does not tax capital gains on portfolio investments, and it abolished the real-property gains tax (RPGT) as from April 1st 2007. The RPGT was eliminated in an effort to spur the property market.

Taxes on dividends

Malaysia introduced a single-tier tax system as from January 1st 2008. Under this system dividends are taxed at the source and are exempt from Malaysian tax in the hands of the shareholders.

Taxes on interest

Interest paid to resident companies is not subject to withholding tax but is included in year-end corporate income tax calculations, and taxed at the appropriate rate. Interest paid to resident individuals is subject to 5% withholding tax, which is credited against final income tax. Interest received from savings deposits held with the National Savings Bank or the Pilgrimage Board is exempt. Individuals are granted tax exemption on interest from government securities and bonds, and debentures (other than convertible loan stocks) approved by the Securities Commission (SC); and on Malaysian saving bonds issued by Bank Negara Malaysia (BNM), the central bank. To expand the domestic capital markets, as from September 11th 2004, the government made exempt from income tax interest income derived by non-resident companies from (1) ringgit-denominated Islamic securities and debentures (other than convertible loan stocks) approved by the SC and; (2) government securities.

Since 1999 the government has made income received by resident unit trusts and property unit trusts exempt from tax interest.

Interest paid to a foreign parent is subject to withholding tax of 15%, which may be waived or reduced under double-tax treaties. Interest paid to non-residents by commercial banks operating in Malaysia is exempt from the tax, except for interest paid to maintain net working funds, as prescribed by the central bank. The 2007 budget extended this exemption to profits received from Islamic banks operating in Malaysia.

Interest on "approved loans", as specified in Section 2 (1) of the Income Tax Act 1967, is exempt from tax. Approved loans include those made by non-residents for development projects and any loans to the government or guaranteed by the government.

Taxes on royalties and fees

Royalties and contract service fees are subject to a 10% withholding tax, which may be waived or reduced under double-tax treaties.

Double-tax treaties

Profits, dividends, interest and royalties are subject to treaties, ensuring that taxes are levied only in the country where a business is situated. Such treaties allow for repatriating profits without subjecting them to double taxation.

Under the OECD convention, companies residing in countries that have double-taxation agreements with Malaysia are subject to Malaysian income tax only if they have permanent establishments in the country. The following do not constitute permanent establishments: representative offices; offices maintained solely to buy goods or collect information; facilities for storage, display or delivery of goods; and places for advertising or scientific research.

Withholding rates under double-tax treaties (%)

Country of recipient	Interest	Royalties	Technical-svc fees	Country of recipient	Interest	Royalties	Technical-svc fees
Albania	10	10	10	Morocco	10	10	10
Argentina[a]	15	10	10	Myanmar[b]	10	10	10
Australia	15	10	0	Namibia	10	5	5
Austria	15	10	10	Netherlands	10	8	8
Bahrain	5	8	10	New Zealand	15	10	10
Bangladesh	15	10	10	Norway	15	10	10
Belgium	10	10	10	Pakistan	15	10	10
Bosnia/Herzegovina[b]	10	8	10	Papua New Guinea	15	10	10
Canada	15	10	10	Philippines	15	10	10
Chile[b]	15	10	5	Poland	15	10	10
China	10	10	10	Romania	15	10	10
Croatia	10	10	10	Russia	15	10	10
Czech Republic	12	10	10	Saudi Arabia	5	8	8
Denmark	15	10	10	Seychelles	10	10	10
Egypt	15	10	10	Singapore	10	8	5
Fiji	15	10	10	South Africa	10	5	5
Finland	15	10	10	South Korea	15	10	10
France	15	10	10	Spain	10	7	5
Germany	15	10	0	Sri Lanka	10	10	10
Hungary	15	10	10	Sudan	10	10	10
India	10	10	10	Syria	10	10	10
Indonesia	15	10	10	Sweden	10	8	8
Iran[b]	15	10	10	Switzerland	10	10	10
Ireland	10	8	10	Taiwan	10	10	7.5
Italy	15	10	10	Thailand	15	10	10
Japan	10	10	10	Turkey	15	10	10
Jordan	15	10	10	United Arab Emirates	5	10	10
Kazakhstan[b]	10	10	10	United Kingdom	10	8	8
Kuwait	10	10	10	United States[a]	15	10	10
Kyrgyz Republic	10	10	10	Uzbekistan	10	10	10
Lebanon	10	8	10	Venezuela[b]	15	10	10
Luxembourg	10	8	8	Vietnam	10	10	10
Malta	15	10	10	Zimbabwe[b]	10	10	10
Mauritius	15	10	10	Non-treaty	15	10	10
Mongolia	10	10	10				

Where the rate of tax of the above payment is not specifically stated in the respective double-taxation agreement, the normal applicable rate of tax is withheld. Where the rate of tax is lower than the maximum rate of tax as mentioned in the respective double-taxation agreement, the lower rate of tax applies. (a) Limited to air and shipping transport. (b) Gazetted but not yet in force in April 2008.

Source: Inland Revenue Board.

Intercompany charges

Intercompany charges properly classified as charges against income incurred in the production of gross income are considered business deductions, unless specifically excluded under the Income Tax Act 1967. However, a section of the act dealing with transactions between a resident and a non-resident with substantial control over the resident provides that if the resident produces little or no income, the resident is to be treated as an agent of the non-resident and charged tax on income as assessed by the tax authorities.

The authorities may base such assessment on income that the resident might reasonably be expected to have made on ordinary commercial terms. Usually, a fair and reasonable percentage of the business turnover is used as a way to assess income, if figures are not available. The authorities may also discount transactions deemed to result in substantial avoidance of tax liability.

In July 2003 the Internal Revenue Board introduced five testing methods to determine if an intercompany transaction was priced at "arm's length". (An arm's-length transaction is one involving two unrelated, independent parties.) Failure to demonstrate an arm's-length consideration could subject a firm to hefty additional taxes and penalties.

There is no special scrutiny of intercompany transactions except in suspicious circumstances, such as making agreements and documents retroactive.

The 2006 budget introduced relief to companies within a group, with a minimum of 70% ownership between them. The group relief allows 50% of a company's current-year losses to be offset against the profits of another company in the same group. To be eligible, both companies need to have a paid-up capital of more than M$2.5m and have the same accounting period. Companies enjoying pioneer status, investment tax allowance, reinvestment allowance or exemption of shipping profits (see Incentives) are not eligible for group relief.

Regional management companies

Malaysia offers qualified companies operational headquarters (OHQ) status as an investment incentive. It aims to promote the country as a regional centre for management, technical and financial support services; to facilitate technology transfer; and to create ready markets for Malaysian products (see General incentives). The 2003 budget made OHQs exempt from income tax for ten years.

Companies may also set up an international procurement centre, which offers centralised purchasing of manufacturing goods and services, or a regional distribution centre—a collection and consolidation centre for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries or to other unrelated companies inside or outside the country. Qualified centres are eligible for full tax exemption for ten years if certain turnover conditions are met (see Export incentives and zones).

Turnover, sales and excise taxes

By end-April 2008 the government had not announced a new date for introducing the goods and services tax (GST). The 2005 budget, released in September 2004, had said that the GST, a single consumption (value-added) tax, would replace the present system of sales and service taxes on January 1st 2007. But the Ministry of Finance in February 2006 deferred implementation of the GST to an unspecified later date. To ensure that implementation of the GST will not burden low-income groups, goods and services considered to be basic needs will be either zero-rated or exempt. Small businesses also will be exempt from the GST.

A general sales tax now applies at rates of 5–10% to local products and imported items (except those that are to be re-exported). A 5% rate applies to fruits, certain foods and building materials, alcoholic beverages, and cigarettes and other tobacco products. A 10% rate applies on all other types of goods.

Items exempt from sales tax include mobile libraries and clinics; computers; books, newspapers and other reading materials; and necessities such as certain essential food items and building materials. Sales tax is M$0.59 per litre for petrol, and M$0.20 per litre for diesel fuel.

The sales tax that producers pay on imported raw materials and value-added items is deductible from the final sales tax for manufactured goods. Refunds are available only to exporters and manufacturers that produce goods subject to sales tax.

Producers with sales turnover of less than M$100,000 can choose to be licensed, which lets them obtain their raw materials and components without paying a sales tax. They are then subject to sales tax on final goods produced.

A service tax of 5% applies to the value of certain goods or services sold or provided by prescribed establishments throughout Malaysia (except on the islands of Labuan, Langkawi and Tioman, and in free zones). Prescribed businesses include the following:

- hotels with more than 25 rooms;
- restaurants, bars, snack bars, coffee houses and food courts;
- cabarets, dance halls, night-clubs, health centres, massage parlours, golf clubs and public beer houses;
- insurance companies, forwarding agents and telecommunications services firms (except Internet);
- motor-vehicle service/repair centres with annual turnover of M$150,000 or more;
- car-park operators, security guards or courier-service firms with annual turnover of M$150,000 or more;
- employment or private agencies with annual sales turnover of M$150,000 or more;
- private hospitals, dental clinics and veterinary clinics with annual turnover of M$150,000 or more;
- advertising firms with annual turnover of M$300,000 or more;
- private clubs with annual turnover of M$300,000 or more; and
- car-hire services with annual sales turnover of M$300,000 or more.

From January 1st 2008 all providers of professional, consultancy and management services have to collect service tax (previously only those with sales turnover of at least M$150,000 had to collect this tax).

Professional services provided within the same group have been exempt since January 1st 2003 from the service tax. This exemption applies to services provided by public accountants, solicitors, engineers, architects, surveyors (including valuers, assessors and estate agents), consultants and management-service providers. Courier services provided from a point within Malaysia to a destination outside Malaysia also are exempt.

Excise duties apply on tobacco, beer and liquor, motor vehicles, playing cards and mah-jong tiles. In order to "promote a healthy lifestyle" the excise tax on all types of tobacco products and on most types of alcoholic beverages has been sharply increased in recent years. Duties on imports are generally higher than the excise tax on similar items produced domestically. The 2002 budget abolished excise duties on the purchase of locally produced cars for car-rental companies. Taxi operators also are exempt on the purchase of locally produced cars.

Other taxes

The national government charges stamp duties (varying *ad valorem* charges on certain instruments and documents) that can be significant, especially for disposal of properties and marketable securities. But there are many waivers and reduced rates. From January 1st 2008 private valuation has been allowed for purposes of assessment in payment of stamp duty. This enables the transfer of property to be executed pending the final valuation from the Valuation and Property Services Department.

The 2008 budget announced a 50% exemption from stamp duty on transfers of residential houses worth less than M$250,000; usual rates are 1% for the first M$100,000 of the value of the property, 2% for the next M$400,000 and 3% for the value exceeding M$500,000. The budget also made fully exempt the transfer of property between husband and wife or parents and children "on the basis of love and affection" (from 50% exemption previously).

The 2000 budget had introduced a stamp duty for Islamic banking products, with a rate structure similar to that for conventional financial instruments. The 2003 budget amended this structure because Islamic banking products require additional agreements on sales and purchases of assets, causing higher stamp-duty payments than on conventional instruments. The 2006 budget announced a stamp duty exemption on Islamic financial products approved by the *sharia* advisory council of either Bank Negara Malaysia or the Securities Commission (SC) until December 31st 2016. The 2006 budget also reduced the stamp duty on loans of up to M$1m taken out by small and medium-sized enterprises.

The government has used stamp-duty exemptions to encourage corporate restructuring. Mergers of stockbroking companies have been exempt from stamp duty on merger documents since January 1st 2001. Similar exemptions have been given to merging banks and insurance companies. The 2006 budget expanded the exemption to all companies listed on Bursa Malaysia, the national stockmarket, and the 2008 budget extended this incentive by three years. To be eligible for the exemption, mergers need the approval of the Securities Commission, the markets supervisor, before December 31st 2010 and be completed by December 31st 2011.

Unimproved land is taxed at 10% of its estimated market value. A 10% withholding tax applies to income received by non-residents from the rental of movable property. There are export levies on logs, palm oil, base metals, live animals and a number of other products.

An entertainment duty of 25% of admission price is charged, though many performances are exempt.

