Wong & Partners.
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Doing Business in Malaysia

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Private & Confidential

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1. Introduction

Malaysia is a federation comprising thirteen states and three federal territories in both West (Peninsular) Malaysia and East Malaysia. It has a population of approximately 30.38 million. Malaysia is rich in natural resources (such as oil and natural gas) and is a major producer of palm oil, natural rubber, tin and tropical hardwoods. The Government encourages industry and foreign investment, particularly in high technology and resource-based export-oriented industries. Malaysia has attracted much interest from multi-national companies due to its economic growth and future potential.

2. Legal Background

For historical reasons, the Malaysian legal system is English-based. Many Malaysian statutes are modelled on their English counterparts. Unless there are provisions to the contrary in the written laws of Malaysia, there is continuing reception of English mercantile law as it stands in the states of Malacca, Penang, Sabah and Sarawak, and for the rest of West Malaysia, as it stood on 7 April 1956. English law continues to be strongly persuasive in the practice of Malaysian common law.

There is equal protection under the law for foreigners and foreign-owned companies. Court procedure is very similar to that in England. Foreign judgments of superior courts of reciprocating countries i.e. the United Kingdom, the Hong Kong Special Administrative Region of the People's Republic of China, Singapore, New Zealand, Sri Lanka, India (excluding the State of Jammu and Kashmir, State of Manipur, Tribal areas of the State of Assam, Scheduled areas of the States of Madras and Andhra) and Brunei Darussalam are directly enforceable in accordance with the Reciprocal Enforcement of Judgments Act 1958. It may be possible to enforce a judgment obtained from a superior court of a non-reciprocating country by bringing a fresh action on the judgment in the Malaysian courts. Commercial disputes may also be resolved by arbitration conducted either ad hoc or under the auspices of the Kuala Lumpur Regional Centre for Arbitration whose rules are based on the UNCITRAL rules. Malaysian law gives effect to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

3. Types of Presence

In Malaysia, a business may be carried on through several different possible vehicles which, in practice, are limited by the necessity to comply with the government guidelines further discussed below:

- branch office;
- wholly-owned subsidiary;
- joint-venture company with Malaysian shareholders;
- representative office; and
- limited liability partnership.

4. Foreign Investment and Local Equity Participation

4.1 Foreign Investment and Local Equity Participation Requirements – Brief History

The New Economic Policy ("**NEP**") was implemented with the twin objectives of eradicating poverty and restructuring society. It was also intended to ensure that Bumiputeras and other indigenous people became full partners in all aspects of economic life of the nation. Later, the government implemented new policies called the National Development Policy ("**NDP**") and the National Vision Policy ("**NVP**"). The overall aim of these policies was to achieve a "balanced development" within a framework of rapid growth with equity as its primary thrust. In particular, one of the main objectives of the NVP was to achieve at least 30% Bumiputera participation in all industries by 2010. During this period, many government ministries were given the task to implement policies and guidelines to achieve the NVP.

The Foreign Investment Committee ("**FIC**") was formed to balance the goals of implementing the NDP and NVP whilst at the same time maintaining investor friendly policies that would facilitate enhanced levels of foreign investment. The result of this was the implementation of guidelines limiting foreign participation in acquisitions of interest, mergers and takeovers, and acquisitions of properties ("**FIC Guidelines**").

4.2 Position Today

Although the equitable growth or "Growth with Distribution" is still the Government's policy, the current Prime Minister has acknowledged the urgent need for Malaysia to undergo a transformation in the pursuit of a developed nation status.

In April 2009, the Prime Minister of Malaysia announced the removal of the 30% Bumiputera equity requirement for 27 services sub-sectors.

Shortly thereafter, on 30 June 2009, the Government of Malaysia announced further measures to liberalise a host of restrictions on foreign investments in Malaysia including abolition of the FIC and the repeal of the FIC Guidelines. The abolition of FIC and liberalisation of certain restrictions are intended to stimulate growth and encourage further participation of foreign investments.

In October 2011, the Prime Minister announced the further liberalisation of 17 service sub-sectors, the implementation of which would be carried out in phases from 2012. Some examples of these service sub-sectors which have been or will be fully liberalised include private hospitals, medical and dental specialists, architectural, engineering, legal, accounting (including auditing) and taxation, courier services, telecommunications (except for the category of content application service provider licence), education (including private universities, international schools, technical and vocational schools, and skills training centres), as well as departmental and specialty stores.

This is not to say that restrictions on foreign investments in Malaysia have been wholly lifted. Notably, the Malaysian Government has stated that sectoral regulation by the relevant Government ministries and/or agencies continues to apply. This is no different from the implementation of the regulatory framework in Malaysia since the advent of the NDP, as sectoral regulations typically dovetail with equity conditions imposed by the FIC. As such, there continues to be requirements for local equity participation in foreign investments in certain sectors.

Repealing the FIC Guidelines does mean, however, that one layer of bureaucracy has been removed in respect of equity investments.

The requirements for local equity participation in foreign investments are administered via 2 methods: legal and non-legal controls. These controls are explained below.

<u>Non-legal (Administrative) Control</u>

Generally, committees are set up under various governmental ministries and are given the task of procuring guidelines to seek to achieve the 30% Bumiputera participation envisaged in the NEP/NDP/NVP.

Previously, the FIC played an important role in this regard. Since the abolition of the FIC, there remain sectoral regulators which impose equity participation conditions in connection with the operation of businesses in specific industry. An example of such a sectoral regulator is the Ministry of Domestic Trade, Co-operatives and Consumerism ("**MDTCC**").

Under MDTCC's Distributive Trade Guidelines 2009 ("**DTG**"), all proposals for foreign involvement in distributive trade in Malaysia are subject to the approval of the MTDCC. Distributive trade companies include hypermarkets, departmental stores, superstores, specialty stores, franchise systems and other types of distributive formats.

Currently, under the DTG, all distributive trade companies with foreign equity which intend to undertake activities relating to mergers and acquisitions, opening or expansion of branches, sale and purchase of properties to operate a distributive trade business, as well as other ancillary businesses of distributive trade operators are required to comply with the requirements of the DTG.

The DTG provides that a distributive trade company with foreign equity shall consist of Bumiputera directors and management personnel, formulate policies to assist Bumiputera participation and persons with disabilities, as well as increase their utilisation of Malaysian services such as airports, ports, legal and other professional services.

All distributive trade companies with foreign involvement must be incorporated locally under the Companies Act 1965.

The DTG is not law and represents the Malaysian government's policy. Although there are no legal sanctions against non-compliance, the DTG can be enforced administratively through the refusal to register branches of foreign companies engaged in such trade, or through licensing, and immigration passes.

Legal Control

Legal control in respect of Bumiputera participation is enforced through administrative discretion conferred under statutes or subsidiary legislations. Equity ownership is controlled through the issuance of licences, permits and employment passes or in the purchase of real property and acquisitions of any interest in real property. Where the intended operations of a company or business in Malaysia require certain operating licences, equity conditions or restrictions may be imposed through the approval and issuance of such licences by government or statutory bodies. An example of a sectorial regulator vested with powers and legal control by way of conditions imposed through an operating licence is the Ministry of International Trade and Industry ("**MITI**") which regulates the manufacturing industry in Malaysia. This is discussed below in the section entitled "*Manufacturing*".

Investment in the Share Capital of Malaysian Companies

There is no legislation prohibiting foreign ownership of the share capital of Malaysian companies. Nonetheless, as discussed, the relevant government department or statutory bodies may require or impose certain equity conditions on companies with foreign ownership in granting licences, permits or other governmental approvals. Certain examples are discussed below.

Manufacturing

Manufacturing companies (except those with shareholders' funds of less than RM2.5 million or less than 75 full-time paid employees) are required to be licensed under the Industrial Coordination Act 1975 ("**ICA**") which is regulated by the Malaysian Industrial Development Authority ("**MIDA**"), a governmental agency under the purview of the Ministry of International Trade and Industry ("**MITI**"). It is MIDA's policy that any foreign company wishing to obtain a manufacturing licence must incorporate a local company in Malaysia to apply for a manufacturing licence.

The Malaysian government has, in the past few years, taken various steps to liberalise the restrictions on foreign participation in the manufacturing industry in Malaysia. The general policy is that 100% foreign equity participation will be allowed for all new investments, including investments for expansion and diversification by existing licensed manufacturers, save for certain sensitive industries/activities where evaluation and approval are still required for the issuance of the manufacturing licence.

Whilst equity and export conditions imposed on existing licensed manufacturing companies prior to the new policy will be maintained, a waiver of the equity conditions may be sought by the license holder by application to MITI, approval for which is at the sole discretion of MITI.

Trading

As discussed above, foreign interests engaging in wholesale or retail trade (i.e. the re-sale of goods without transformation) are currently required to comply with the DTG which introduces rules and conditions in connection with the defined distributive trade businesses described above. As discussed above, the DTG does not constitute law and is only a reflection of the Malaysian government's policy. Although there are no legal sanctions against non-compliance, the DTG can be enforced administratively.

Petroleum – Upstream Activities

Petronas, a wholly-owned Malaysian government entity vested with the ownership and control of the petroleum resources of Malaysia, licenses upstream activities and generally requires local and Bumiputera equity ownership in entities which it deals with.

5. Investment Incentives

Investment incentives are contained mainly in the Promotion of Investments Act, 1986 ("**PIA**") and the Income Tax Act 1967 ("**MITA**"). Some of these incentives are outlined in the Appendix.

6. Establishing a Presence and Corporate Law

6.1 Branch of a Foreign Corporation

Under the Malaysian Companies Act 1965 ("**CA**"), the registration of a branch is at the discretion of the Companies Commission of Malaysia ("**CCM**") which has the power to impose conditions on such registration. Under the DTG, all wholesale and retail companies with foreign interest must be incorporated as local companies.