Other taxes include a road tax (levied on vehicles, based on the type of vehicle and the type of fuel used) and gaming taxes. A windfall levy applies on crude palm oil and crude palm-kernel oil when their prices exceed M$2,000 per tonne.

Individual states levy real-property taxes at varying rates.

Personal taxes

Overview

The federal government is the only authority that levies an income tax on individuals in Malaysia. These taxes are withheld from pay packets, and they are settled with the filing of income tax returns after the year-end. Foreign business personnel report no problems in this area.

Contrary to most analysts' expectations, the government did not cut individual income tax rates in its 2008 budget, presented on September 7th 2007. To revitalise domestic demand as a primary source of growth, the 2000 budget had cut those rates by 1 percentage point across the board, and the 2002 budget cut them by 1 or 2 percentage points. Still, as part of the revamp of the tax code, tax rates are to be cut further. The maximum tax rate, now 28%, has applied since the 2003 assessment year. Personal relief, a standard deduction declared by each resident filer, is M$8,000. To stimulate consumption and increase disposable income, the 2002 budget raised the threshold above which the top tax rate would apply to M$250,000 (from M$150,000).

For residents, the personal tax burden in Malaysia compares favourably with that in neighbouring countries. But it should be noted that, besides income tax, compulsory savings are deducted at source and paid into the Employees Provident Fund (EPF), to which employers must contribute. Foreign business personnel in Malaysia must register as taxpayers with the relevant Inland Revenue Board and are subject to normal taxation if they are residents. If the length of expatriate employment (not the period of residence) is fewer than 60 days in any calendar year and the employee does not meet residency requirements, then he or she is exempt from tax on income. Special exemptions exist for foreign entertainers and for foreign experts on a project under a government-sponsored technical-assistance scheme.

Special tax concessions are also available for foreign nationals working in Labuan, where the tax rate is 0–28% for resident individuals and a flat 28% for non-resident individuals. Expatriates employed in a managerial or professional capacity in Labuan by offshore companies enjoy a 50% tax abatement, so their highest rate is 14% instead of 28%. Income from qualifying professional services rendered to an offshore company in Labuan is 65% exempt from tax.

Expatriates working in an approved operational headquarters, international procurement centre, regional distribution centre, or regional office are taxed only on that portion of their chargeable income attributable to the number of days that they are in the country.

Residence

Individuals are considered tax residents for a calendar year if they are in Malaysia for even one day if the visit is linked to a period of residence of at least 182 consecutive days in an adjoining year. Tax-resident status can also be earned with only 90 days of residency in Malaysia in a given year if the individual in question was either a resident or in Malaysia for at least 90 days during three of the preceding four years or if he/she qualifies for residency in both the following year and the three immediately preceding years.

Those not meeting the residency qualifications described above are taxed at a flat 28% on income derived from activities in Malaysia.

Other sources of income received by non-residents are subject to withholding tax at the following rates: 10% on royalties, rental of movable properties, and services or technical advice; and 15% on interest. Non-resident public entertainers are taxed at 15% of gross income. Since September 21st 2003 payments to non-residents for services rendered abroad have not been liable for the 10% withholding tax.

Determination of taxable income

Resident individuals are taxed on income sourced in Malaysia at normal personal rates. They are entitled to various deductions and personal allowances. Income received by a resident from outside Malaysia is exempt from tax.

Income includes gains or profits from any trade, business or profession; salary or wages; dividends, interest or discounts; and rent from property. Tax exemptions are allowed for the following income: interest and dividends from certain Malaysian federal and state government bonds and securities; and income remitted to Malaysia by a non-resident. Taxpayers must include in their taxable income employer-provided allowances (such as for housing or education). Employees may deduct only those expenses wholly incurred in performing employment duties.

Permissible deductions are as follows: M$8,000 for the taxpayer (M$14,000 if disabled, from year of assessment 2005; previously M$13,000); M$3,000 for a spouse (M$6,500 if disabled, from year of assessment 2005; previously M$5,500); M$1,000 (increased from M$800 in the 2004 budget) for each child younger than age 18 either unmarried or in school full-time (M$5,000 if disabled), which can be claimed against the income of either husband or wife; life-insurance premiums and provident-fund contributions (up to M$6,000 from year of assessment 2005; previously up to M$5,000); approved insurance premiums (up to M$3,000); premiums for approved annuity schemes (up to M$1,000); medical expenses of parents (up to M$5,000); medical expenses for serious disease of taxpayer, spouse or children (up to M$5,000); purchase of sports equipment (up to M$300, introduced in the 2008 budget); contributions to approved healthcare facilities or contributions used to build or equip libraries (up to M$20,000); approved technical or vocational education fees (up to M$5,000); and up to M$1,000 (up from M$700 in the 2007 budget) for the purchase of books. The 2007 budget amended the tax rebate of M$500 (which could be claimed every five years) to buy a personal computer to a deduction of up to M$3,000 (which can be claimed every three years).

If a child is older than age 18, the taxpayer may deduct M$4,000 if the child is studying at diploma level or above in Malaysia (or studying at degree level or above overseas). Individual taxpayers studying at the tertiary level are eligible for tax relief up to M$5,000. Additional tax relief is available for the support of disabled dependants. Islamic religious dues and approved donations are deductible.

Working wives may choose to have their employment income assessed separately from that of their husbands; they may then take a personal deduction of M$8,000 (M$14,000 if disabled). Single and married filers with taxable income of less than M$35,000 are entitled to tax credits of M$350 (single) and M$700 (married).

Retirement benefits received by employees who retire upon reaching age 55 or on medical grounds are tax exempt. The 2005 budget introduced an income tax exemption of up to M$6,000 for each year of service for employees in the private sector who take compulsory retirement (applicable in some sectors) between ages 50 and 55. This exemption took force retroactively from year of assessment 2003.

Benefits derived by employees from employees' share-option schemes in the form of shares offered at discounted price are deemed gross income and thus subject to tax. The 2006 budget announced that the value of the benefit for each share option would be determined based on the difference between the market price on the date the share option is exercised or exercisable (whichever is lower) and the discounted price offered by the employer. The benefit is liable for tax in the year the option is exercised. Previously, the value was determined based on the difference between the market price of the share on the date of offer and the discounted price for each share. The value of the benefit did not take into consideration the price of the share on the date when the share option was exercised.

Following an announcement in the 2008 budget, computers and broadband subscription fees provided by employers as benefit-in-kind will not be subject to tax in assessment years 2008–10.

Individual residents who receive royalty income or payment from the use of any artistic works (other than any original painting) have an income tax exemption up to M$10,000 a year (up from M$6,000 in the 2006 budget).

Individuals receive full tax exemption on all interest from savings deposits with the Pilgrimage Board; from earnings on deposits held under the interest-free banking scheme (established in conformance with Islamic principles); and from some accounts with the National Savings Bank.

Funds held in several categories of fixed accounts carry an exemption from the general withholding tax of 5% on interest. This exemption includes: (1) up to M$100,000 in qualifying savings accounts with registered co-operative societies, the Agricultural Bank of Malaysia, the Malaysia Building Society, the Borneo Housing Mortgage Finance Company and any gains under the interest-free banking scheme; (2) up to M$100,000 in certain deposit accounts held for fewer than 12 months; and (3) any amount for deposit accounts held longer than 12 months.

Also exempt is interest that non-resident individuals earn from deposits with registered banks.

Personal tax rates

Personal taxes are assessed based on the following nine income brackets:

- up to M$2,500: 0%
- M$2,501–5,000: 1%
- M$5,001–20,000: 3%
- M$20,001–35,000: 7%
- M$35,001–50,000: 13%
- M$50,001–70,000: 19%
- M$70,001–100,000: 24%
- M$100,001–250,000: 27%
- M$250,001 and above: 28%.

Personal taxation, 2008

The following is a hypothetical calculation for a resident individual, with a non-working spouse and two minor children, with total income of M$200,000.

Total income from all sources	M$200,000
Less donations to approved institutions	0
Total income	200,000
Less:	
Personal relief[a]	(16,000)
Insurance and fund contributions[b]	(14,000)
Taxable income	170,000
Tax assessment[c]	33,375
Less:	
Rebates[d]	(500)
Other relief[e]	0
Total tax payable	32,875
Total tax as a percent of total income	16.44%

(a) Includes M$8,000 for the taxpayer, M$3,000 for a spouse, M$1,000 for each child younger than age 18 and M$3,000 for the purchase of a personal computer. (b) Includes deductions for insurance premiums and obligatory contributions to an approved provident fund (the most common is the Employees' Provident Fund, for which the employer deducts 9% of employment income) and insurance premiums on education or medical benefits. (c) Within each tax bracket, tax is calculated at two different rates, a lower rate for income up to a designated level and a higher rate for all income exceeding that level. (d) Rebates are granted for *zakat/fitrah* (religious tithes), levies on foreign workers and for individuals with taxable income of less than M$35,000 for self (M$350) and spouse (M$350). (e) Includes relief for foreign taxes and for domestic taxes deducted at source from dividends.

Source: Ministry of Finance.

Capital taxes

Malaysia abolished the real-property gains tax (RPGT) from April 1st 2007.

Capital sources

Overview

Malaysia has made substantial progress on restructuring and strengthening its financial-services industry since the start of the decade. The government has completed an ambitious, multi-year programme to consolidate the many commercial banks, merchant banks and finance companies into nine "anchor banks". As at April 2008, however, the expected second round of mergers and takeovers is progressing much slower than authorities had expected. Similar changes are now in progress for the insurance and brokerage industries, with the goal of creating core groups of resilient and dynamic domestic institutions. Affiliates of the main local banks dominate the market for most financial services, but foreign banks and insurance companies play important roles. The government has moved cautiously in allowing foreign banks and insurance companies greater scope to do business.

Sustained growth in business and investment activity in 2007 supported the demand for financing by businesses. Indeed, the number of new loan applications jumped by 63.1% (compared with growth of 4.8% in 2006), and approvals to the business sector jumped by 88.4% (compared with 8.7% in 2006). Actual loan disbursements expanded by 9.9% in 2007, compared with a contraction of 1.2% the previous year. Most of the loans disbursed to businesses were for working capital (75.6% of total loans disbursed), with funds channelled mainly to manufacturing (mainly for industries focusing of the domestic market), wholesale trade, and construction.

Bank Negara Malaysia (the central bank) reports that funds raised via the equity market jumped markedly, to M$7.1bn in 2007 from M$1.9bn a year earlier, amid continued economic expansion and as sentiment improved on Bursa Malaysia, the national stockmarket. New funds were mostly raised through rights issues (61%), followed by initial public offerings (IPOs; 35%). The plantation, trading and services and Real Estate Investment Trusts (REITs) sectors raised the most funds through IPOs in 2007. Funds raised through private debt securities (which includes bonds and other notes) in 2007 also increased strongly, to M$66.5bn, from M$30.7bn in 2006, as did the market for securitisation of assets. Securitisations raised a record M$6.4bn in 2007, compared with just M$1.5bn the previous year.

Loans from foreign-owned banks and internal sources of credit, such as borrowing from a parent situated in a low-interest-rate environment, remain the financing option of choice for many foreign-owned subsidiaries. Locally incorporated foreign banks face many restrictions, though they have been allowed since January 1st 2006 to open an additional four branches. (Of these four, only one can be in an urban centre.)

Malaysia's export-development strategy means that the state and private sector make abundant resources available to promote and finance exports. Unlike most other forms of subsidised credit, foreign companies can generally make use of official export financing.

For more information on financial techniques and instruments, see the Economist Intelligence Unit report *Country Finance* Malaysia.

Short-term capital

Commercial banks are the major suppliers of short-term credit. Most companies prefer longer-term credit, but smaller, less creditworthy firms have to settle for short-term funding. Foreign companies tend to rely on foreign-owned banks and parent companies for their funds. But many raise funds from the domestic banking system and the capital markets.

Lending rates for short-term loans are sometimes based on a "cost-plus basis"—that is, pegged to interbank money-market rates, though the percentage of such loans is relatively small.

The government-subsidised Export Credit Refinancing (ECR) facility is the cheapest source of short-term credit, followed by banker's acceptances, other discounted trade bills and overdrafts. The cost of funds is more closely related to the creditworthiness of the client, however, than to the type of financing. Short-term credit from banks is significantly cheaper than from non-bank financial institutions like finance companies.