6.2 Wholly-Owned Subsidiary

As discussed above, there is no statutory prohibition against the establishment of a wholly foreign-owned subsidiary so long as no licences, permits or passes are needed for the company to carry on its business activities in Malaysia. Where licences, permits and passes are required, there have been instances where approvals have been obtained by companies subject to a condition of future partial divestment of equity to Malaysian shareholders.

6.3 Joint Venture Company

Where it is not possible to conduct the business through a wholly foreign-owned subsidiary, the foreign party may wish to enter into a joint venture with Malaysians. The joint venture may be documented by way of a joint venture agreement which will provide for ownership and capital structure of the joint venture company, transfer of shares, composition of the board of directors, requirements concerning meetings of the company, financial policies, and termination of the agreement. The terms of a joint venture agreement (and Articles of Association of the joint venture company to conform to such terms) should be considered with care as these documents are crucial in protecting the interests of a foreign shareholder, in particular where the foreign shareholder is a minority shareholder. There would often also be agreements dealing with matters such as trademarks, trade names and patent licences, technical assistance and know-how, marketing, management and other matters.

The incorporation of a Malaysian company is relatively simple. The proposed name of the company must first be approved by CCM, and once the approval has been obtained, the incorporation can generally be completed within two to three weeks.

Alternatively, it may be quicker to acquire an existing shelf company, but the previous name of the shelf company must appear below the new name on all documents and stationary for at least a year after the change of name.

6.4 Representative Office

Foreign companies in the manufacturing and services sector are permitted to establish representative offices in Malaysia. Representative offices are not regulated by CCM, but are instead established under the guidelines of the Malaysian Industrial Development Authority ("**MIDA**"). The permitted activities of a representative office are fairly limited as a representative office is set up mainly for the purposes of conducting market research and feasibility studies and for liaising and co-ordinating the activities of a foreign company in the region. It is not allowed to engage in any business transactions or conduct any business activities in Malaysia, or derive income from its operations. It therefore cannot be used for sales promotion or servicing activities of the foreign company as these are in the nature of business activities.

The representative office is allowed to be set up for an initial period of two (2) years, subject to extension upon application.

According to the guidelines issued by MIDA guidelines, applications relating to the setting up of a representative office by foreign companies in the banking and financial sector and the tourism sector would need to be submitted to the Central Bank of Malaysia i.e. Bank Negara and the Ministry of Tourism respectively.

6.5 Limited Liability Partnership

With the coming into force of the Limited Liability Partnership Act ("**LLP Act**") on 26 December 2012, it is also possible to establish a limited liability partnership to conduct business in Malaysia. The key features of a Limited Liability Partnership ("**LLP**") include:

(a) the LLP must be formed by no fewer than two persons who may be individuals or bodies corporate;

(b) all partners have limited liability in respect of:

- (i) claims against the LLP; and
- (ii) personal liability from the wrongful conduct of other members of the LLP.

(c) it is a body corporate or legal entity separate from its members; and

(d) compared to traditional partnerships, a LLP has continuing legal existence independent of its members.

These features distinguish LLPs from other forms of undertaking business in Malaysia. A sole proprietorship does not enjoy separate legal personality and the proprietor is exposed to unlimited personal liability; whereas a company incorporated in Malaysia is subject to relatively strict capital maintenance rules and extensive compliance requirements. Another distinct advantage of a LLP would be the limited liability of partners. A LLP effectively shields the partners from the negligence or impropriety of other partners, whilst also having the flexibility of the traditional partnership model and it is not burdened by strict capital maintenance rules and compliance requirements applicable to a corporate entity.

The LLP Act allows for the registration of both local and foreign LLPs and there are generally no limitations as to whether the partners forming the LLP must be of local or foreign origin. The LLP Act does, however, require the LLP to appoint at least one compliance officer from amongst its partners or persons qualified to act as company secretaries under the CA. Such compliance officer must be a citizen or permanent resident of Malaysia and must ordinarily reside in Malaysia.

6.6 Takeovers and Mergers of Companies

The Malaysian Code on Take-overs and Mergers 2010 ("**Code**") came into effect on 15 December 2010. The Code replaces the Malaysian Code on Take-overs and Mergers 1998 ("**1998 Code**") and introduces a more comprehensive and prescriptive regime compared to the 1998 Code. Under the Code, an acquirer who has obtained control in a company ("**control**" is defined as the acquisition or entitlement to exercise control of voting shares of more than 33% in a company) or an acquirer who holds more than 33% but less than 50% of the voting shares of a company and such acquirer who acquires in any period of 6 months more than 2% of the voting shares of the company, will be required to undertake a mandatory general offer for the remainder of the shares in the company which it does not already own.

The Code also prescribes numerous Practice Notes which clarify the requirements, interpretation and application of the Code and have to be read in conjunction with the body of the Code. Of significance are the various exemptions prescribed under the Practice Notes which precludes an acquirer from having to undertake a mandatory general offer. There are 10 prescribed exemptions which are generally applied by the SC which administers the Code and the Practice Notes.

7. Taxation in Malaysia

7.1 General

The Malaysian system of taxation is territorial in nature. Income is taxed in Malaysia if the income is sourced (i.e. accrued in or derived from) in Malaysia or received in Malaysia from outside Malaysia (subject to certain exemptions).

Foreign sourced income received in Malaysia by a resident company has been and continues to be exempted from tax since the year of assessment ("**YA**") 1998. However, this exemption does not extend to a company carrying on the business of banking, insurance, shipping or air transport.

With effect from YA 2014, no further income tax is imposed on dividends received from a Malaysian company under the single tier dividend system. Tax imposed on the company's profits will be the final tax and dividends distributed to their shareholders will not be subject to further tax.

Presently, income remitted into Malaysia by non-resident individuals, a resident company and a unit trust is exempted from tax. Effective from YA 2004 to enhance domestic investment, income remitted by any person including a resident individual, a trust body, a cooperative and a Hindu joint family has been exempted from tax. The rate of income tax for resident and non-resident companies (save for small and medium scale companies ("**SMEs**") in Malaysia is 25% from YA 2009 onwards. This rate will be reduced to 24% starting from YA 2016. SMEs with a paid up capital of not more than or equal to RM 2.5 million are subject to income tax at the rate of 19% on the first RM500,000 of its chargeable income and 24% on the remaining chargeable income with effect from YA 2016. The highest individual income tax rate is currently standing at 28%.

There are no capital gains tax (apart from real property gains tax which is discussed further below) but a gain which has the characteristics of income or is deemed to be an "adventure in the nature of trade" may be subject to income tax. Gains arising from the sale of assets which have enjoyed capital allowances and are sold for more than their tax written-down value are also taxable as balancing charge.

Generally, tax losses can be carried forward indefinitely but can only be set off against future business income. However, accumulated tax losses of a company will not be allowed to be carried forward unless the shareholders in the company are substantially the same during the relevant periods. This provision is aimed at discouraging companies from taking advantage of loss-making companies. However, the Ministry of Finance has used its legislative powers to grant a (currently prevailing) exemption from this restriction upon all companies except dormant companies.

With effect from YA 2006, the Malaysian Income Tax Act ("**MITA**") also provides for group relief for all locally incorporated resident companies in order to enhance private sector investment in high-risk projects. The group relief is limited to 70% of the current year unabsorbed tax losses to be set-off against the income of another company within the same group subject to certain conditions.

Further, companies currently enjoying the incentives such as Pioneer Status, Investment Tax Allowance or Malaysian ship exemption, Reinvestment Allowance and/or exemption of income tax under Section 127 of the MITA or has made a claim for deduction in respect of an approved food production, cost of acquisition of foreign owned company, or proprietary rights; or a claim for deduction under any rules under Section 154 are not eligible for the group relief. With the introduction of the above incentive, the existing group relief incentive for approved food production, forest plantation, biotechnology, nanotechnology, optics and photonics has been discontinued. However, companies granted group relief incentive for the above activities shall continue to set off their income against 100% of the losses incurred by their subsidiaries.

Expenses "wholly and exclusively" incurred in the production of taxable income are generally deductible (including pre-operation training costs and interest on money borrowed and employed in the production of income) unless otherwise disallowed under the MITA.

Generally, unutilised capital allowances can be carried forward indefinitely but can only be set off against income from the same business. Similar to the restriction on the carrying forward of tax losses, unutilised capital allowances of a company will not be allowed to be carried forward unless the shareholders are substantially the same during the relevant year, but there is currently an exemption in force with regards this restriction. The exemption is applicable except for dormant companies.

7.2 Self Assessment System of Taxation

Income tax in Malaysia is presently assessed by the Malaysian Inland Revenue Board ("**IRB**") based on a Self-Assessment System ("**SAS**"). Taxpayers are expected to assess their own tax liability and complete their tax returns within 7 months after the company's financial year end. Tax computations and audited accounts should be retained by the company for purposes of audits or inspections by the IRB. The IRB will from time to time audit taxpayers to ensure compliance.

Companies are required to provide estimates of tax payable for the current year and these estimates should not be less than the estimates or the revised estimates of the preceding year. Companies are allowed to revise their estimates on the 6th and the 9th month of their financial year.

A tax refund will be given to companies that have paid excess income tax payments. Refund mechanisms are provided under the ITA.

7.3 Introduction of Goods and Services Tax ("GST")

GST, which is a form of consumption tax has been implemented with effect from 1 April 2015 at the rate of 6%. GST is administered by the Royal Customs of Malaysia, and replaced the sales tax and service tax previously imposed and collected under the Sales Tax Act 1972 and the Service Tax Act 1973 respectively. All supplies of goods and services made in Malaysia by a taxable person will be subject to GST unless they are zero-rated supplies, exempt supplies or fall within a special scheme.