In the past, local banks' personal relationships with clients were sometimes more important than an objective appraisal of the financial merits of the borrower, but high levels of non-performing loans and a focus on corporate governance have led credit managers to adopt stricter credit analysis.

Medium- and long-term capital

Companies operating in Malaysia generally tap bank loans to meet their needs for medium- and long-term capital, though the generally low interest-rate environment of recent years, coupled with more-liberal regulations, caused many firms to turn to the bond markets to raise capital. Medium- and long-term bank credits are readily available, though they are more difficult to obtain than short-term credits. Domestic firms also often turn to the equity market or to the leasing of equipment and vehicles.

The Securities Commission (SC) gave a much-needed boost to Malaysia's bond markets in 2000–01 by liberalising the regulations under which companies can issue new debt securities, and corporations were quick to take advantage of the improved market structure. Financing via the bond market (excluding issues by Cagamas, the National Mortgage Corp) and non-residents) was buoyant in 2007; gross funds raised more than doubled to M$66.5bn (from M$30.7bn in 2006). Despite large redemptions during the year, the net issuance of debt securities (excluding Cagamas and non-residents) nearly doubled, to M$19bn in 2007 from M$10.1bn in 2006.

Companies used most of the private debt securities (PDS), which includes bonds and other notes, issued during the year for new investment activity (48%), refinancing of existing debt (34%), and for mergers and acquisitions (12%). Nearly two-thirds of PDS issued in 2007 were *sukuk*, or debt paper conforming to Islamic principles, a direct result of the authorities' efforts to position Malaysia as a hub of Islamic finance. In recent years, PDS has emerged as an attractive funding option because of the special status of certain PDS paper, its preferential tax treatment and the designation of semi-public bonds as eligible liquid assets for financial institutions. In 1996, the year before the financial crisis, for example, companies issued only M$17bn in PDS.

In July 2004 the SC relaxed the requirements for ringgit bond offerings by multilateral development banks and multilateral financial institutions by making them exempt from certain restrictions on issuing PDS; the SC extended this framework in March 2006 to sovereigns and quasi-sovereigns rated AA and above. The Asian Development Bank became the first bank to make use of the new facility on November 10th 2004, when it raised M$400m through the issue of a five-year bond. This landmark issue was followed by ones from the International Finance Corporation (the private-sector arm of the World Bank); the International Bank for Reconstruction and Development; and German development bank KfW, which launched a M$2bn medium-term notes programme on January 24th 2007. This development may lead to foreign corporations one day being able to issue ringgit-denominated debt, though concrete proposals had not been announced by April 2008.

The market for asset-backed securities (ABS) reached a record high in 2007: issuance of ABS raised M$6.4bn in 2007, compared with just M$1.5bn in 2006. To promote the issuance of ABS, the commission introduced revised guidelines in March 2003 for offering such securities; these went into effect on May 1st 2003.

The government has also positioned Malaysian government securities (MGS) as the benchmark for the bond market, providing investors with a solid basis for comparison with corporate bonds. The public sector raised a record M$53.7bn in bonds and other debt instruments in 2007, compared with M$38.3bn the previous year, according to the central bank. Citigroup (US) added MGS to its World Government Bond Index, a global benchmark, in July 2007 MGS; this is expected to attract part of an estimated US$1trn in funds that seek to match their performance to the benchmark.

The development finance institutions (DFIs) specialise in providing medium- and long-term loans to priority sectors of the economy (such as infrastructure development and capital-intensive and high-tech industries) or to achieve certain social goals (such as lifting the economic status of *bumiputras*—ethnic Malays and other indigenous peoples). The nationwide DFIs in April 2008 were Agriculture Bank of Malaysia, Bank Rakyat, Credit Guarantee Corp, Development Bank of Malaysia, Export-Import Bank of Malaysia, Malaysian Industrial Development Finance, National Savings Bank, Pilgrims Trust Fund and SME Bank. The other DFIs—Sabah Credit, Sabah Development Bank, and the Sabah and Sarawak arms of the Borneo Development Corp—deal specifically with development in Sabah and Sarawak states. Total value of loans outstanding at DFIs expanded by 17.5% in 2007, to M$65.2bn at year-end.

The Labuan International Offshore Financial Centre is another source of medium- and long-term finance. It hosts international business activities in banking, insurance, corporate funding, investments and trust management, professional services and related activities. It is characterised by low taxes, zero or marginal exchange-control requirements, a high level of confidentiality for borrowers and lenders, and few regulations or restrictions on the flow of funds. Licensed offshore banks can accept deposits and grant loans in foreign currency.

Term loans, financial leasing, mortgage loans, convertible unsecured loan shares and equity derivatives (particularly transferable subscription rights) are other frequently used forms of raising medium- and long-term financing. Although swap financing exists as well, it is not often used for finance.

Human resources

Overview

Malaysia's labour market continued to be stable in 2007 and should stay that way in 2008. According to the Ministry of Human Resources, the unemployment rate remained at 3.3% at end-2007, unchanged from a year earlier, as total employment expanded by 2.1% (to 11.4m) and the labour force increased by 2% (to 11.8m). The ministry expects the unemployment rate to reach 3.2% at end-2008. Labour productivity, as measured by the real value added per worker, improved to 4.1% in 2007 (compared with 3.4% the previous year), boosted mainly by higher productivity growth in the services sector. The labour-force-participation rate for the population as a whole stood at 67% at end-2007, up from 66.9% a year earlier.

English, a legacy of British colonisation, is widely spoken, since it remains one of several languages of instruction in schools. (After independence in 1957, however, nationalism systematically reduced its role.) To boost Malaysia's international competitiveness, science and mathematics have been taught in English since 2003.

Malaysia has met its unskilled-labour shortage by importing foreign workers from neighbouring countries. Authorities have launched several crackdowns on illegal workers since 1992, most recently in 2006, but each crackdown has led to a labour shortage followed by renewed illegal immigration. The government wants to reduce the economy's reliance on foreign labour but has provided no plans as to how to do this without harming the country's economic expansion.

The expanding economy has led to increased demand for skilled labour, which is sometimes in short supply. In addition, persistent emigration among professionals intensifies the shortage of qualified Malaysians. (Singapore, Canada, the United States and Australia are the favoured destinations for these professionals.) This will probably remain a long-term problem, especially given the shift in production to higher-value-added products and more-sophisticated processes. Some of the skills that are in high demand include engineers, machinists, geologists, architects, accountants, Islamic-finance specialists, information-technology specialists, and mid- and senior-level managers. Demand for these skilled workers has increased in recent years and will remain high in the medium term. Nevertheless, 49,406 graduates remained unemployed at end-2007, mainly because of a mismatch of skills and workplace demands. In mid-May 2008 the government is planning to introduce a compulsory 3–6 months industrial training for undergraduates.

The 2008 budget also addressed the lack of the workforce's quality as the country moves up the value chain. It made public-school tuition, textbooks and uniforms free; increased the number of local and overseas scholarships awarded to talented Malaysians; and raised the wages of teachers. In all, the government allocated M$30bn in fiscal year 2008 (ending September 30th 2008) to the Ministry of Education and another M$14bn to various higher-education projects and programmes.

Several fiscal incentives to enhance productivity have been in place since the 1997 budget. These measures include the following: (1) a reinvestment allowance to encourage companies to introduce automation and labour-saving devices; (2) fiscal and other incentives to facilitate the shift to high technology and capital-intensive and information-based technology; (3) incentives for research and development; (4) incentives for training employees; and (5) incentives to increase the value chain of manufacturing processes to strengthen industrial linkages.

The 1998 budget extended the Human Resources Development Fund scheme, which promotes sufficiently skilled labour, to other sectors—particularly information technology, education and consulting. In keeping with measures in the 2001 budget, the fund reimburses up to 100% of the cost of training for staff of private institutions of higher learning in medicine, engineering and computer science.

The fund uses a levy/grant system. Employers who have paid the levy qualify for training grants from the fund to defray or subsidise training costs for their Malaysian employees. Companies that employ 50 or more Malaysian workers or companies that employ 10–49 workers and have paid-up capital of at least M$2.5m contribute 1% of employees' monthly wages. Companies employing 10–49 workers but with insufficient paid-up capital have the option of registering with the fund and paying a levy of 0.5% of employees' monthly wages. Since its inception in 1993, the fund has paid out more than M$1bn in grants. Total financial assistance approved by the fund for training rose by 15%, to M$331m, in 2007; this funded nearly 700,000 training places.

The Ministry of Human Resources operates the Electronic Labour Exchange (ELX) to match job seekers with potential employers. More than half of the job positions advertised in the ELX in 2007 were elementary occupations. For higher-skilled jobs, employers preferred to draw on the expertise and reach of private employment agencies and media, both print and electronic.

National affirmative-action guidelines for *bumiputras* (Malays and other indigenous peoples) pose a constraint on recruitment, even if these are not strictly enforced. In practice, companies generally need only present evidence of having actively looked for *bumiputra* staff. In keeping with the goals of the New Economic Policy of 1970 and maintained in a modified form in the National Development Policy of 1990, the National Vision Policy of 2001 and the Ninth Malaysia Plan of 2006, companies are encouraged to employ Malays, Chinese and Indians at all job levels in proportion to the ethnic distribution of the population. Qualified *bumiputra* managers and technicians are scarce, however, and turnover is high among trained personnel.

The government also requires all foreign-invested firms to set up training programmes for their Malaysian staff and plan for the gradual replacement of expatriates (except those holding key posts) by Malaysians, particularly in managerial and white-collar positions. As part of any application for pioneer status (see General incentives), firms must present a localisation schedule. But the persistent labour shortage has forced the government to be more flexible in applying these policies.

Most foreign-invested firms do not encounter difficulties recruiting employees, because they offer relatively high wages (at times up to 20% more than their local counterparts) and attractive benefits. Government employment offices throughout the country provide free assistance to firms. Some companies also use registered private-sector employment agencies. Every employee must be given a written contract of employment that states the terms and conditions (including the notice period required for termination) of the position.

The normal retirement age for government workers is 55 years, although optional retirement with full pension is possible at age 50. The 2005 budget introduced income tax exemption for employees in the private sector who retire at 50–55. The Ministry of Human Resources appealed to the private sector in March 2001 to increase the retirement age to 56 years, but there is no law establishing a national retirement age, so compliance is voluntary.

Labour law

Malaysia's main labour laws include the Employment Act 1955, the Trade Unions Act 1959, the Industrial Relations Act 1967, the Employees' Social Security Act 1969 and the Employees' Provident Fund Act 1991. Amendments to these laws have increased the power of officials of the Ministry of Human Resources and the director-general for trade unions to suspend unions, forbid strikes, unilaterally intervene in any labour conflict, invalidate strike ballots and regulate relations with international labour bodies. They also prohibit high-ranking union leaders and their organisations from engaging in political activity.

The Employment Act—the most important piece of labour legislation—was amended, as from August 1st 1998, to promote more-flexible working practices and to encourage employers to provide productivity incentives. It applies to all persons engaged in manual work, including artisans and apprentices, or those operating and maintaining transport vehicles; certain officers engaged in any ship registered in Malaysia; persons supervising employees engaged in manual labour; and those, regardless of occupation, earning less than M$1,500 a month. Following the 1998 amendment, the act also covers employees earning M$1,500–5,000 per month, though only in terms of wages, allowances and other cash benefits. The government announced in July 2006 that it planned to raise this ceiling to M$2,000, though it had not done so by May 2008. Workers not covered by the Employment Act are regulated by common-law practice and by the terms of employment contracts. The act limits hours of work and overtime, provides for a minimum number of annual holidays and deals generally with working conditions. The Employment (Termination and Lay-off Benefits) Regulations 1980, which come under the act, stipulate compensation levels for employees who are laid off.

The Trade Unions Act 1959 limits membership in unions to employees within a particular trade, occupation or industry. The act requires all unions to be registered with the director-general for trade unions. Under this law, any union organising a strike must first obtain the consent of at least two-thirds of its membership by secret ballot.