The GST is administered pursuant to the Goods and Services Tax Act 2014 ("**GST Act 2014**") and its subsidiary legislations. Under the GST Act 2014, all supplies of goods and services made in Malaysia by a taxable person in the course or furtherance of a business carried on by him will be subject to GST at the standard rate of 6% with effect from 1 April 2015, unless such supplies of goods and services are specifically exempt. GST is also charged and levied on the importation of goods and services into Malaysia. The taxable person is responsible for charging GST on his supplies of goods or services and remitting the GST charged (output tax) to the Royal Customs of Malaysia. GST in Malaysia is based on an invoice credit mechanism where a taxable person is entitled to claim GST incurred against the GST output accounted for in the course or furtherance of business subject to certain prescribed conditions.

GST registration is mandatory for any person who makes a taxable supply for business purposes and where the annual taxable turnover of such supply exceeds the prescribed threshold of RM500,000 based on either historical turnover or future forecasted turnover. For businesses with a taxable turnover of RM500,000 and below, such businesses may elect to be voluntarily registered but must remain in the system within 2 years of registration

7.4 Dividends

So far as a foreign shareholder is concerned, the main practical result of the dividend taxation rules is that dividends paid by a Malaysian resident company out of profits which have been subject to full Malaysian taxation will not be subject to any further Malaysian tax in the hands of the foreign shareholder.

7.5 Withholding Taxes

Malaysia imposes a withholding tax on certain payments to non-residents such as royalties, technical fees, installation fees and rental of movable property. The rate of withholding tax is generally between 10% - 15% and this is considered a final tax save for fees paid to non-resident contractors in respect of contract payments where the non-resident files a return and claims deductions for losses and expenses.

However, treaty protection may be available in certain instances where there is in existence a double taxation agreement between Malaysia and the treaty country of the non-resident, in which case the rate of withholding tax may be reduced.

Payments to non-residents for services performed *outside* Malaysia were exempted from withholding tax with effect from 21 September 2002. The exemption applies specifically to services rendered in respect of technical advice, assistance or technical services in relation to the management or administration of any projects, or services rendered in connection with the use of property or rights belonging to, or the installation or operation of any plant machinery or apparatus purchased from the non-resident. Pursuant to Finance Act 2009 and Section 109F of the MITA, income of non-residents falling under Section 4(f) of MITA (all other gains or profits) will be deemed to be derived from Malaysia and will be subject to 10% withholding tax even if the non-residents are not present in Malaysia.

For fees paid to non-resident contractors, consultants or professionals in respect of services under a contract performed in Malaysia, the rate of withholding tax has been reduced from 20% to 13% (10% of the contract payment on account of tax payable by the non-resident and 3% on account of tax payable by non-resident employees (eventually to be refunded on filing of their tax returns)) effective 21 September 2002. This is not a final tax and any excess of withholding over the final tax will be refunded.

7.6 Transfer Pricing

The MITA contains a specific transfer pricing provision (i.e., Section 140A) which governs dealings between related companies, requiring them to be conducted at arm's length failing which the Director-General of the IRB may make necessary adjustments or disregard transactions.

The IRB first issued Transfer Pricing Guidelines in 2003, which sought to provide multi-national corporations and other corporate taxpayers with information on the relevant existing domestic legislation, methodologies that may be used in determining arm's length price and administrative regulations relating to taxpayers involved in transfer pricing arrangements. This was followed by an insertion of a specific transfer pricing provision in MITA, being Section 140A, in 2009.

Subsequently, the Income Tax (Transfer Pricing) Rules 2012 ("**Transfer Pricing Rules**") were released in May 2012, with retrospective effect as of 1 January 2009, as the first legislation dedicated solely to regulate transfer pricing and requiring that all related party transactions be documented.

To complement the Transfer Pricing Rules, the IRB also issued updated Transfer Pricing Guidelines in July 2013 to provide taxpayers with guidance on the administrative requirements and application of transfer pricing methodologies to related party transactions, in addition to prescribing applicable penalties for non-compliance. The IRB has also issued a specific Transfer Pricing Audit Framework which indicates the process and procedures which will take place during a transfer pricing audit.

As transfer pricing continues to be an increasing area of focus for the IRB, Malaysian corporate income tax return forms have also been revised effective YA 2014 to include a check-the-box disclosure of whether transfer pricing documentation has been prepared in respect of any related party transactions declared. This, in addition to other forms and surveys issued by the IRB, constitute critical risk assessment tools in the IRB's determination of potential audit targets. Accordingly, structuring related party transactions at an arm's length and having appropriate and locally compliant transfer pricing documentation can minimise and mitigate the risk of adjustments being made following an audit.

The Finance Act 2014 (No. 2) and section 91 of the MITA provides that the Director-General of the IRB may raise an assessment or additional assessment in consequence of a transfer pricing adjustment arising from a substitution of price, under Section 140A(3) of the MITA, within 7 years from the relevant YA. This amendment allow the Director General of the IRB to have a 7-year time period for raising an assessment or additional assessment in respect of transfer pricing adjustments for a transaction entered into between associated persons not at arm's length.

7.7 Real Property Gains Tax ("RPGT")

Malaysia has had legislation imposing real property gains tax ("**RPGT**") since 1975. These rates apply equally to all "persons" including individuals, companies, a partnership, a body of persons and a corporation sole whether or not that person is resident in Malaysia or not for the assessment year.

With effect from 1 January 2015, the RPGT rates have increased significantly and the revised RPGT rates for the disposal of real property and shares in real property companies are as follows:

Disposal Period	**RPGT Rates**		
	Companies	**Individual (Citizen / PR)**	**Individual (Non-Citizen)**
For disposals within the first 3 years	30%	30%	30%
For disposals in the 4th year	20%	20%	30%
For disposals in the 5th year	15%	15%	30%
For disposals in the 6th year and subsequent years	5%	0%	5%

Currently, in instances where the consideration paid for the disposal of real property consists wholly or partly of money, the acquirer is required retain and remit the whole of that money or a sum not exceeding 3% of the total value of consideration, whichever the lower, to the Malaysian Inland Revenue Board ("**MIRB**") within 60 days from the date of such disposal. The rate has been increased from 2% to 3% with effect from 1 January 2015 pursuant to the Finance Act 2014 (No. 2) which amends Section 21B of the Real Property Gains Tax Act.

It is also important to highlight that in tandem with the move to the self-assessment system for the individual and corporate income taxes, it is proposed in the Malaysian Budget 2015 that RPGT will be also be self-assessed by taxpayers with effect from YA 2016. This is in contrast to the current situation where the gains from the disposal of property under RPGT Act 1967 are assessed by the MIRB.

7.8 Real Property Companies

The concept of a "real property company" ("**RPC**") was introduced as an anti-avoidance device intended to prevent persons from avoiding RPGT by using a company to acquire land, and selling shares in the company instead of selling the land.

An RPC is a controlled company which owns land with a defined value of not less than 75% of its total tangible assets. Capital gains on the disposal of shares in RPCs will be subject to tax in the same way as capital gains on the disposal of land.

7.9 Tax Treaties

As at September 2015, Malaysia has concluded treaties to mitigate double taxation with about 74 countries, including Albania, Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Bosnia Herzegovina, Brunei, Canada, Chile, China, Croatia, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyz, Laos, Lebanon, Luxembourg, Malta, Mauritius, Mongolia, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Qatar, Romania, Russia, San Marino, Saudi Arabia, Seychelles, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Taiwan (by way of exemption orders), Thailand, Turkey, Turkmenistan, United Arab Emirates, the United Kingdom, the United States of America, Uzbekistan, Venezuela, Vietnam and Zimbabwe. However, the treaties with Argentina and the United States of America are of restricted application, dealing only with the profits of shipping and/or air transport undertakings.

8. Exchange Control

Prior to 30 June 2013, the Exchange Control Act 1953 ("**ECA**") was the legislation governing exchange control in Malaysia. The ECA was supplemented by the Exchange Control of Malaysia Notices ("**ECM Notices**") and circular letters issued under the ECA, which embodied the general permissions and directions of the Controller of Foreign Exchange. The ECA, along with the Banking and Financial Institutions Act 1989, Insurance Act 1996 and Payment Systems Act 2003, were repealed and consolidated into the Financial Services Act ("**FSA**") and Islamic Financial Services Act ("**IFSA**") with effect from 30 June 2013.

With the coming into force of the FSA and IFSA, the Controller of Foreign Exchange revoked all existing ECM Notices and related circular letters, and consolidated them into 7 new notices ("**FEA Notices**") which were issued to supplement the foreign exchange administration rules under the FSA and IFSA. The FEA Notices set out the circumstances in which the specific approval of the Controller of Foreign Exchange within Bank Negara Malaysia, i.e. the central bank of Malaysia ("**Bank Negara**"), must be obtained by residents and non-residents to remit funds to and from Malaysia.

A "resident" is defined as a citizen of Malaysia (excluding a person who is a permanent resident of a foreign country and is residing outside Malaysia), a non-citizen of Malaysia who has obtained permanent resident status in Malaysia and is residing permanently in Malaysia, or a person (whether body corporate or unincorporated) incorporated or registered with or approved by any authority in Malaysia.

A "non-resident" is defined as any person other than a resident, an overseas branch, an overseas subsidiary, a regional office, a sales office, a representative office of a resident company, embassies, consulates, high commissions, supranational or international organisations, or a Malaysian citizen who has obtained permanent resident status in a territory outside Malaysia and is residing outside Malaysia.

Bank Negara has significantly liberalised Malaysia's foreign exchange regime since 1 April 2007, including among others, the relaxation of rules relating to residents obtaining foreign currency/ringgit credit facilities from non-residents and the rules on investment abroad. The FSA and IFSA reflect the continued trend of liberalisation incorporating further relaxation in the rules including those garnering the right to issue foreign currency securities in Malaysia.