The Industrial Relations Act 1967 regulates the settlement of disputes among employers, employees and their trade unions. Part four of this act regulates collective bargaining.

The Employees' Social Security Act 1969 protects employees with monthly wages of M$2,000 or less against the contingencies of industrial accidents, diseases, invalidity and death.

The Employees' Provident Fund Act 1991 requires employers and employees to contribute to a national provident fund. Employers' contributions are tax deductible.

Safety and health legislation are in the Factories and Machinery Act 1967, the Workers' Minimum Standards of Housing and Amenities Act 1990, and the Occupational Safety and Health Act 1993. The government created regulations during 2000 on occupational safety and health regarding exposure to hazardous chemicals. It also extended child-labour laws to the federal territory of Labuan.

Under the Factories and Machinery Act, all factories and high-risk machinery must be registered with, and sometimes certified by, the Department of Occupational Safety and Health. Under the Occupational Safety and Health Act, any firm employing 40 or more persons must establish a safety and health committee. The department makes about 150,000 inspections annually; it prosecuted 108 cases of non-compliance under the act in 2007.

Fundamental indicators: labour and wages

Labour market	2007 actual	2008 forecast	2009 forecast
Labour force (m)	10.9	11.2	11.4
Unemployment rate (%)	3.2*	3.4	3.2
Wage costs			
Average real wages (% growth)	1.4*	0.6	1.2
Average nominal wages (% growth)	3.5*	3.5	3.5
Labour costs per hour (US$)	2.80*	3.10	3.30

* Estimates.

Source: Economist Intelligence Unit, *Country Forecast* Malaysia, April 2008.

Industrial labour

The upswing in economic activity in recent years has brought welcome relief to industry, which suffered some of the worst effects of the 1997–98 financial crisis and the economic downturn of 2001. Government statistics counted 14,035 retrenchments in industry during 2007, down from 15,360 the year before. Retrenchments hit nearly 90,000 during 1998, in the wake of the financial crisis. The number of active job seekers rose by 10% during the year, to 92,508 at end-2007, though about 41% of this group consisted of employed persons seeking better jobs. Active vacancies, meanwhile, reached 825,182 at end-2007, slightly less than a year earlier.

Malaysian trade unions tend to be well organised, but unionised employees represented less than 10% of the nation's 11.4m workers at end-2007. Most of the unions are in peninsular Malaysia; Sabah and Sarawak have practically none. According to the Department of Trade Union Affairs, under the Ministry of Human Resources, there were 642 trade unions at end-2007 (up from 631 a year earlier), with a total of 803,462 members (up by 1,877 from end-2006). More than half of these unions (407) are in-house unions; the rest are national unions (such as the Plantations Workers' Union, the National Union of Bank Employees, and the Transport and General Workers' Union), government bodies or employer organised. Malaysian law now allows only in-house unions, not ones organised on an industry-, nation- or state-wide basis.

The country's three umbrella labour organisations include less than half the number of trade unions. Individual in-house unions may apply to form trade-union federations or become affiliated with the Malaysian Trade Unions Congress (MTUC). The Malaysia National Workers Organisation split from the MTUC in early 2006, though it has not been heard from since. The Congress of Unions of Employees in the Public and Civil Services (Cuepacs) is registered under the Trade Unions Act 1959.

The MTUC filed a complaint in September 2003 with the International Labour Organisation (ILO) against the government for refusing the formation of unions in certain sectors, such as electronics. The MTUC claimed that, despite being an ILO member, the Malaysian government ignores its commitment to ILO conventions, particularly Convention 87, which provides for the freedom of association. The ILO in June 2004 urged the government to amend its legislation to bring the laws into full conformity with freedom-of-association principles; however, the ILO's recommendations are non-binding, and in April 2008 the government had still not acted on these recommendations. (The government did amend the Employment Act in December 2005 to make it mandatory for employers to submit regular reports on the condition of their foreign workers, in accordance with ILO provisions.)

Strikes are very rare in Malaysia; only two such actions (involving 79 workers) were reported in 2007, and there was just one strike (involving 172 workers) the previous year. Labour relations will continue to be non-confrontational, particularly since salaries are rising and unemployment remains low.

Before calling a strike, a union must obtain the consent of at least two-thirds of its membership via secret ballot. The secret ballot is valid for only 90 days from the date on which it is taken; thereafter no strike can commence on the basis of that ballot. The director-general for trade unions must receive 14 days notice of a vote to strike, and a strike action may not be taken until seven days after the notification period.

The time lapse is designed to let the Industrial Relations Department of the Ministry of Human Resources intervene and encourage an amicable settlement. Dispute-resolution methods include fact-finding, arbitration and conciliation. Strikes and lockouts are restricted in certain essential services, such as emergency services. Picketing also is severely restricted. Under a "crisis management" technique implemented in 1992, staff members from the Ministry of Human Resources are placed at the sites of anticipated labour actions to promote peaceful negotiations. The technique has generally been successful in resolving strikes within 48 hours. A total of 302 trade-union disputes, involving some 20,000 workers, were reported to the Industrial Relations Department in 2007, compared with 333 cases, involving more than 14,000 workers, in 2006.

The Industrial Court arbitrated 2,349 cases in 2007, down from 2,381 cases in 2006. More than half of the cases in 2007 concerned employment termination following alleged misconduct.

Wages and fringe benefits

Malaysia does not at present have a minimum wage, though the government is considering introducing one for private security guards later in 2008. The Malaysian Trade Unions Congress (MTUC) has been pressing for a minimum wage since early 2000, but the government maintains that wages should be decided by market forces and has consistently dismissed demands to set minimum wages. The MTUC has proposed a minimum wage of M$900 per month, plus a cost-of-living allowance of M$300; entry-level wages for low- or unskilled labour are well below this level. The proposed minimum wage for security guards would be in the M$500–700 range.

The expansion of economic activities and labour demand resulted in some wage pressures in 2007, with executives in the private sector receiving higher salary increases (5.9% on average) than non-executives (5.6%), according to Bank Negara Malaysia, the central bank, similar to the average increases (of 5.9% and 5.7%, respectively) in 2006. The salary hikes in part reflect companies' policy in rewarding performance and use of salary to attract and retain talents.

Fringe benefits normally amount to around one-quarter of base wages. Holiday and annual-leave provisions vary widely among industries. Ten paid holidays are mandatory nationwide; the particular days vary by region but usually include at least three national and state holidays and 4–6 national and religious-festival days, such as the Chinese New Year, the prophet Mohammed's birthday, the Muslim Hari Raya Puasa festival, the Christian Christmas, the Hindu Deepavali festival and the Buddhist Wesak Day.

Employees with fewer than two years of service are entitled to eight days paid leave each year. Employees with service of 2–5 years are entitled to 12 days of annual leave, and those employed for five or more years are entitled to 16 days.

Under the Employment Act 1955, an employee is entitled to 14 days of annual sick leave if employed less than two years, 18 days for 2–5 years and 22 days after five years. If hospitalisation is necessary, paid medical leave is extended to a total of 60 days each year. Most companies supply some free medical facilities. Certain categories of female workers are guaranteed 60 days of paid maternity leave at the greater of the employee's normal rate of pay or M$6 a day, plus an optional 90 days of unpaid maternity leave.

Where unions represent industries or establishments, wages are settled through collective bargaining. According to the Ministry of Human Resources, there were 186 collective wage agreements (covering nearly 150,000 workers) concluded in 2007, compared with 168 agreements (covering nearly 61,000 workers) in 2006.

The Employees' Provident Fund (EPF) Act 1991 provides for a compulsory contributory retirement fund that is payable to employees in full when they reach age 55. All employers and employees must contribute to the fund; the minimum mandatory employee contribution is 11% of basic monthly pay. An employer must contribute another 12% to each employee's personal EPF holding, which is deductible from the employer's corporate income tax. This relief is allowed on additional contributions up to 19% of the employee's monthly pay, which is paid into either the EPF or other government-approved savings schemes. All foreign workers and expatriates and their employers are exempt from compulsory contributions; however, they can volunteer to contribute (employers at M$5 per employee per month, and employees at 11% of monthly wages). Firms can seek tax exemption for contributions on their own pension schemes in addition to the EPF.

The Social Security Organisation (Socso; often referred to by its Malay acronym Perkeso) administers two social-security schemes for workers earning less than M$3,000 per month (increased from M$2,000 in mid-2007). Once covered, workers remain included irrespective of their wages, though the maximum contribution is based on monthly wages of M$2,000. Employers contribute 1.25% of the employee's wages under the Employment Injury Insurance Scheme; employees do not contribute. The contribution under the Invalidity Pension Scheme is 1% of the employee's wages, shared equally by the employer and employee. A total of 56,339 workplace accidents were reported to Socso in 2007, a sharp decline from 68,008 mishaps reported the previous year.

It is customary in Malaysia for employees to receive an annual bonus equivalent to 1–3 months of salary. Bonus payments by employers are tax deductible as a company expense for up to two months of wages (plus an additional sum calculated from the two months of wages) or M$2,000 per employee per year, whichever is greater.

In a 2007 survey, the World Bank estimated the non-wage labour costs in Malaysia at 15% of an employee's salary.

Working hours

Under the Employment Act 1955, normal working hours are limited to 48 hours or six days a week at eight hours a day. In practice, a 44-hour week is common for industrial and office employees. The latter usually put in a working week of five-and-a-half days, or five days a week and every other Saturday. Civil servants and employees of most foreign companies enjoy five-day workweeks. The maximum allowable overtime is 104 hours per month. A convention that is generally observed is that all Muslim men must be allowed to attend prayers on Friday afternoons (between noon and 2.45 pm) in accordance with the requirements of Islam.

Overtime on working days is compensated at a minimum of one-and-a-half times the regular hourly rate, irrespective of the basis of payments (for example, hourly, daily, monthly or by piece). On non-regular working days, such as Sundays, overtime is paid two times the regular rate, and on public holidays, three times.

Employees must be offered at least one rest period of at least 30 minutes within five consecutive hours of work.

The employment of female workers in certain activities is prohibited. The employment of women in industrial and agricultural jobs is prohibited between 10 pm and 5 am.

Compensation, 2007

Position	Wage range (M$ per month)
Unskilled	507–1,146
Data entry	590–1,312
Security guard	596–1,438
Semi–skilled	604–1,459
Laboratory assistant	640–1,751
Quality-control inspector	669–1,863
Typist	672–1,708
Accounts clerk	733–1,797
Lorry driver	734–1,692
Welder	758–1,707
Electrician	779–1,958
Maintenance technician	901–2,074
Foreman	1,095–2,969
Secretary	1,195–2,280
IT supervisor	1,303–3,386
Production/technical supervisor	1,472–3,116
Marketing executive	1,825–4,680
Programmer	1,898–4,086
Mechanical engineer	2,076–5,059
Executive secretary	2,155–5,049
Electrical engineer	2,171–4,984
Systems analyst	2,485–5,381
Accountant	3,250–6,394
Company secretary	3,967–9,983
Marketing manager	4,234–10,240
Production manager	4,846–9,892
Human-resources manager	4,960–10,672
Administration manager	4,979–10,240
Purchasing manager	4,999–9,383
Quality-control manager	5,548–11,211
Factory manager	7,681–15,916
General manager	9,119–17,023
Financial controller	9,205–19,943

Source: Malaysian Employers Federation, Salary and Fringe Benefits Survey for Executives 2007; Salary and Fringe Benefits Survey for Non-Executives 2007.

Part-time and temporary help

Part-time employment is used in Malaysia, but it is difficult to generalise about these workers' rights. Because Malaysia's labour legislation makes no distinction between part-time or temporary help and permanent staff, normal rules apply to part-time and temporary workers. Case law, however, makes a distinction between casual workers (defined as those who offer services at the job site each day and are paid on a daily basis) and permanent staff.

Casual workers are not entitled to termination benefits, and it is unlikely the courts would order reinstatement (nevertheless, such workers may not be dismissed without due cause). A casual worker actually paid on a monthly basis may be deemed to be a regular employee and enjoy all the benefits of regular employment.

Termination of employment

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

Where notice is not provided for in the agreement, the Employment Act 1955 stipulates that four weeks notice must be given for employment of less than two years; six weeks for 2–5 years of service; and eight weeks for more than five years of service.