<u>FEA Notices</u>

The following are some of the provisions and restrictions of the FEA Notices that are applicable to residents and non-residents:

Settlements between residents and non-residents

(a) Residents are free to make or receive payments to or from non-residents in foreign currency for any purpose (including settlement of trade in goods and services), other than for derivatives:

  (i) denominated or reference in Ringgit, unless approved by Bank Negara;

  (ii) denominated in foreign currency offered by a resident, unless approved by Bank Negara; and

  (iii) denominated in foreign currency offered by a non-resident, except for:

    (A) derivatives purchased by a licensed onshore bank for its own account, other than exchange rate derivatives with reference to Ringgit;

(B) derivatives offered on specified exchange undertaken through resident futures brokers; and

(C) interest rate derivatives entered with Labuan banks to manage interest rate exposure arising from approved foreign currency borrowing.

(b) Settlement in Malaysian Ringgit ("**Ringgit**" or "**RM**") between residents and non-residents is, however, only allowed for the settlement of:

(i) Ringgit assets;

(ii) trade in goods and services;

(iii) commodity murabahah transactions;

(iv) income earned or expense incurred, in Malaysia;

(v) reinsurance for domestic insurance business or retakaful for domestic Takaful business between a resident and a person licensed to undertake Labuan insurance or Takaful business;

(vi) Ringgit non-financial guarantee denominated in Ringgit issued by a person licensed to undertake Labuan banking activities in favour of a resident; and

(vii) any purpose between immediate family members (i.e. spouse, parents, children and siblings),

provided that:

(A) such payment in Ringgit by a resident is made into the external account (i.e an account in Ringgit maintained with a financial institution in Malaysia) of the non-resident or a non-resident financial institution; and

(B) payment in Ringgit by the non-resident is also effected from an external account.

Borrowing in Ringgit

(a) Generally, a resident (company or individual) is permitted to borrow up to RM1 million from any non-resident other than a non-resident financial institution. Notwithstanding, a resident individual is also permitted to borrow in any amount from his non-resident immediate family members or non-resident employer in Malaysia (subject to the terms and conditions of his service); whilst a resident company is allowed to borrow any amount:

(i) from a non-resident company within its group or its non-resident direct shareholder, to finance activities in the real sector in Malaysia. "**Real sector activities**" include:

(A) the production or consumption of goods or services (excluding activities in the financial services sector, or the purchase of securities or financial instruments, whether Islamic or not); and

(B) the construction or purchase of residential or commercial properties excluding the purchase of land only; or

(ii) from any non-resident through the issuance of:

(A) tradable private debt securities or Islamic private debt securities under the relevant guidelines of the Securities Commission of Malaysia; or

(B) Ringgit or Islamic debt securities by the Federal Government of Malaysia.

(b) A non-resident (company or individual) is allowed to borrow in Ringgit from a resident:

(i) through the issuance of private debt securities or Islamic private debt securities in Ringgit approved by Bank Negara; or

(ii) to finance activities in the real sector in Malaysia. A non-resident can also borrow in Ringgit from licensed onshore banks, as well as resident stock broking companies and resident insurance companies for specified purposes.

Borrowing in foreign currency

(a) A resident individual may borrow in foreign currencies up to an amount equivalent to RM10 million from a licensed onshore bank or a non-resident, and in any amount from his immediate family members; whereas a resident company may borrow any amount of foreign currency from:

(i) licensed onshore banks;

(ii) a resident or non-resident company within its group of entities (except those solely set up to obtain borrowings);

(iii) its resident or non-resident direct shareholder;

(iv) through the issuance of foreign currency debt securities to another resident; or

(v) up to an amount equivalent to RM100 million in aggregate on a corporate group basis from other non-residents.

(b) Non-residents are permitted to borrow any amount of foreign currencies from licensed onshore banks, another non-resident in Malaysia or any of his immediate family members. Non-residents are also permitted to borrow from residents, subject to certain limits depending on whether the resident has existing domestic Ringgit borrowings.

Export and import of Ringgit and foreign currency by travellers

Residents and non-residents are allowed to import and export any amount of foreign currency but only up to USD10,000 equivalent of Ringgit.

Others

The limit on the number of residential or commercial property loans allowed to be obtained by a non-resident has been abolished since 1 April 2007.

There are also other exchange control rules which are applicable to investments abroad, the issuance, transfer or substitution of securities or financial instruments, financial guarantees, export of goods, opening of foreign currency accounts, payments and hedging, as well as dealings with specified persons and companies.

9. Labuan - International Offshore Financial Centre

Labuan is an island located off the state of Sabah in East Malaysia and a federal territory of Malaysia which became a special international offshore financial centre in 1990. With effect from 11 February 2010, the Labuan financial centre was rebranded as the International Business and Financial Centre ("**IBFC**") from its previous name, the Labuan International Offshore Financial Centre (i.e. Labuan IOFC). In conjunction with the rebranding of Labuan as an IBFC, four new Acts were introduced and four existing Acts were amended as follows:

New Legislation

- Labuan Limited Partnerships and Limited Liability Partnership Act 2010.
- Labuan Foundations Act 2010.
- Labuan Islamic Financial Services and Securities Act 2010.
- Labuan Financial Services and Securities Act 2010.
- Labuan FSA Regulation 2010.

Amended Legislation

- Labuan Business Activity Tax Act 1990 (previously Labuan Offshore Business Activity Tax Act 1990).
- Labuan Companies Act 1990 (previously Offshore Companies Act 1990).
- Labuan Trusts Act 1996 (previously Labuan Offshore Trusts Act 1996).
- Labuan Financial Services Authority Act 1996 (previously Labuan Offshore Financial Services Authority Act 1996).

The new legislation repeals the Offshore Banking Act 1990, the Labuan Trust Companies Act 1990, the Labuan Offshore Securities Industry Act 1998, the Labuan Offshore Limited Partnerships Act 1997 and the Offshore Insurance Act 1990.

The aim of the new and amended legislation is to enhance the competitiveness of Labuan IBFC in offering a wider range of financial products and services, both conventional and Islamic, as well as the continued maintenance of Labuan IBFC's status as a well regulated business and financial centre.

General

The Labuan Companies Act 1990 ("**LCA**") provides for the incorporation, registration and administration of Labuan companies as well as foreign companies in Labuan, and facilitates the carrying out of Labuan business activities including:

(i) Labuan trading activities such as banking, insurance, trading, management, licensing and shipping operations; and

(ii) Labuan non-trading activities such as those relating to the holding of investments in securities, stocks, shares, loans, deposits and any other properties by a Labuan entity on its own behalf.

Labuan business activities are required to be carried out in, from or through Labuan, with non-residents of Malaysia or with another Labuan entity, and in foreign currencies except for specific purposes. A Labuan company may however carry on a business with a resident, provided that it does not issue, offer or invite any resident for subscription or purchase of any interest other than shares, debentures, etc. where such issue or offer or invitation is made in Malaysia, other than Labuan, unless the specific provisions of the Malaysian Companies Act 1965 pertaining to the same are complied with. Where a Labuan company carries on a business with a resident, the Labuan company shall notify the Labuan Financial Services Authority ("**LFSA**") of any transactions between the Labuan company and the resident within ten working days of such transactions.

Note that for exchange control purposes, Labuan companies will be treated as non-residents.

Flexibility to establish operational and management office in Kuala Lumpur

With effect from 1 June 2009, Labuan holding companies are given the flexibility to establish their operational and management office in Kuala Lumpur and take advantage of the infrastructure, facilities, human capital, professional services and the lower cost operating environment in Kuala Lumpur. The set up of the operation and management office in Kuala Lumpur is however subject to the prior approval of and the conditions imposed by LFSA.

Tax regime

A Labuan company carrying on Labuan trading activities in, from or through Labuan, can elect either to pay tax at a rate of 3% of its net audited profits or a flat tax of RM20,000 in any year of assessment pursuant to the Labuan Business Activity Tax 1990 ("**LBATA**"), or make an irrevocable election to be taxed at the current corporate income tax rate of 25% under the MITA instead of the existing options under the LBATA. Income derived from a Labuan non-trading activity is exempted from tax. Note however that for taxation purposes, a business transaction carried out with Malaysian residents may not qualify as a "Labuan business activity" as defined under the LBATA (subject to certain exceptions), and income received from such activities may therefore be taxed under the MITA instead.

Dividends received from a Labuan company which are distributed out of income derived from a Labuan business activity or income exempted from tax and distributions received from a Labuan trust by its beneficiaries are not subject to tax in the hands of the recipients. Dividends received by an offshore company are exempted from income tax. Further, royalties, interest and considerations for specific services paid by a Labuan company to a non-resident person or another Labuan company, and any interest paid by a Malaysian resident to offshore banks in Labuan are not subject to withholding tax. However, rentals of movable property paid to a non-resident will not generally enjoy this exemption, with the exception of offshore banks or offshore companies carrying out leasing business.

10. Employment

10.1 Employment of Expatriates

Non-Malaysians require work permits before they can take up employment in Malaysia. Given the Malaysian government's objective to train Malaysians so that they may be involved in all levels of employment, in certain industries, such as manufacturing, only certain "key posts" designated and approved in advance may be permanently filled by foreigners. Generally, approval of expatriate posts is normally granted only where the paid-up capital of wholly-foreign owned Malaysian companies is at least RM500,000. Registered branches of foreign companies are generally permitted very limited expatriate posts without compelling reasons.

Applications for expatriate posts in manufacturing companies are submitted to the Malaysian Industrial Development Authority ("**MIDA**"), before subsequent submission to the Immigration Department. Other executive posts requiring professional qualifications and practical experience and non-executive posts which require technical skills and experience may be filled by expatriates subject to the condition that Malaysians are eventually trained to take over such posts. In early 2011, the "residence pass" was introduced. This approval will be valid for 10 years, is not specific to a particular employer but is open only to highly qualified expatriates who will exercise employment in specified sectors.

10.2 Employment Laws

The Employment Act 1955 ("**EA**") governs matters relating to employment in West Malaysia, with the exception of public servants and those employed in statutory bodies. The EA applies to all employees whose monthly wages do not exceed RM2,000 and those who are engaged in specified work such as manual labour regardless of their monthly wage ("**EA Employees**"). In respect of other employees and those who do not come within the ambit of the Sabah or Sarawak Labour Ordinances, their benefits will be governed by their employment contracts and to a limited extent, the common law.

In early 2012, the EA was amended to include provisions specific to workplace sexual harassment, more favourable maternity leave benefits and on the employment of non-Malaysians. The key areas covered by the EA include termination, payment deductions and advances of wages, liability of principals and contractors for wages, maternity protection, work hours and days of work, annual leave, sick leave, public holidays and termination and lay-off benefits.

Minimum wage

Previously, there were generally no statutory minimum wages in Malaysia, except for employees in certain occupations e. g. cinema workers, shop assistants, hotel and catering workers, cargo-handlers and stevedores. Benefits and related terms of employment were left to be agreed upon, subject to the minimum standards set out in the EA (where applicable). However, with the enactment of the National Wages Consultative Council Act 2011, the Minimum Wages Order 2012 which prescribes the mandatory minimum basic wage for employees according to their region was published. For West Malaysia, the minimum wage is RM900/month (RM4.33/hour) and for East Malaysia, RM800/month (RM3.85/hour). The minimum wage took effect in 2 stages. In respect of employers carrying out professional activities (as classified under the Malaysia Standard Classification of Occupations (MASCO)) and/or having 5 employees and above, the enforcement date was 1 January 2013; whereas, in respect of employers having less than 5 employees, the enforcement date was 1 July 2013. Pursuant to the Minimum Wages Order 2016, the minimum wage for West Malaysia will be revised to RM1,000/month (RM4.81/hour) and for East Malaysia, RM920/month (RM4.42/hour). The revised minimum wage will take effect on 1 July 2016.

Termination and dismissal

There is no "at will" employment in Malaysia. All dismissals must be for "just cause or excuse" and certain procedures and requirements which are specific to the grounds for termination must be followed. The former employer may eventually be found liable for unfair dismissal by the Industrial Court. The compensation awarded in a successful unfair dismissal claim can be substantial and no orders as to legal costs are made regardless of the verdict. The conciliation and adjudication process will take several years. Any dismissal of employees, including non-Malaysian employees, must therefore be very carefully managed with the objective of managing unfair dismissal risk.

A vendor of a business will be liable to pay termination benefits (i.e. severance) to EA Employees unless the purchaser, within 7 days of the change of ownership of the business, offers to continue to employ the EA Employees under no less favourable terms and conditions and the EA Employees unreasonably refused the offer. Arrangements relating to benefits payable upon termination on grounds of redundancy can be addressed in the contract of service or the collective agreement.

Retirement age

The Minimum Retirement Age Act ("**MRAA**") came into force on 1 July 2013. The MRAA provides for a prescribed minimum retirement age of 60 years for private sector employees.

The MRAA does not apply to probationers, apprentices, non-citizens, domestic servants, fixed-term employees who are employed for not more than 24 months (inclusive of any extension), students employed temporarily, or individuals employed with average hours of work not exceeding 70% of the normal work hours of a full-time employee. The MRAA will also not apply to individuals who, before the date of enforcement, retired at the age of 55 or above and are subsequently re-employed.

While the MRAA specifies the minimum retirement age, the MRAA also provides for optional retirement prior to the minimum age. According to the guidelines on the implementation of the MRAA issued by the National Wages Consultative Council, an accelerated retirement age can be fixed by the employer with the consent of the employee and agreed in the contract of service or collective agreement. The employee may elect to retire when he attains the optional retirement age.

Employees' pension and social security

The Employees Provident Fund ("**EPF**") Act 1991 requires contributions by both employer and employee to a provident fund. As there is no compulsory retirement age for private sector employees, the retirement age is determined as a matter of contract and in the absence of such agreement, by reference to the employer's practices. The retirement age of 55 years is not legally prescribed but most employers adopt this age as a matter of general practice. The Minimum Retirement Age Act 2012 ("**MRAA**") does however provide for a mandatory minimum retirement age of 60 which can be opted out of, but only by the employee.

Currently, for employees who receive wages exceeding RM5,000, the employer's contribution in respect of an employee is 12% of the employee's wages while the employee contributes 8% towards his own account. For employees who receive wages of RM5,000 and below, the employee's contribution of 8% remains, while the employer's contribution is 13% (employers can claim income tax deductions for contributions to the EPF up to 19%).

Previously, the EPF Act requires contributions by both employer and employee to an EPF fund for retirement of the employee at the age of 55 years. Consistent with the MRAA, contributions from both the employer and the employee will need to be continued at the respective rates of 12% and 8%, respectively, until the employee reaches the age of 60.

Employers with one or more employees whose wages do not exceed RM4,000 a month or employees who have previously contributed to the Social Security Organization are required to insure their employees against injury and invalidity under the Employees' Social Security Act 1969.

Whistleblower protection

The Whistleblower Protection Act 2010 ("**WPA**") came into force on 15 December 2010. It aims to encourage disclosures of improper conduct by ensuring that whistleblowers do not suffer retaliatory action subsequent to making a protected disclosure under the WPA.

The WPA will have broad and potentially significant implications on all employers in Malaysia regardless of the nature of business and the position of the employee. Employers should therefore adopt a pro-active and self- regulating approach through the implementation of comprehensive whistleblower protection policies that facilitate whistleblowing.

In light of the Personal Data Protection Act 2010 ("**PDPA**") (which came into force on 15 November 2013), there will be the need for the employer to be able to strike the right balance where the whistleblower and the alleged wrongdoer are both employees.

Employee's personal data protection

The PDPA which came into force on 15 November 2013 was enacted to regulate the collection and use of personal data. Briefly, the PDPA imposes new legal obligations on employers (as data users) who process the personal data of its employees (as data subjects). Employers are expected to, among others, obtain an employee's consent prior to processing his/her personal data, inform the employee that his/her personal data is being processed via written notice, specify such reasons for the collection of the personal data, be responsible for protecting such personal data, ensuring the accuracy of the personal data and to allow employees to access the collected personal data.

Certain classes of data users are also required to be registered under the PDPA (Personal Data Protection (Class of Data User) Order 2013). Please refer to paragraph 13.3 below for a detailed discussion on the PDPA.

11. Trade & Customs

11.1 Trade Policies

Malaysia generally maintains an open trade policy that is favourable to both foreign direct investment into Malaysia and also to those trading with Malaysia. The major trade objectives of Malaysia include improving market access for goods and services, promoting the global competitiveness of Malaysian exports, expanding and diversifying trade with existing partners, and exploring new markets.

11.2 Main Trade Issues

Tariffs are the main border measure affecting the importation of goods, although various non-tariff border measures are also used as instruments of Malaysia's trade and industrial policy. Some of Malaysia's tariff lines are subject to import licensing. Imports of certain tariff lines are also subject to technical standards and require approval to be granted as a pre-requisite for the issuance of import licences. Malaysia has initiated a variety of anti-dumping actions against other countries and economies and there are also anti-dumping actions taken against Malaysian products.

Malaysia imposes export taxes and adopts export promotion measures as part of its industrial policy. Export taxes or licensing are applied to certain goods of national interest. Export promotion measures include export processing zones and guarantees.

11.3 Customs Duties and Related Considerations

Import duties are payable on a wide variety of imported goods on tariff lines ranging from agricultural products, processed materials to finished manufactured goods, based on the Custom Duties Order 2012, a subsidiary legislation under the principal Customs Act 1967. To determine the amount of customs duties payable on imported goods, the following needs to be considered:

- tariff classification,
- origin of the goods; and
- value of the goods subject to duty.

Goods imported into Malaysia are classified according to the Harmonised Commodity Description and Coding System (the "**HS Code**") a globally standardised system administered by the World Customs Organisation and used in all WTO member countries including Malaysia. The origin of the goods is relevant as there may be different duty rates or preferential rates applicable under free trade agreements ("**FTAs**") which promote free flow of goods in the region under various ASEAN economic agreements and FTAs entered into by Malaysia or in its capacity as an ASEAN member.

Valuation of imported goods must be done in accordance with the Customs (Rules of Valuation) Regulations 1999 which prescribes the transaction value as the primary method of valuation, i.e., the price actually paid or payable in respect of the goods. Notwithstanding this, where Customs has reasons to doubt the truth or accuracy of the transaction value (i.e., the declared value) it may value the goods in accordance with alternative methods of valuation such as by using the value of identical or similar goods, taking a deductive value of the goods (i.e. its sale price minus reasonable profits and other expenses) or compute the value of the goods based on its known cost price plus a reasonable amount of profits and other expenses. Lastly, Customs can also use the fall back or derivative value method which combines all of the above methods.

Export duties are levied on a very limited category of products (e.g., crude petroleum, palm oil) by reason of Malaysia's goal to make its exports internationally competitive. Export duties are imposed on the price which the exporter receives for such goods when released by the Customs for export.

Separately, excise duties are imposed on certain goods which are imported into Malaysia or manufactured in Malaysia (e.g. cars, alcoholic beverages, cigarettes and certain articles such as casino accessories, billiards, playing cards and mahjong tiles). The rates of excise duties vary depending on the nature of the goods and are either specific or *ad valorem*. The types of goods which are subject to excise duties and the applicable duties are prescribed under the Excise Act 1976, the Excise Regulations and the Excise Duties Orders made pursuant to the Excise Act.