Firms have the right to make workers redundant. No fixed period of notice is required in the event of lay-offs. Under the Employment (Termination and Lay-off Benefits) Regulations 1980, employees are entitled to a redundancy benefit of at least ten days wages for each year of service under two years, 15 days wages per year of service for 2–5 years, and 20 days wages for each additional year of service. In a 2007 survey, the World Bank estimated that the financial cost of firing an employee after 20 years of employment averages 66.7 weeks of salary for that worker.

Employment of foreigners

According to official figures, the number of registered foreign workers in Malaysia rose by 9.3% in 2007 to 2.1m at year-end, making the country one of the largest importers of foreign labour in Asia. In total, foreign workers account for more than one-sixth of total employment and are engaged mainly in manufacturing (36%), plantation (25%) and construction (14%), as well as domestic helpers (15%).

The Ministry of Home Affairs has drafted a Foreign Workers Act, which would hold employers accountable for the conduct of their foreign workers. But the Ministry of Human Resources opposes a separate labour law for foreign workers, and so parliament had not yet passed the new law by April 2008. The draft act imposes fines for employers who fail to meet their workers when they arrive in Malaysia.

Approval for expatriate posts is usually handled by the Malaysian Industrial Development Authority, which since mid-2007 has a unit of the Immigration Department on its premises to expedite the processing of applications from expatriates. The Multimedia Development Corp approves applications from companies with Multimedia Super Corridor Malaysia status; Bank Negara Malaysia (the central bank) handles those from in financial services, insurance and banking; the Securities Commission (SC) approves those relating to the securities and futures market; Malaysian Biotechnology Corp handles those for the biotechnology industry; and the Expatriate Committee approves those for expatriate posts in other sectors (the Employment Pass Division of the Immigration Department is the secretariat for the committee). Applications are reviewed within seven working days (compared with 14 days prior to January 1st 2008); another three working days are needed to issue the employment pass. Details of the application procedures are at http://www.pemudah.gov.my/Guidebook.pdf. Work permits are now valid for five years per renewal, up from two years prior to mid-2007.

The government approved 2,312 expatriate posts in 2007 (581 more than in the previous year); of these, 621 were key posts (which could be filled permanently by foreigners), and the remaining 1,691 were term posts (which generally are granted for 3–5 years and for which Malaysians are trained eventually to take over the posts). The total number of expatriates rose by 5.7% in 2007 to 34,822 persons at year-end. Most of the expatriates were engaged in services (60%) and manufacturing (33%).

The government has made it easier for companies to hire skilled foreigners. Under the stimulus package announced in May 2003, automatic approvals are granted to recruit highly skilled workers where no local expertise is available. Manufacturing companies with foreign paid-up capital of at least US$2m are automatically allowed ten expatriate positions, including five key posts. Expatriates can be employed for up to ten years for executive posts and five years for non-executive posts. Manufacturing companies with foreign paid-up capital of US$200,000–2m receive automatic approval for up to five expatriate posts, including at least one key post. Expatriates can be employed for up to ten years for executive posts and up to five years for non-executive posts. Manufacturing firms with foreign capital of less than US$200,000 are considered for both key posts and time posts.

Key posts can be considered where the foreign paid-up capital is at least M$500,000; time posts can be considered for up to ten years for executive posts and five years for non-executive posts. The number of key posts and time posts allowed is considered on a case-by-case basis. For Malaysian-owned manufacturing companies, automatic approval for employing expatriates for technical posts (including research and development posts) is given as requested.

Expatriates may fill other executive posts if no Malaysians can be found with the necessary qualifications and experience. The expatriate may hold the post for up to ten years. Within one year of the expatriate's arrival, a training programme must begin for a Malaysian to fill the position.

Professional Visit Passes are available for professionals on short-term assignments; these are valid for six months (up from three months prior to January 1st 2008).

Companies investing in approved projects in the new Iskandar Development Region may employ foreign employees freely within the zone, depending on the amount of space occupied (see Incentives).

The minimum age for expatriates is 27, except for information-technology positions, for which the minimum age is 21. The annual levy for expatriate positions depends on the sector of employment and ranges from M$360 (agriculture) to M$1,800 (service). Fees for employment-pass issuance (M$200–300 per year), processing (M$550 per year) and other services are charged as well.

Semi-skilled and unskilled foreign workers may work only in certain sub-sectors of the plantation, construction, manufacturing and service sectors, or as domestic help. Applications for foreign workers for companies on peninsular Malaysia have to be submitted to the Immigration Department, and are limited to certain Asian countries. Nationals from Cambodia, Indonesia, Laos, Myanmar, Nepal, the Philippines, Thailand and Vietnam are allowed to be employed in manufacturing, services, plantations and construction; nationals from Kazakhstan, Turkmenistan and Uzbekistan are allowed to work in manufacturing, services and construction only; and nationals from India can apply for employment only in the plantation sector, as restaurant cooks or as high-voltage cable workers. Domestic work is limited to females aged 25–45 from Cambodia, Indonesia, the Philippines, Sri Lanka and Thailand.

However, replacement of foreign labour (after workers have returned to their country of origin) is limited to nationals from Cambodia, India (to work as tool and die makers in manufacturing, or as construction workers dealing in the installation of high-voltage cables), Indonesia, Nepal (allowed only in specific cases), Sri Lanka (for employment in tea and rubber plantations) and Thailand.

Employers in Sabah state may employ foreign workers from Indonesia and the Philippines only; they need to apply at the Department of Immigration in Sabah. Companies based in Sarawak state that intend to employ foreign labour must obtain a licence and employment quota from the Sarawak Department of Labour. Employers on the island of Labuan may employ foreign labour from Bangladesh, Indonesia, Pakistan, the Philippines and Thailand only, and they need to apply at the Labuan immigration Office.

Foreign workers are initially allowed to work for three years only; upon application by the employer, this may be extended, year by year, to the fifth year. For an extension after the fifth year, the employer must obtain certification from the National Vocational Training Council, the Ministry of Human Resources or the Construction Industries Development Board that the particular worker is a skilled worker. All new foreign workers, except those from Indonesia, expatriates and maids, have been required since November 2005 to attend a week-long induction course on Malaysian laws, culture and taboos.

The Immigration Department, under the Ministry of Home Affairs, on August 1st 2005 slightly raised the levies and fees imposed on the employment of foreign labour. Annual levies apply to ensure that foreign labour is employed only when necessary; these levies for foreign workers in manufacturing, service and construction now stand at M$1,200 per worker per year (M$960 in Sabah and Sarawak) plus a one-time fee of M$110. The levy for the plantation sector and domestic help is M$360 per year, plus a fee of M$70, per foreign worker. The department also applies a security deposit—refundable after the return of the foreign worker to his/her country of origin—which ranges from M$250 for workers from Cambodia, Indonesia or Thailand, to M$1,500 for those from Vietnam.

At the same time, the department also streamlined procedures for hiring foreign workers; properly prepared and documented applications now receive same-day approval.

In early 2008 the government said it would send home up to 200,000 legal foreign workers by 2009 and announced a decision to ban foreigners from working in frontline jobs at airports and hotels. But his ban was not being enforced as at April 2008. The government also said it wants to apply stricter standards for hiring foreign labour in order to reduce their number to 1.8m in 2009 and to 1.5m by 2015. Syed Hamid Albar, the minister of home affairs, said in April 2008 that he wants the country to stop using foreign workers completely, but he did not provide a timetable or any suggestions for achieving this without derailing Malaysia's expansion plans.

Authorities regularly crack down on illegal immigration. The most recent crackdown, led by the 450,000-strong People's Volunteer Corps (better known by its Malay acronym Rela), started in mid-2006. Amendments to the Emergency (Stipulated Powers) Act 1964 issued in February 2005 allowed Rela to arrest and detain suspected undocumented immigrants, to raid premises without search warrants, and to carry small firearms—powers some critics claim the organisation has regularly abused. Despite these efforts, government officials believe that 500,000–700,000 illegal immigrants were in Malaysia in early 2008, and some observers believe that number could top 1m.

Foreign trade

Overview

The value of total foreign trade in 2007 expanded to a historic high of M$1.1trn, according to the Ministry of International Trade and Industry. Total trade was up by 3.7% from 2006, significantly less than the 10.5% recorded the previous year as exports of electronic goods slowed. Exports increased by 2.8% year-on-year, from M$589bn to a record high of M$605.2bn, and the value of imports expanded by 5%, to M$504.8bn, from M$480.8bn. Malaysia's trade surplus decreased by 7.3% in 2007 to M$100.3bn, but the current-account surplus increased by 6.3% to reach M$99.3bn. An improvement in the services and income accounts supported the upward trend. The trade surplus was underpinned by strong commodity exports as a result of high prices of palm oil and minerals. Commodity exports, which have low import content, contributed to 73% of the trade surplus for the year. The last time Malaysia recorded a monthly trade deficit was in October 1997.

Malaysia's main trade policies have several aims: to improve market access for exports of primary commodities, manufactured products and, increasingly, services; to develop and promote exports of higher value-added manufactures; to expand trade with major trading partners; to diversify trade into non-traditional markets, particularly developing countries; to strengthen trade and economic co-operation within the Association of South-East Asian Nations (ASEAN); and to expand trade and investment links within the larger Asia–Pacific region and with the 55 fellow Muslim member states of the Organisation of the Islamic Conference.

Malaysia enjoys generalised system of preferences (GSP) privileges from the European Union (under rules introduced in January 2002), Australia, Canada, Japan, New Zealand, Norway, the Commonwealth of Independent States, and Switzerland. From January 1st 2006, the EU added around 250 products to its GSP scheme, including consumer electronics, which make up more than half of Malaysia's exports to the EU. On May 8th 2003 the EU reinstated GSP privileges for Malaysia for clothing, cereals, malt and starches, retroactive to January 1st 2003. The United States withdrew Malaysia's trading benefits under the GSP in 1997 when it judged that income levels no longer qualified the country as a developing nation.

Standards and standardisation activities are among Malaysia's priorities for achieving developed-nation status by 2020. The government aims to align Malaysian standards with international standards; indeed, nearly two-thirds of Malaysian standards were aligned by 2007, up from 35% in 2001. Malaysia has had much success in developing *halal* certification, reflecting the government's aim to make the country a hub for *halal* food products.

As from January 1st 2008, the Customs Department merged 16 different customs forms into four, in an effort to enhance efficiency and cut red tape.

Tariffs and import taxes

Malaysia uses the widely employed Harmonised System in its customs tariff nomenclature. There are still more than 10,000 lines at the nine-digit level in the Malaysian tariff structure, though the government is slowly reducing the number of lines by simplifying and streamlining import procedures, which should improve efficiency. Almost all rates (99.3%) are *ad valorem*; the remainder are specific, mixed or alternative duties. An ongoing exercise to convert these to *ad valorem* duties has increased the transparency of Malaysia's tariff structure. It agreed with the World Trade Organisation that about 63% of imports would be bound (that is, not alterable without a renegotiation of the trade pact). It also charges surtax as a part of customs duties and on certain imports. Malaysia is participating actively in the WTO's Doha round.

The US Trade Representative estimated that the average applied tariff rate was about 8.1% in 2007, unchanged from 2006, but it noted that duties for tariff lines where there is significant local production are often higher.

Malaysia's tariff protection is generally lower for raw materials and increases depending on the category and value-added content. The higher rates apply to protected sectors and luxury products. About 27% of Malaysia's tariff lines (principally on construction equipment and the agricultural, mineral, and motor-vehicle sectors) are also subject to non-automatic import licensing designed to protect import-sensitive or strategic industries.

To reduce the reliance of domestic industry on imports, limits on a number of types of equipment have been in place since 1998. All imports of heavy machinery for the construction sector need approval from the Ministry of International Trade and Industry (MITI), which grants approval only if this machinery is not available locally. An import duty of 5% has been imposed since 1998 on heavy machinery and equipment such as tower cranes, forklifts and escalators.

Besides import duty, a single-stage sales tax applies to goods manufactured or imported into Malaysia where total sales of the manufacturer exceed M$100,000. The tax, which applies equally to domestic products, applies at the importer level at 5% (for nearly all items) on the gross value of the item (customs value plus tariffs).