11.4 Free Zones ("FZ")

There are several designated FZs in Malaysia. There are two types of FZs: Free Industrial Zones ("**FIZ**") and Free Commercial Zones ("**FCZ**"). Only manufacturing activities are permitted in the FIZs. The types of activity permitted in FCZs are limited to commercial activities, which include trading (excluding retail trade), breaking bulk, grading, repacking, relabeling and transit. The objective of these FZs is to enable industries to enjoy minimum customs control and formalities in the import of raw materials, parts, machineries and equipment.

Companies eligible for location in FZs are those whose entire imports are meant for export and whose materials/components have to be imported. In exceptional cases, companies exporting not less than 80% of their products can also be considered for location in the FZs (although the Malaysian government encourages FZ companies to use local raw materials or components wherever possible).

Goods and services of any description may be brought into, produced, manufactured or provided in a FZ without payment of any customs duty, excise duty, sales tax or service tax. Companies in the FZ wishing to sell their products in the domestic market may apply to the Ministry of Finance for exemption of the import duty for such products.

11.5 Licensed Manufacturing Warehouse

As free zones are specifically designated geographical areas, it may not be suitable for all companies to set up operations within such geographical areas. To extend the same benefits and exemptions enjoyed by manufacturers located within the free zones, the Malaysian Government has introduced a Licensed Manufacturing Warehouse scheme ("**LMW**") under Sections 65 and 65A of the CA, which allows manufacturers the choice of locating their premises taking into account factors such as availability of labour, cost of land and support services.

LMWs are essentially bonded warehouses where goods imported for manufacturing purposes can be imported duty free and sales tax free, for incorporation into the finished product to be exported. Customs is strict with LMW licensees by requiring manufacturers to maintain a comprehensive documentary system capturing all in-flow and out-flow of goods from and to the LMW facility, to prevent duty leakage. Any movement of goods must be recorded and/or endorsed by a proper officer of Customs. There are also obligations to keep daily records which will be required for the preparation and submission of monthly records and an audited annual report to Customs. Any goods which are not accounted for would be subject to the payment of customs duties and sales tax at Customs' discretion.

11.6 Duty Drawback Mechanism

In the event that a manufacturer neither locates itself in the FZs nor applies to be a LMW, a drawback mechanism is available to provide a full refund of duties or taxes paid on parts or components which are re-exported as part of finished goods manufactured in Malaysia. A duty drawback is granted upon application to Customs, where Customs will determine whether the parts or components for which the drawback is claimed are actually used as components in the finished product which is subsequently exported.

11.7 Import / Export Licensing

There are prohibitions and restrictions against the import and export of certain goods into and out of Malaysia which are set out in the Customs (Prohibition of Imports) Order 2012 and the Customs (Prohibition of Exports) Order 2012 respectively. The schedules to these orders set out a list of goods which are absolutely prohibited and those which are restricted, subject to obtaining the required licensing or approval from the relevant authority.

There are also minimum standard requirements for certain goods imported into Malaysia such as (non-exhaustive) for building or construction materials, steel, toys, telecommunications equipment and labelling requirements in respect of other goods. These requirements are generally product specific and as any process for approvals require processing time, importers and exporters alike are advised to check whether any proposed import or export are subject to such requirements.

11.8 Export Controls of Strategic Items

With the introduction of the Strategic Trade Act 2010, Malaysia now has in place export control laws which require exports, transits and transhipment of any strategic items to be accompanied by permits issued by the Ministry of International Trade and Industry. Although the Act and its subsidiary legislations came into force on 1 January 2011, only the permit obligations for nuclear items and restrictions against shipping to prohibited and restricted end-users were effective immediately. On 1 April 2011, the final tranche of the Act came into force, requiring permits for military items and other non-nuclear dual-use items and technology. A three month grace period for compliance was granted and the necessary permits for the military and dual-use items should be obtained by 1 July 2011.

The Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 effectively adopts all UN Security Council resolutions on the non-proliferation of weapons of mass destruction in totality. A full embargo for which all export, transshipment or transit of strategic goods is prohibited, is imposed on persons and entities listed in the 2nd Schedule to the Order, located primarily in the People's Republic of Korea and Iran.

The 1st Schedule to the Order on the other hand sets out the list of restricted end-users requiring a special permit issued by the Minister of International Trade & Industry, for exports, transits and transshipments. These countries include Congo, Ivory Coast, Lebanon, Sudan and Libya, Afghanistan, Iraq, Liberia, Rwanda, Somalia and Eritrea.

The brokering provisions under the STA are drafted very widely to include the activity of any person who either on his own behalf or acting as an agent on behalf of another negotiates, arranges or facilitate the purchasing, financing, conveying, sale or supply of strategic items or buys, sells or supplies such strategic items. Brokers of strategic items have annual registration obligations.

The STA also has extra-territorial effect and can catch any person regardless of nationality or citizenship, such that any offences committed under the STA outside Malaysia will be treated as offences committed within Malaysia.

11.9 Free Trade Agreements

Malaysia has signed various bilateral and multi-lateral comprehensive FTAs with India, Japan, New Zealand, Pakistan, Australia, Chile, Turkey and as a member of ASEAN with Japan, South Korea, China, India and Australia and New Zealand.

Malaysia also has in place the Framework Agreement on Trade Preferential System among the member states of the Organisation of the Islamic Conference (PTS-OIC) and the Developing Eight (D-8) Preferential Tariff Agreement comprising Bangladesh, Indonesia, Iran, Egypt, Nigeria, Pakistan and Turkey.

Since 2010, Malaysia has been actively participating in the Trans-Pacific Partnership Agreement ("**TPPA**") negotiations, a multilateral free trade agreement with 12 countries including the United States, Canada, Chile, Mexico, Peru, Australia, New Zealand, Vietnam, Singapore, Brunei and recently Japan. The TPPA was signed by all member countries on 4 February 2016 and member countries have 2 years to ratify the TPPA.

The TPPA is a 'high standard' FTA as it seeks to include in its ambit various "WTO-plus" chapters which are trade issues or topics not covered today in WTO rules, or which seek to cover WTO issues or topics in a way that is superior to that under the WTO. For countries which have entered into high standard FTAs with the United States such as Singapore and Korea, it may not be uncommon to find chapters on competition policy (including with respect to state owned enterprises), government procurement, e-commerce, labour standards, and environmental standards, albeit at varying levels of commitments or subject to carve-outs.

For Malaysia however, given that it has been unable to reach a conclusion of the Malaysia-United States FTA after more than 10 years since its inception (negotiations began in June 2005 and were temporarily suspended thereafter), there are various chapters within the TPPA which would be regarded by many as falling outside the scope of typical agreements that Malaysia has signed previously.

Unlike the traditional agreements negotiated by Malaysia which were based on a 'positive list' approach, where market access and national treatment commitments for trade in services are based on an exhaustive list (i.e., only services sectors which are specifically committed to are opened for investment), the TPPA is negotiated on a 'negative list' approach, whereby any services sector which is not specifically excluded or carved-out is open to other member countries.

In order to ratify the TPPA, the Malaysian Government has set up a national consultative committee to push forward reforms to existing legislation. Based on information released by the Malaysian Government to date, a total of 26 amendments will have to be made in 17 laws to be able to ratify the TPPA.

Separately, Malaysia is also trying to conclude an FTA with the European Union by the end of 2016. As an ASEAN member, Malaysia is also party to the ASEAN Economic Community (which involves 10 ASEAN countries (i.e. Brunei, Cambodia, Indonesia, Laos, Myanmar, the Philippines, Singapore, Thailand, Vietnam and Malaysia)) and also a party to the Regional Comprehensive Economic Partnership (RCEP) Agreement negotiations which involve the 10 ASEAN countries and the other 6 countries with which ASEAN has existing FTAs (i.e. Australia, China, India, Japan, Korea and New Zealand).

FTAs serve to amongst others, reduce tariff rates payable in respect of goods originating from countries which have an FTA with Malaysia. Conversely, exports of goods manufactured in Malaysia can also benefit from lower tariff rates in the country of import which has an FTA with Malaysia. There are specific rules and conditions to qualify for preferential duty treatment under different FTAs, such as the rules of origin and operational rules for certification procedures to obtain certificates of origin from issuing authorities in the exporting country. Companies intending to utilise these FTAs are advised to review their existing supply chain structure and make such that the requisite rules of origin or operational rules to qualify for preferential tariff under the relevant FTA are satisfied.

12. Intellectual Property

12.1 Intellectual Property Law

The protection of Intellectual Property under Malaysian law is available in various forms, and is generally consistent with international standards and obligations. In 1988, Malaysia also acceded to the Paris Convention for the Protection of Industrial Property. Pursuant to the ASEAN Economic Community ("**AEC**") initiative between member states of ASEAN which seeks to build a single harmonised market in ASEAN by the end of 2015, Malaysia has agreed to streamline its Intellectual Property regime to comply with the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("**Madrid Protocol**") and the Patent Cooperation Treaty ("**PCT**").

The Patents Act 1983 ("**PA**") provides protection for registered patents. Patent protection in Malaysia is available by registering the invention or utility innovation. A patent expires 20 years after its date of application, while the initial duration of protection for a utility innovation is 10 years from the date of filing of application. This initial ten-year term may be extended twice, each time by an additional five years, provided the owner shows that the utility innovation is in commercial or industrial use in Malaysia, or satisfactorily explains its non-use. Note that annual fees are payable in order to keep a patent or certificate in force. On 16 May 2006, Malaysia acceded to the PCT and the PCT came into effect in Malaysia from 16 August 2006.