The import of raw materials and certain specified items are exempt from sales tax. These include the following: those for use in manufacturing taxable goods, primary commodities, basic foods, basic building materials, certain agricultural implements and heavy machinery for use in the construction industry, certain tourism and sporting goods, newspapers and reading materials, and all computer equipment, including modems.

Malaysia agreed in 1996 with an Asia–Pacific Economic Co-operation (APEC) forum initiative to reduce maximum tariff rates to 15% by 2000 and to eliminate them by 2020. In reality, however, the average tariff level is already less than 10%. Malaysia also endorsed the WTO-affiliated Information Technology (IT) Agreement in 1997, pledging to end import barriers on many IT hardware, software, components and manufacturing machinery by January 1st 2000. Though many of these products were freed ahead of schedule, Malaysia was allowed to maintain tariffs on a handful of products until end-2005, by which time all such barriers had been abolished.

Concurrently, the Association of South-East Asian Nations (ASEAN) Common Effective Preferential Tariff (CEPT) scheme seeks to achieve an ASEAN Free-Trade Area (AFTA) by end-2008. It extends the 1977 ASEAN Preferential Trading Arrangement (PTA), which sets a margin of preference at 25–50% on imports originating from member states, subject to national exemption lists. The CEPT affected all product categories (save unprocessed farm products) and called for a gradual reduction of tariffs to 0–5% by January 1st 2003. Malaysia has committed to 97% of the products covered under the CEPT; the simple average tariff rate for these products is scheduled to be reduced to zero by 2010. Under the CEPT, products are deemed to originate from within ASEAN if at least 40% of their content originates from within the region (compared with the 50% threshold under the Preferential Trading Arrangement). ASEAN members agreed on September 15th 2006 to harmonise their trade laws but quickly admitted that achieving that goal is a long way off because of differences in legal frameworks; by April 2008 few specific steps had been announced.

In recent years, ASEAN has shifted its focus from the ASEAN Free-Trade Area (AFTA), which concentrates on goods, to the formation of the ASEAN Economic Community (AEC), which is much wider in scope. The date for zero tariffs was brought forward to 2010 for the following 12 sectors: farm products, air travel (open-sky policy), automotive products, electronics, fisheries, healthcare, information technology, logistics, rubber-based products, textiles, tourism and wood-based products. These 12 sectors account for more than 50% of total ASEAN trade.

Free-trade agreements (FTAs) involving ASEAN will probably also lead to tariff reductions by Malaysia. ASEAN's FTA with China, for example, requires the elimination of most Malaysian tariffs on the "normal track" by 2010 and on the "sensitive track" by 2018. ASEAN and Japan agreed on November 20th 2007 to put 70 categories of goods on an intensive tariff-reduction list, as a prelude to a full FTA, which is expected to be signed in 2009. (This deal has little direct effect on Malaysia, given the FTA between the two countries.) Other such agreements are being negotiated with the European Union, India and South Korea.

Recent budgets have gradually lowered tariffs, but no reductions were announced in the 2007–08 budgets. The 2006 budget lowered import duties on 51 goods (mostly types of paper and fabric, and some consumer electronics) from 25–30% to 20–25%, from September 30th 2005. The 2005 budget reduced import duties on 118 goods (mostly herbicides, fabrics, textiles) and abolished duties on another 27 (mainly types of wood, clothing, paper). The 2004 budget eliminated the 10% import duty on health supplements. It also extended indefinitely the exemption period for import duty and sales tax on spare parts and consumables for the manufacturing and services sectors, which was to have expired on December 31st 2003. It also reduced, or abolished, import duties on selected goods such as computer batteries and wooden and plastic goods to 0–20% (from 5–30%). The 2003 budget eliminated the 5% import duty on quality paper, and the 2002 budget cut the import duty on all motorcycles to 60% (from 80–120%). It further reduced import duties on 55 products (including carbonated beverages, woven fabric, lace and blankets) to 10–50% (from 20–105%), and it trimmed import duties on 171 types of intermediate goods (including furniture components and multimedia projectors) to 0–25% (from 5–35%).

A notable exception has been completely built-up (CBU) automotive products. Seeking to retain protective barriers for the domestic automotive industry, Malaysia gained ASEAN approval in May 2000 to defer the schedule for CBU automotive products until 2005. The government cut tariffs on CBUs on January 1st 2004—one year ahead of schedule—from as much as 300% to 70–90%. The National Automotive Policy, announced on March 22nd 2006, cut the import duty for vehicles with at least 40% ASEAN content from 15% to 5%. Vehicles from other regions had their import duties cut from 50% to 30%.

In January 2004 tariffs on completely knocked-down (CKD) automotive products were reduced to a flat 25% (from 42–80%, depending on the vehicle's engine size). However, the government also increased the excise duties on both CKDs (from 55% to 55–200%, depending on type of vehicle) and CBUs (from 0% to 55–200%, also depending on type of vehicle), while extending a 50% rebate to Proton and Perodua (local carmakers) on these excise duties. The government abolished these rebates on October 20th 2005 when it announced the framework for its National Automotive Policy. That framework also included the establishment of an industrial-adjustment fund to assist Malaysian manufacturers in facing increased competition and market liberalisation. The fund's incentives can take the form of free loans, financing for component development or technology enhancement. Foreign automotive firms may also apply for these incentives, depending on their level of investment.

The Ministry of International Trade and Industry (MITI) oversees a system of approved permits that allows the holder to import cars and distribute them locally. The system was designed to provide *bumiputra* companies easy entry into the car distribution and service sector. The system acts as a quota by restricting the total number of cars that can be imported in a given year relative to the size of the domestic market. In addition to restricting market access for imports, many of the permits are sold for profit, with the associated costs passed on to consumers—further raising the costs of imported vehicles. The National Automotive Policy is to phase out this permit system by 2010. The policy also announced that no new manufacturing licences would be granted until the overcapacity in the domestic automotive sector is resolved and that the import of second-hand cars will be banned by end-2010.

The government reviews, and continues to exclude, items from the CEPT on grounds of protection of national security; protection of human, animal and plant life and health; and protection of articles of artistic, historic and archaeological value. At present, Malaysia has placed certain alcoholic drinks and weapons on this list.

Rice also remains a sensitive product. Malaysia, along with Indonesia and the Philippines, placed rice on the highly sensitive list, for which tariff reduction would not begin before January 1st 2005; however, tariffs had still not been reduced by April 2008. The tariff is to be determined by each country individually. Malaysia has also reserved the right to impose a 20% duty on rice imports.

Partial tariff exemptions are available for import duties exceeding 2% on raw materials and components imported for direct use in the local manufacturing of finished goods for the domestic market, but which cannot be manufactured locally or are not replaceable by locally produced items. Imports of raw materials or components subject to tariffs of 2% and below are generally not considered for duty exemptions. Consideration may be given, however, if the imports are by companies that comply with government guidelines on equity participation, management and employment structure.

Full duty exemption is possible for the following: (1) raw materials and components used to manufacture a product whose importation is duty free; (2) imported machinery or equipment (not produced locally) directly used in manufacturing and on plantations; and (3) complete, new machinery or plant (not produced locally) used to start a factory or expand an existing one. Under bilateral agreements, Malaysia accords preferential tariff treatment to certain items from Australia and New Zealand.

Fundamental indicators: foreign trade

Foreign trade (% growth)	**2007 actual**	**2008 forecast**	**2009 forecast**
Exports of goods and services	3.7	1.0	4.8
Imports of goods and services	4.1	3.2	5.4
Foreign trade (% of GDP)			
Exports of goods and services	109.6	105.2	104.0
Imports of goods and services	89.4	87.4	85.5
Trade figures (US$ bn)			
Current-account balance	29.9 *	26.6	28.8
as percent of GDP	16.0 *	12.5	12.1
Goods: exports fob	181.2 *	191.4	205.1
Goods: imports fob	-145.7 *	-156.7	-169.7
Trade balance	35.6 *	34.6	35.4
Services: credit	26.7 *	28.4	31.7
Services: debit	-26.3 *	-28.4	-31.4
Services balance	0.4 *	0.1	0.3

* Estimates.

Source: Economist Intelligence Unit, *Country Forecast* Malaysia, April 2008.

Import restrictions

The World Trade Organisation claims that Malaysia's system of import prohibitions and licensing is not fully transparent, though it said the system has become more transparent in recent years. The country uses import licences (and export controls) to ensure adherence to safety, environmental-protection and copyright requirements, but it also at times uses them to protect domestic producers. This policy seeks to ensure adequate supply of essential raw materials and yet provide temporary protection to infant and strategic industries. Regulations do not clearly distinguish between these two purposes for import licensing; hence, traders face uncertainty. Moreover, the persistent denial of sanitary certificates for products such as chicken, pork, liquid milk and eggs in effect prohibits imports. Products affected by such trade regulations since 1993 include cement, steel billets, electric and telephone cables, certain essential food items, and minerals and ores.

But most goods may be imported into Malaysia freely under an open general-import licence, and there are virtually no controls on importing capital goods for new or expanding projects. Import quotas affect some farm products, like unroasted coffee, to protect local producers and ensure a consistent supply of goods at reasonable prices.

Specific restrictions are listed in four schedules:

- The first list includes 14 prohibited items; these are products banned for religious, moral, security, health and environmental reasons.
- The second list, for items that require licences, contains items restricted for reasons of health, sanitation, security, environmental protection or intellectual property. These include poultry and beef (which must come from facilities that have been approved as *halal*, or acceptable to Muslim consumers), eggs, rice, sugar, cement clinker, fireworks, magnetic tapes for video and audio recording, explosives, wood, safety helmets, diamonds, rice-milling machinery, colour copying machines, some telecommunications equipment, arms and ammunition, coin- or disc-operated amusement machines, and saccharin. Some items are restricted to protect local industries.
- The third list contains items for which licences are required to afford temporary protection to local manufacturers, including milk, coffee, cereal flours, certain wire and cables, and some iron and steel products.
- The fourth list contains items that may be imported only after meeting specific criteria. These include animals, animal products, plants, plant products, cigarettes, soils, fertilisers of animal origin, bullet-proof vests, electrical apparatus, safety belts and imitation weapons.

The Customs Department has the authority to grant import licences. The Ministry of International Trade and Industry (MITI), along with other specified authorities (the Ministry of Primary Industries, the Malaysian Timber Board, the Department of Agriculture and the Veterinary Department), is responsible for the day-to-day administration of import licensing. Padiberas Nasional Berhad, the successor of the National Paddy and Rice Board, is the corporatised entity responsible for the local rice industry and the sole authority for rice imports. It operates its own mills and regulates rice prices at the retail level. According to government data, about 27% of Malaysia's tariff lines are still subject to import licensing; these are principally for animal and vegetable products, wood, machinery, vehicles and transport equipment, and arms.

Malaysia has no national law governing rules of origin for imports. It applies non-preferential rules in accordance with the WTO agreement on rules of origin and is committed to finalising negotiations on the work programme for the harmonisation of non-preferential rules. Malaysia maintains preferential rules of origin vis-à-vis the Association of South-East Asian Nations (ASEAN)

Common Effective Preferential Tariff (CEPT) scheme (see Tariffs and import taxes).

Officially, Malaysia has 19 products (73 tariff lines) subject to tariff-rate quotas—including livestock and dairy products, tobacco, round cabbages, coffee, wheat and meslin flour, and sugar. However, the implementation these quotas remained suspended in April 2008.

The Countervailing and Anti-dumping Act 1993 incorporates principles from the WTO agreements on Anti-dumping and on Subsidies and Countervailing Measures. This act permits actions to be taken against imports when a petition is received from an injured party in a domestic industry. The latest case in which the act was invoked was in January 2007, when Malaysia imposed a temporary anti-dumping import duty of 3.4–13.53% on Indonesian paper products made from corrugating medium paper; the duty was still being levied in April 2008. The move was made after Malaysia found Indonesian paper producers to be involved in dumping activities.