Computer programmes and compilations of computer programmes are protected by the Copyright Act 1987 ("**CA**"). Furthermore, Malaysia's accession to the Berne Convention for the Protection of Literary and Artistic Works on 28 June 1990 led to further enactment of regulations which extended copyright protection within Malaysia to certain works first published in other member-countries of the Berne Convention, and works which are created by nationals of Berne Convention members. It is notable that amendments were recently made to the CA to include, amongst others, safe harbour provisions for internet service providers, a voluntary copyright registration regime and expansion of the fair dealing exceptions which was previously very limited.

The Industrial Designs Act 1996 provides protection for registered industrial designs in Malaysia, which was recently amended by the Industrial Designs (Amendment) Act 2013 ("Amendment Act"), which came into force on 1 July 2013.

The first key amendment introduced by the Amendment Act was the extension of the concept of novelty to 'worldwide novelty', where prior art existing outside of Malaysia can now qualify as valid prior art. Secondly, the maximum duration for protection of a registered industrial design is now 25 years from the date of filing of application. After the initial term of 5 years, up to four periods of 5-year extensions may be sought. In addition, and in line with the government recent initiatives to encourage the use of intellectual property as collateral, amendments have been made to explicitly provide that a registered industrial designs are considered personal property and is capable of assignment, transmission and being dealt with by operation of law in the same way as other personal or movable property including being the subject of a security interest.

Trade marks and service marks may also be registered in Malaysia under the Trade Marks Act 1976 ("**TMA**"). Note however, that the registration process may be lengthy owing to potential amendments or oppositions raised against it. Registrations issued after 1 December 1997 are valid for an initial period of 10 years from the date of application, and are renewable for subsequent 10-year periods. In addition to the protection offered by the TMA, common law actions of breach of confidence under the laws of confidentiality and passing-off are also available.

The Protection of New Plant Varieties Act 2004 ("**PNVA**") which came into force on 1 January 2007 seeks to provide for the protection of the rights of breeders of new plant varieties, and to recognise and protect the contribution made by farmers, local communities and indigenous peoples towards the creation of new plant varieties in Malaysia. The PNVA is distinct from other intellectual property statutes, as it introduces a new registration system of its own - the Plant Varieties Board. This Board issues registration certificates for new plant varieties and grants breeder's rights to applicants. The PNVA aims to encourage development and investment in the breeding of new plant varieties in both the public and private sectors. As the Malaysian Patents Act 1983 excludes plant and animal varieties from patentability, protection is afforded only by the PNVA. Consequently, its introduction is welcomed progress in the area of plant biotechnology in Malaysia.

The Optical Discs Act 2000 was enacted to deal with the issue of piracy and the copying of copyrighted works (principally software, film and music) in the form of optical discs such as VCDs, DVDs, CD-ROMS and CDs. The Act also regulates the manufacture of optical discs and requires such manufacturers to be licensed.

In line with Malaysia's obligations under TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights), protection is now available for the layout design of integrated circuits under the Layout-Designs of Integrated Circuits Act 2000 based on originality, creator's own invention and the fact that the creation is freely created.

Geographical indications are also protected under the Geographical Indications Act 2000.

13. Multimedia and Technology

13.1 Communications and Multimedia Act 1998

The Communications and Multimedia Act 1998 and its raft of supporting regulations, guidelines and directions provide a comprehensive regulatory and licensing framework for the converging telecommunications, broadcasting, multimedia and IT industries. One of the objectives of this Act is to make Malaysia a major global centre for these industries and to spur local development in these areas.

The Commission has issued regulations on, *inter alia,* licensing requirements under the Act and the applicable exemptions; requirements for spectrum and apparatus assignments; and technical standards and certification for communications equipment. Guidelines have also been issued on competition within the communications market, provision of wireless LAN services, advertising and broadcasting. The Commission frequently issues discussion papers on various topics (such as the Electronic Addressing and Numbering Initial Issue Paper, Public Inquiry Paper on Assessment of Dominance in Communication Markets, Notice on Public Inquiry on Access List and Mandatory Standard on Access etc.) affecting the communications market to solicit constructive responses from the public.

The regulatory regime is regulated by the Malaysian Communications and Multimedia Commission, while overall policy continues to be determined by the Ministry of Communications and Multimedia.

13.2 Multimedia Super Corridor and Information and Communication Technology Developments

Malaysia's Multimedia Super Corridor ("**MSC**") is a 15 kilometre wide by 50 kilometre long zone extending south from Malaysia's present national capital and business hub - Kuala Lumpur. The MSC zone has been extended to Bayan Lepas, Prai Pinang and Kulim High-Technology Park, Kedah under the 2005 Budget. Currently, there are various existing MSC zones located in the Klang Valley, Northern Region and Southern Region of Malaysia including Cyberjaya, Technology Park Malaysia, UPM-MTDC, KLCC, KL Tower, KL Sentral, Menara Telekom Malaysia, I-City Shah Alam, Plaza IBM Bandar Utama, The Gardens Mid Valley, Penang Cybercity, Kulim High Tech Park, Perak Techno Trade Centre, Melaka International Trade Centre and Menara MSC Cyberport, Johor.

MSC status is conferred by the Malaysian Government through the Multimedia Development Corporation ("**MDeC**") to companies that participate in and undertake information and communication technology ("**ICT**") activities in the MSC. Companies with MSC status are entitled to operate tax free for up to 10 years (renewable at the expiry of the first five (5) years) or receive a 100% investment tax allowance for up to 5 years, and enjoy other financial and non-financial incentives and benefits backed by the Malaysian Government's Bill of Guarantees.

The Malaysian Government is strongly committed to the MSC project and views it as being vital to achieving Vision 2020, Malaysia's economic agenda for the 21st century and the development of a knowledge-based economy. The Government has promised to fulfil the following Bill of Guarantees:

- Provide a world-class physical and information infrastructure.
- Allow unrestricted employment of local and foreign knowledge workers.
- Ensure freedom of ownership by exempting companies with MSC Status from local ownership requirements.
- Provide the freedom to source capital globally for MSC infrastructure, and the right to borrow funds globally.
- Provide competitive financial incentives, including no income tax for up to 10 years or an investment tax allowance for up to 5 years, and no duties on import of multimedia equipment.
- Become a regional leader in intellectual property protection and cyberlaws.
- Ensure no Internet censorship.
- Provide globally competitive telecommunications tariffs.
- Tender key MSC infrastructure contracts to leading companies willing to use the MSC as their regional hub.
- Provide an effective one-stop agency - MDeC.

In fulfilling the commitment to provide a comprehensive framework of cyber laws and intellectual property laws to facilitate the development of the IT and multimedia industries, the Government has enacted the Digital Signature Act 1997, Copyright (Amendment) Act 2012, Computer Crimes Act 1997, Communications and Multimedia Act 1998, the Telemedicine Act 1997, Electronic Commerce Act 2006, Electronic Government Activities Act 2007 and the Personal Data Protection Act 2010.

Further, various measures will be implemented to enhance the development of Cyberjaya, the key component of MSC, one of which is that Industrial Building Allowance will be available to owners of new buildings occupied by MSC status companies for a period of 10 years. Such new buildings include completed buildings which are yet to be occupied by MSC status companies.

Typically, multimedia companies operating outside cybercities do not enjoy tax incentives given to the MSC status companies. In order to further encourage information, communication and technology and multimedia activities including computer software development throughout the country, it was announced in the 2008 Budget that the government will grant an income tax exemption on 100% of its statutory income for ten (10) years or an investment tax allowance of 100% on qualifying capital expenditure to be utilised against 100% of statutory income for a period of five (5) years to qualifying companies operating outside the cybercities. This incentive will only be extended to companies endorsed by the MDeC.

13.3 Personal Data Protection Act 2010

The Personal Data Protection Act ("**PDPA**") was enacted to regulate the collection and use of personal data. The PDPA came into force on 15 November 2013. No Codes of Practice ("**Codes**") setting out detailed implementation steps or substantive official pronouncements have so far been issued. The Codes are expected to be sector and subject matter customised.

The provisions of the PDPA apply to any person who processes or who has control over or authorises the processing of any personal data in respect of commercial transactions. To qualify as "personal data", the information must:

(a) relate, either directly or indirectly, to a data subject who is identified or identifiable from that information or from that and other information in the possession of a data user; and

(b) the information must be capable of being processed by means of equipment operating automatically in response to instructions given for that purpose or recorded as part of a manual filing system, where specific information relating to a particular individual is readily available.

"Processing" is defined broadly under the PDPA to include collecting, recording, holding or storing the personal data or carrying out any operation or set of operations on the personal data, including the:

(a) organisation, adaptation or alteration of personal data;

(b) retrieval, consultation or use of personal data;

(c) disclosure of personal data by transmission, transfer, dissemination or otherwise making available; or

(d) alignment, combination, correction, erasure or destruction of personal data.

There are 7 data protection principles that form the basis of protection under the PDPA. A data user who does not comply with the personal data protection principles commits an offence punishable by a fine of up to RM300,000 and / or a term of imprisonment of up to 2 years.

The principles are as follows:

(a) General Principle: Prohibition from processing personal data unless the data subject has consented to the processing of the personal data.

(b) Notice and Choice Principle: Providing the data subject with a written notice as soon as practicable.

(c) Disclosure Principle: Prohibition from disclosing personal data for any purpose other than the purpose for which the personal data was to be disclosed at the time of collection of the personal data or a directly related purpose.

(d) Security Principle: When processing personal data, the data user must take practical steps to protect the personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction.

(e) Retention Principle: The obligation to take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed.

(f) Data Integrity Principle: The obligation to take reasonable steps to ensure that the personal data processed is accurate, complete, not misleading and kept up-to-date, having regard to the purpose for which the personal data was collected and further processed.

(g) Access Principle: The data user must grant data subjects with access to his personal data and ability to correct that personal data where the personal data is inaccurate, incomplete, misleading or not up-to-date.