Taxes on exports

Export duties are generally imposed on Malaysia's main commodities, such as crude petroleum and palm oil. Out of 10,580 tariff lines, 512 lines are subject to export duties, most of which are 15–20%. Export duties were reduced in September 2003 for 41 items and abolished altogether for another 208 items. Products affected include unprocessed agricultural produce, food products, minerals and construction materials. The purpose of Malaysia's export duties is to discourage the export of raw materials and to encourage downstream activities in the country. Generally, Malaysia does not enjoy a surplus of the products listed in this category. The export of wildlife is discouraged for conservation purposes.

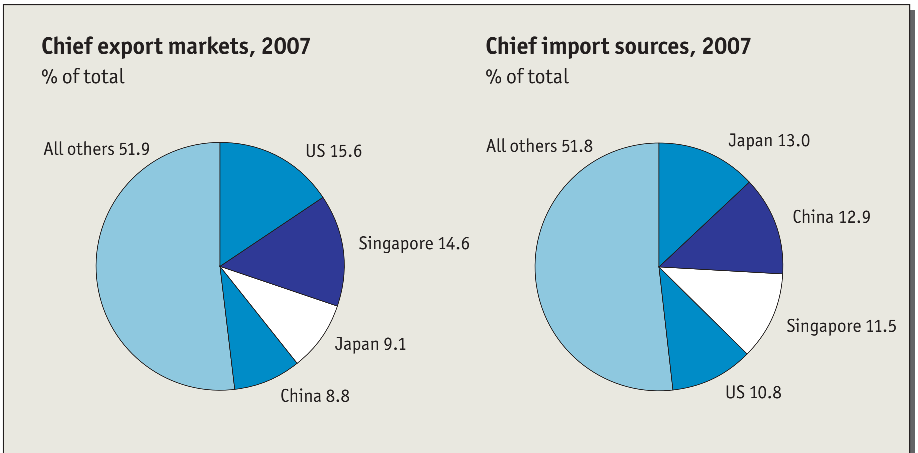
Export duties also apply to fund research-and-development and promotion activities for commodities in downstream and upstream industries and to maintain an adequate supply of certain goods in the domestic market. Export duties are 15% on logs and are 10–30% for crude palm oil, based on tonnage. Malaysia uses export taxes to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products are not subject to export taxes. The government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable-oil refineries that include investment by Malaysian entities, giving these plants a decided competitive advantage in foreign markets.

The government imposes an export levy on selected species of sawn timber to ensure an adequate supply for timber-based industries and for R&D. Though the export ban imposed on rubberwood in June 2005 was partially withdrawn in September 2006, an export quota remains; this indirect support to domestic users is to help develop downstream industries—such as domestic furniture makers—that provide value-added content. Ramin and gaharu wood have been subject to export quotas since April 2007.

With the exception of crude petroleum, which is subject to a flat-rate duty of 20%, duties on commodities are based on the "cost plus" concept: the duty is imposed only on the excess over a threshold price that reflects the cost of production. No export duty is collected when the price falls below the threshold.

Exports of tin concentrates are subject to levies for R&D and for a "publicity fund". (The levies are collected and administered by the Tin Board, established by the government in 1953. The "publicity fund" levy is used to "stimulate, popularise and extend the consumption and uses of tin and to publicise and disseminate information on tin production, characteristics and availability".)

Exports are exempt from sales tax, but some are subject to excise taxes, at 2–65%, depending on the product.



Source: Economist Intelligence Unit, *Country Forecast* Malaysia, April 2008.

Free ports, zones

The Free Zones Act 1990 and the Free Zones Regulations 1991 regulate free zones. The act divides the zones into free commercial zones (for conducting trading activities such as trading, breaking bulk, grading, packing, re-labelling and transit) and free industrial zones (for manufacturing activities only). Benefits enjoyed by businesses in the two zones are similar, and they include exemption from customs and excise duties, sales tax and service tax on raw materials, components and services used directly in the manufacturing processes and in the provision of services. Free zones do not discriminate between foreign and domestic enterprises; enterprises operating in these zones do not receive preferential income tax treatment.

There were 14 free industrial zones and 13 free commercial zones in April 2008; most are along peninsular Malaysia's west coast. In June 2006, the Port Klang Free Zone opened as the nation's first fully integrated free industrial zone and free commercial zone. Malaysia also allows exporters to establish a licensed manufacturing warehouse, which offers the same benefits as operating within a free zone while offering greater freedom of location.

Export restrictions

Malaysia restricts some exports, which are listed in three schedules:

(1) Items absolutely prohibited from export include coral, turtle eggs and rattan, as well as weapons and other products to selected countries.

(2) Exports are restricted and licences are needed for all exports to Israel (Malaysia does not have relations with Israel) and 43 product groups. Exports

are usually restricted for reasons of health, sanitation, environment, security and stability of supply. These products include animals and animal products, fish, dairy products, rubber, palm-oil products, pineapples, vegetables, rice, cocoa, minerals and ores, cement clinkers, Portland cement, metal wastes, some chemicals, cinematographic films, roofing tiles, timber, plywood veneer chips, waste paper, textiles, military clothing and equipment, bricks, tin ingot, sugar, iron and steel, and star fruit.

(3) Another 19 product categories may be exported only after meeting specific criteria for the protection of wildlife, health, security and antiquities.

The Ministry of International Trade and Industry and Ministry of Domestic Trade and Consumer Affairs administer licences for most of the controlled goods. The Malaysian Trade Classification and Customs Duties Order has a full list of restricted exports, which changes periodically. In June 2007 the government partially lifted the ban on the export of monkeys: those caught in urban areas may now be exported, whereas the ban on catching monkeys in (and exporting from) jungles remains.

The government occasionally imposes temporary bans on exports to ensure local supplies. The export ban imposed on rubberwood in June 2005 was partially withdrawn in September 2006.

Rubber exporters must be members of the Malaysian Rubber Exchange, which applies different requirements for paid-up capital among non-*bumiputra* Malaysian companies, *bumiputra* companies and foreign companies. Malaysian exports also face a number of non-tariff barriers in foreign markets, including pre-shipment inspection, import bans and tropical-timber labelling, as well as certain anti-dumping and countervailing duties.

Malaysia is a signatory to the Washington Treaty, which controls international trade in about 1,000 species of animals and plants.

Export insurance and credit

Malaysia Export Credit Insurance Berhad (MECIB), which provided export insurance and credit under government-backed programmes, merged with the Export-Import Bank of Malaysia (Exim Bank) on October 1st 2005. Both institutions had been wholly owned subsidiaries of the Industrial and Technology Bank of Malaysia; following the reorganisation, however, Exim Bank was placed directly under the Ministry of Finance. The government said this move enables the bank to capitalise on its near-sovereign status in gaining better credit-rating recognition and higher acceptance from foreign counterparties on guarantees and insurance coverage issued by the bank. This in turn provides Exim Bank with more diverse and competitive sources of funding to support its business operations. The merger of the two entities is part of the government's reorganisation and streamlining of its development financial institutions.

Exim Bank now provides commercial banks with coverage of losses against loans to exporters and suppliers. Facilities, previously offered by MECIB, include a comprehensive short-term policy, a bank-letter-of-credit policy, an overseas-investments-insurance policy, a bond-indemnity-support facility and a buyer-credit-guarantee facility. Exim Bank on December 11th 2006 added an

Overseas Guarantee Facility to its offerings. Financing of up to 90% of the value of an overseas contract is available through the facility.

According to latest available figures, the total amount of financing approved by the Exim Bank nearly tripled from M$1.2bn in 2005 to M$3.3bn in 2006, driven by demand from the construction, transport and services sectors. Exim Bank covers 90% of commercial risks and 95% of political risks for exporters, at premiums that reflect the company's stability, the goods' destination and the payment terms. The bank issues comprehensive short-term policies for 180 days or less and only on a repetitive basis. The bank's net profit declined from M$83.4m in 2005 to M$74.2m the following year.

All locally incorporated firms that export goods wholly or partly produced or manufactured in Malaysia are entitled to Exim Bank's insurance facilities. All locally incorporated banks may apply for cover under its export-finance-insurance policy and bond-indemnity-support facility. Export-credit-insurance premiums paid by exporters to Exim Bank are eligible for double income tax deduction.

An export-credit-refinancing (ECR) facility maintained by Exim Bank since 1998 lets exporters obtain short-term financing for up to six months for the post-shipment facility and four months for the pre-shipment facility. Input suppliers have access to ECR through the issuance of domestic letters of credit or domestic purchase orders issued by the exporter in favour of its suppliers. ECR utilisation stood at M$8.2bn in 2006, compared with M$7.2bn in 2005. The interest rate on ECR was 4.5% in April 2008, unchanged from a year earlier.

Refinancing facilities are granted for up to 100% of export value (post-shipment), and 95% of export order value, or up to 90% of the value of exports of the preceding 12 months (pre-shipment facility). The minimum amount of financing is M$10,000 for both facilities. The maximum limit for pre-shipment and for post-shipment refinancing is M$50m per exporter. The financing is granted through commercial banks.

E-commerce

Forms of e-commerce

Despite government initiatives, the e-commerce sector in Malaysia remains in its infancy. According to the latest available figures, for 2006, from IDC Malaysia, a leading industry forecaster, local business to business (B2B) e-commerce was worth M$47.6bn (77% more than in 2005), and business-to-consumer (B2C) e-commerce was worth M$9.8bn (up by 43% from the previous year). It forecast annual B2B and B2C e-commerce spending to post compounded annual growth rates of 28–29% in 2006–10.

Malaysia's government continues to be a major promoter of the Internet and is taking specific measures to build a knowledge-based economy. The government launched its knowledge-economy master plan in early 2001 to guide Malaysia's transition from a labour-intensive economy to a higher-value-added one. The Ninth Malaysia Plan, for 2006–10, has allocated M$12.9bn for information and communication technology (ICT) programmes; M$5.7bn is earmarked to computerise government ministries and agencies.

The government created several agencies in 1998 to regulate and advance the use of the Internet. All public-service providers now allow customers to pay bills online, and it launched its public-service portal in December 2005, at http://www.gov.my. The portal aims to facilitate communication between Malaysians and the various government agencies.

Official support measures for companies introduced in recent years include several venture-capital funds, tax incentives for venture capital for technology firms and other high-risk investments, ongoing expansion of the high-technology Multimedia Super Corridor Malaysia, and new laws and initiatives to protect intellectual property. An individual tax deduction of M$3,000 to buy a personal computer can be claimed every three years, and from year of assessment 2008 gifts of computers from companies to their employees are no longer considered income in kind for tax purposes.

To help companies tap into electronic global supply networks, the 2002 budget granted M$5m for the development of RosettaNet, an internationally standardised supply-chain-management platform, and extended income tax deductions for expenses incurred to implement it in Malaysia. RosettaNet itself launched its Asia engineering centre in northern Penang state in February 2004. Costs of developing websites have been deductible for income taxes since 2003, at 20% annually for five years.

A number of B2B Internet hubs have emerged, most centred on specific industries. Tradenex.com is the B2B electronic marketplace and service provider of the Federation of Malaysian Manufacturers; it also takes part in the TIGeR (Technology, Industry and Government for the e-Economic Revolution) initiative to link Malaysian companies to global buyers and to roll out secure e-commerce services to manufacturing companies.

The Ministry of Agriculture and the Malaysian Institute of Microelectronics Systems (MIMOS), a government-linked information-technology firm, on January 1st 2004 launched www.agribazaar.com.my. AgriBazaar enables the buying and selling of farm produce via the Internet. More than 33,000 participants had signed on by April 2008. MIMOS is also involved, along with the Ministry of Plantation Industries and Commodities, Multimedia Development Corp, Malaysian Palm Oil Association, Ministry of Science, Technology and Innovation, and others, in the Oilpalmworld.com website, which was launched in August 2005. The site aims to become the main electronic exchange for all commerce functions of the global palm-oil industry, including trading. Malaysia is the world's largest producer of palm oil.

Although eBay, a giant Internet auction site, expanded its operations into Malaysia in December 2004, the US firm had to enhance its site and provide a more secure platform in late 2007 before it could challenge Lelong, a domestic auctioneer and the market leader.

Dagang Net operates the national electronic data interchange (EDI) system and provides other electronic trade-facilitation services. All major sea- and airports now use the EDI system. In September 2006 Dagang Net launched its e-Permit Project, through which all 24 permit-issuing government agencies issue their permits electronically. In the same month it also introduced electronic systems for online documentation of K3 forms (used to transfer goods between peninsular Malaysia and Sabah and Sarawak states) and shipping manifests. The company plans to implement the United Nations electronic-trade documents (UNeDocs) standard, which lets countries align their local systems with the international purchase and supply chain; this should facilitate exports by small and medium-sized enterprises. It handled around 40m electronic transactions in 2007.

The Small and Medium Industries Development Corp (SMIDEC), a government agency, estimates that in early 2008 less than 25% of Malaysia's 100,000+ manufacturers had an online presence; moreover, the vast majority of those sites are static (that is, not offering online transaction capabilities). Through SMIDEC, small and medium-sized enterprises can apply for soft loans of up to M$250,000 to use information and communications technology to improve competitiveness, efficiency and productivity. In general, eligible companies must have annual sales of less than M$25m, employ fewer than 150 people and be at least 60% Malaysian owned. SMIDEC also administers grants to implement RosettaNet.

Nearly all of Malaysia's banks offer online banking services. Foreign banks have been allowed to offer online services since 2002; HSBC (UK), Citibank (US), OCBC and UOB (both of Singapore) and others offer electronic banking.

Internet companies have faced some resistance from commercial banks. To set up trade accounts, the banks require deposits of up to M$100,000 (as a security against credit-card fraud) and a track record of successful trading operations.

Growth of e-commerce

The government has created several agencies to encourage Internet growth, but it has yet to develop a strong regulatory framework. The Malaysian Communications and Multimedia Commission (MCMC), established in 1998, is charged with promoting and regulating the converging industries of broadcasting, telecommunications and online services. The MCMC, an agency of the Ministry of Science, Technology and Innovation. aims to regulate the industry, to ensure that Internet services are available to the public at "affordable costs", to guide the development of relevant infrastructure and to promote Malaysia as a regional information-technology (IT) hub.

The MCMC reported that Malaysia had 11.8m Internet users at end-2007, up slightly from 11.3m a year earlier. The agency said that the number of broadband subscribers jumped by more than 50% in 2007, to 1.4m subscriptions by year-end, compared with fewer than 900,000 a year earlier. The number of dial-up connections rose by about 0.1m in 2007, to 3.9m by year-end.

IDC Malaysia, a leading industry forecaster, estimates that IT spending on software, hardware and services reached M$16.5bn in 2007, up by 10.7% from M$14.9bn the previous year. The company forecasts that expenditures will grow by 6–8% in 2008.

Since the government plans to foster growth in electronic communications mainly through private enterprise, the MCMC's major practical responsibilities are licensing and regulation. By April 2008 the commission had granted 93 licences for application service providers, 76 for network service providers, 69 to network facilities providers, and 22 for content application service providers.

Six companies, including the government-run Malaysian Institute of Microelectronics Systems (MIMOS), have licences to operate as Internet service providers (ISPs), though two of these control the market: MIMOS, through Jaring; and Telekom Malaysia, through TMnet. The other, much smaller ISPs are Celcom Net, Time Net, DiGi Net and Maxis Net. Though all offer broadband connections, the market is still mostly dial-up connections.

Governmental restructuring in early 2004 divided administrative oversight of the IT industry between two bodies: the Ministry of Science, Technology and Innovation; and the Ministry of Energy, Water and Communications. The Ministry of Science, Technology and Innovation has the responsibility to develop the IT and multimedia sectors, and also to oversee the MCMC and other agencies. The sole remaining IT-related function of the Ministry of Energy, Water and Communications is the development of the communications infrastructure. The prime minister chairs the National Information Technology Council of Malaysia (NITC Malaysia), which functions as the primary adviser and consultant to the government on integrating IT into national development.

There were 19,650 registrations of Malaysian Internet domain names (that is, carrying .my as part of their URL) in 2007, compared with 15,625 in 2006, according to the Malaysian Network Information Centre (MYNIC). There were 103,359 Malaysian Internet domain names at end-2007; nearly all of those (93,260) were .com.my domains. MYNIC administers registration of domain names in Malaysia; it was made independent of MIMOS from July 31st 2006. MYNIC launched its "second level domain name" programme on March 25th 2008; under this programme, entities no longer need any categorisation (such as .com) but can register their entity solely under the .my suffix. MYNIC also offers a domain-name dispute-resolution service; if disputes over a .my domain cannot be resolved through negotiations, complaints can be filed with the Regional Centre for Arbitration in Kuala Lumpur.

Foreign investment

Malaysia strongly encourages technology-related investments. In particular, companies with Multimedia Super Corridor Malaysia status (see Industry-specific incentives) get incentives that include ten tax-free years and freedom from foreign-exchange regulations. Foreign Internet service providers (ISPs) can offer their services directly or invest in a local company with an ISP licence.

The Multimedia Convergence Act 1998 extended the licences of all telecoms companies in the country, and of the state-owned Malaysian Institute of Microelectronics Systems, to include ISP status. Many local telecoms companies have substantial investments from foreign firms. Temasek, the Singapore government's principal investment arm, in March 2004 purchased 5% of government-controlled Telekom Malaysia, which had left several foreign suitors in the cold, for M$1.6bn. (The sale came after Abdullah Badawi became prime minister and the subsequent improvement in relations with Singapore.) The government views the telecoms sector as one of Malaysia's major industrial interests, and it has intervened to block certain foreign investments. Singapore Telecom's bid to acquire holdings of Time Engineering (another major

Malaysian telecoms provider) unravelled in 2000 when authorities refused to approve it. Telenor, a Norwegian telecoms company, in November 2007 reduced its 61% stake in DiGi.Com (a cellular-services provider) to 49% after authorities did not extend Telenor's exemption from foreign-shareholding limits (see Holding patterns).

The Malaysian government lifted its moratorium on the issuance of new licences under the Communications and Multimedia Act 1998. Foreign ownership of telecoms companies had been limited to 30%.

Foreign companies, mainly from the United States, have expressed concern about the anti-competitive bias in the government's software-procurement policy. The policy, announced in July 2004, is not technology neutral; instead, it gives preference to open-source software (OSS) for government procurement "in situations where the advantages and disadvantages of [OSS] and proprietary software are equal".

There are no tariff or regulatory barriers to electronic transactions with other countries.

Intellectual property

The Malaysian government has actively sought to protect online intellectual-property rights. Parliament passed several acts in 2000, and two amendments to existing legislation in 2003, to align the nation's protection of intellectual-property rights more closely with global standards.

Other intellectual-property legislation includes the following:

- The Computer Crime Act, passed in late April 1997, covers crimes such as fraud, computer "hacking" and virus distribution.
- The Copyright (Amendment) Act 1997 extended the powers of the copyright tribunal that regulates licences for reproducing copyrighted works; provides protection to educational works, entertainment products and online information; and amends definitions such as "broadcasting" to cover electronically disseminated information in general. The amendments give multimedia developers full intellectual-property protection through online registration of works, licensing and royalty collection.
- The Multimedia Convergence Bill 1998 overhauled the Telecommunications Act 1950, by addressing the convergence of telecoms, computing and broadcasting technology. It facilitates the development of high-quality telecoms in a multimedia environment, including the setting of guidelines on regulations and licensing requirements for multimedia operators.
- Malaysia had not ratified the World Intellectual Property Organisation (WIPO) Copyright Treaty or the WIPO Performance and Phonograms Treaty, which extend traditional copyright principles to the digital environment, by April 2008, but may do so later in the year.
- The Malaysian Communications and Multimedia Commission Act 1998 provides for the establishment of the Malaysian Communications and Multimedia Commission, a single regulatory body for an emerging and converging communications and multimedia industry.

In October 2002 Malaysia and all other members of the Asia–Pacific Economic Co-operation (APEC) forum adopted a resolution to enact comprehensive legal frameworks to combat cybercrime and enhance cyber-security, and to identify or develop law-enforcement cybercrime units capable of providing international assistance.

Consumer protection

The long-awaited Electronic Commerce Act came into force on October 19th 2006; it provides legal recognition of electronic transactions, including e-commerce transactions. Parliament in July 2007 passed the equally long-awaited Electronic Government Activities Act, which establishes common protocols for electronic interaction between the government and the public. The Sale of Goods Act 1957 and the Contracts Act 1950 provide recourse for fraudulent transactions over the Internet.

The Personal Data Protection Act was first drafted in 1998, redrafted in 2001 and was being redrafted once more as at April 2008; it will go before the parliament later in 2008. The act will regulate the collection, possession, processing and use of personal data, and it will ensure that there are adequate measures for the security, privacy and handling of personal information. It aims to raise public confidence in conducting electronic transactions without fear that a user's privacy will be violated. As at April 2008 the Malaysian Communications and Multimedia Commission was drafting legislation that aims to curb unwanted or unsolicited electronic messages (spam), though no timetable for this bill has been announced.

The government's Communications and Multimedia Content Forum released a Content Code in 2002 to give service providers in the industry guidelines and standards for protecting consumers. The voluntary code states that no content applications service provider "shall provide content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person".

Contract law and dispute resolution

Parliament passed the long-awaited Electronic Commerce Act in August 2006. This legislation, which aims to boost e-commerce by providing legal recognition of electronic transactions, including e-commerce transactions, came into force on October 19th 2006.

The Digital Signature Act, passed in April 1997, provides for and regulates the use of digital signatures (essentially, high-tech electronic authorisation codes).

Digicert is Malaysia's only licensed certification authority. It offers digital certificates to individuals and organisations that may be used to verify the authenticity of a specific website, individual or company on the Internet. Digicert offers two types of digital certifications: a personal certificate, which verifies the identity of an individual; and a server certificate, which guarantees the authenticity of a specific website.

In its Bill of Guarantees for companies with Multimedia Super Corridor status, the government pledged not to censor content on the Internet. Although some concern has been raised about indecent and other "unhealthy" content available online, the government has so far steered clear of intervention.

Nevertheless, it threatened legal action against a few writers who posted dissenting views on government policies on their Internet blogs in 2007. Following the ruling party's disappointing showing in the March 2008 elections, however, the government said it wanted to listen to their viewpoints and open a dialogue instead.

Basis of taxation

Malaysia's income tax laws do not at present address business conducted over the Internet; consequently, income from online business is not legally subject to income tax. The government has been considering legislation to tax online business transactions, though by April 2008, neither the Ministry of Finance nor the Inland Revenue Board had released details. The Multimedia Super Corridor Malaysia status (given to 1,994 companies by end-2007) guarantees that these firms need not pay income tax for up to ten years (see Industry-specific incentives).

The present sales and services tax laws are unclear about online transactions. The proposed goods and services tax, which was to be introduced on January 1st 2007 but has been deferred to an unspecified later date, is to address this issue (see Corporate taxes overview).

Classification of e-commerce transactions

Tax regulations on e-commerce transactions were vague or non-existent in April 2008. A variety of laws (the Customs Act 1967, the Sales Tax Act 1967 and the Excise Act 1976) have yet to be amended to apply to digitised products. The government is to plug these gaps during its overhaul of the tax system.

Compliance and enforcement issues

Because regulations on e-commerce transactions had not yet been clearly defined in Malaysia by April 2008, no precedents have been established on compliance issues.

Key contacts

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- ***Malaysian Industrial Development Authority*** (MIDA), Block 4, Plaza Sentral, Jalan Stesen Sentral 5, 50470 Kuala Lumpur; Tel: (60.3) 2267-3633; Fax: (60.3) 2274-7970; Internet: http://www.mida.gov.my. Companies can register with the Registry of Investors and Contract Manufacturers (Ricom) and with the Enterprise Connect (E-Connect) online business-matching service through MIDA.
- ***Malaysian Industrial Development Finance—Property*** (MIDF Property; formerly known as Malaysian Industrial Estates), Bangunan MIEL, 3 Jalan 31/10A, Taman Perindustrian IKS, Mukim Batu, 68100 Kuala Lumpur; Tel: (60.3) 6186-2616; Fax: (60.3) 6186-2068; Internet: http://www.midf.com.my.
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