14. Real Property

14.1 Restrictions on Ownership of Real Properties

Under the Malaysian National Land Code, save for industrial land, foreigners must obtain the prior approval of the relevant state authority before acquiring real property in West Malaysia. However, industrial land is often held under leasehold title, and state authorities may impose conditions relating to foreign ownership in the title.

Pursuant to the Government's initiative to propagate growth with distribution, restrictions on ownership of real property by foreign interest have been relaxed by the introduction of the new guidelines on the acquisition of properties by the Economic Planning Unit of the Prime Minister's Department ("**EPU Property Guidelines**").

14.2 Introduction to EPU Guidelines on the Acquisition of Properties

For the purposes of the EPU Property Guidelines, "foreign interest" means a person who is not a Malaysian citizen, a permanent resident, a foreign incorporated company and/or a local incorporated company with 50% or more of its equity interest held by one or more of the above.

Under the EPU Property Guidelines, foreign interests are free to acquire commercial, industrial, agricultural and residential properties valued at and above RM1,000,000. As land is a State matter, the relevant State governments will, however, continue to have authority and may impose conditions in respect of real property transactions involving foreign interests.

EPU approval is required for real property transactions resulting in the dilution of Bumiputera or government interests in real property as follows:

- *Direct Acquisition*

  Direct acquisition of real property where (a) there is a dilution of Bumiputera or government interests in real property; and (b) the property is valued at and above RM20 million; and

- *Indirect Acquisition*

  Indirect acquisition of real property by a foreign interest through acquisition of shares if:

  (a) the transaction results in a change in control of the company owned by Bumiputera interest and/or government agency;

  (b) real property makes up more than 50% of the said company's assets; and

  (c) the real property is valued at more than RM20 million.

Where EPU approval is required under the EPU Property Guidelines, the EPU will impose certain equity and share capital conditions on the acquirer of the property, as follows:

- *Equity Condition*

  To have and to maintain at least 30% Bumiputera equity in its shareholding; and

- *Paid-up Capital Conditions*

  (a) to have an issued and paid-up capital of at least RM100,000 where the acquirer is a local company owned by local interest; or

  (b) to have an issued and paid-up capital of at least RM250,000 where the acquirer is a local company owned by foreign interest.

As the EPU Property Guidelines are not law but a reflection of governmental policy, there are no legal sanctions against non-compliance with the guidelines. However, they can be enforced administratively through government departments exercising a regulatory role in the grant of relevant licences, approvals, permits and the non-processing by the relevant land office of non-compliant transfer of properties.

The following transactions are exempted from the EPU approval requirement:

- acquisition of residential unit under the “Malaysia My Second Home” Programme;
- acquisition of property by companies with Multimedia Super Corridor (MSC) status in MSC areas provided that the property is only used for operational activities (which may include using the property as employees’ residence);
- acquisition of property in approved areas in any regional development corridor by companies that have been granted the status by the local state authority as determined by Government;
- acquisition of property by companies which have obtained endorsement from the Secretariat of the Malaysian International Islamic Financial Centre (MIFC);
- acquisition of industrial land by manufacturing companies; and
- acquisition of properties by companies which have been granted the status of International Procurement Centre, Operational Headquarters, Representative Offices, Regional Offices, Labuan offshore companies and Bio-Nexus or special status by the Ministry of Finance, Ministry of International Trade and Industry and other ministries.

15. Environment

Environmental Laws

The Environmental Quality Act 1974 (“**EQA**”) and the regulations pursuant to it have established standards for controlling air emissions, effluents and the disposal and handling of other wastes. An environmental impact assessment must be conducted prior to the implementation of certain projects.

1. Appendix Incentives for the Manufacturing Sector

Some of the incentives available to the manufacturing sector are:

1.1 Pioneer Status

A manufacturing company may apply for Pioneer Status if it engages in specified "promoted activities" or produces "promoted products". A manufacturing company located outside the promoted areas and being granted Pioneer Status will enjoy partial exemption from the payment of income tax. It will only have to pay tax on 30% of its statutory income. The period of tax exemption is 5 years, commencing from the production day as determined by the Minister of International Trade and Industry. As an added incentive, manufacturing companies granted Pioneer Status and located in the States of Perlis, Sabah, Sarawak and the Federal Territory of Labuan (only applicable to the hotel business and tourist industry) and the designated "Eastern Corridor" (which covers the States of Kelantan, Terengganu, Pahang and the district of Mersing in the State of Johor) of Peninsular Malaysia (collectively termed the "Promoted Areas"), be exempt from tax on 100% of their statutory income during the tax exemption period of 5 years. This enhanced tax incentive for promoted areas will be effective for applications received by MIDA on or after 13 September 2003.

To further reduce the costs of doing business in Sabah, Sarawak and the "Eastern Corridor", existing companies which relocate their manufacturing activities to the promoted areas will (for applications received by MIDA from 11 September 2004) be given a second round of Pioneer Status with tax exemption of 100% of statutory income for a period of 5 years.

The tax relief period of a pioneer company commences on its production day and continues for a period of 5 years. The production day is stated expressly in the pioneer certificate and a company which has been granted pioneer status must request for a pioneer certificate within 24 months from the granting of the pioneer status. Typically, the Ministry of International Trade and Industry will issue a pioneer certificate where the company has achieved 30% production of its installed capacity, as such an achievement is deemed to be the "production day."

Pioneer companies carrying on a manufacturing activity or any activity relating to the treatment of water or projects that are of national and strategic importance to Malaysia may be allowed an extension of another five years upon fulfilment of certain legislative requirements.

All accumulated losses and unabsorbed capital allowances incurred by pioneer companies during the pioneer period cannot be carried forward and deducted from post-pioneer income of a business.

1.2 Investment Tax Allowance ("ITA")

As an alternative to Pioneer Status, manufacturing companies may apply for ITA. Both the ITA and Pioneer Status are mutually exclusive i.e. a company can only enjoy either one of the incentive at the same time. The applicant may include Pioneer Status companies applying for ITA for promoted products or promoted activities other than those for which Pioneer Status or ITA has been granted.

A company granted ITA will be given an allowance of 60% in respect of qualifying capital expenditure incurred within 5 years from the date on which the first qualifying expenditure is incurred. The allowance can be used to offset against 70% of the statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up. The balance 30% of the statutory income will be taxed at the prevailing corporate tax rate of 24% (effective YA 2016).

As an added incentive, companies located in the States of Sabah, Sarawak and the Federal Territory of Labuan (only applicable to the hotel business and tourist industry) and the designated "Eastern Corridor" (which covers the States of Kelantan, Terengganu, Pahang and the district of Mersing in the State of Johor) of Peninsular Malaysia (collectively termed the "Promoted Areas"), will be granted an allowance of 80% in respect of the qualifying capital expenditure incurred within 5 years from the date the first capital expenditure is incurred. The allowance can be used to offset against 85% of the statutory income in the year of assessment. This enhanced tax will be effective for applications received by the MIDA on or after 31 December 2005.

A second round of ITA (of 100% of the qualifying capital expenditure incurred within a period of 5 years) will also be given to companies which relocate their manufacturing incentives to promoted areas. The allowance can be used to set-off up to 100% of statutory income in each year of assessment.

It should be noted that the ITA will be withdrawn if the capital expenditure (i.e. plant, machinery and/or building) is disposed within a period of two years from the date of its acquisition.

1.3 Reinvestment Allowance ("RA")

RA is commonly known as the second round of incentive for companies which have exit from the tax holiday of Pioneer Status or ITA. The RA is typically available for a period of 15 consecutive years of assessment beginning from the year of assessment in which the capital expenditure was first incurred.

RA is granted to manufacturing companies which have been in operation for at least 36 months and incur qualifying capital expenditure for the expansion of production capacity, modernisation and upgrading of production facilities, diversification into related products and automation of production facilities. Companies must be in operation for at least 36 months, before it is eligible to claim for RA.

The RA is in the form of an allowance of 60% of capital expenditure incurred by the companies, and will be given for a period of five years from the year the first reinvestment is made. The allowance can be used to offset against 70% of the statutory income in the year of assessment. Any unabsorbed allowance can be carried forward to the following years until it is fully utilised. The RA can only be claimed on completion of the qualifying project (i.e. after the building is completed or when the plant/machinery is put to operational use). However, assets acquired from the reinvestment cannot be disposed within 5 years of reinvestment.

Where an asset is disposed of at any time within 5 years from the date of acquisition of that asset, an allowance given in respect of that asset shall be deemed to have not been given to the person who would have been otherwise entitled to it. The allowance would be treated as part of the person's statutory income in the basis period for the year of assessment in which the asset is disposed.

The Finance Act 2014 (No.2) has introduced a new paragraph into the Schedule 7A MITA. The new paragraph provides that the term "statutory income", for the purposes of this RA claim, shall be construed as the amount of statutory income of a person from a source consisting of a business in respect of a qualifying project. The amendment has the effect of limiting the RA claim only to the statutory income from the qualifying project. It requires taxpayers to ascertain the amount of statutory income strictly from the qualifying project for the purpose of the RA claim and thus imposes additional obligations on the taxpayer to maintain separate accounts segregating the income and expense of the same business source into qualifying projects and non-qualifying projects.

A company can offset the RA against 100% of its statutory income for the year of assessment if:

a) the company undertakes reinvestment projects in the promoted areas i.e. the States of Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia; or

b) the company attains a productivity level exceeding the level determined by the Ministry of Finance.

The government has also introduced restrictions on the amount of RA claimable on the transfer price of an asset in the case of a controlled transfer. If the disposer has incurred capital expenditure on an asset for the purposes of a qualifying project and the asset is subsequently disposed of and control transfer provisions apply, the acquirer is not eligible to claim RA on the asset.

Effective from Year 2011, a company granted a Pioneer Status is only eligible to claim RA in the basis period for a year of assessment after the end of that basis period for that year of assessment.

Also, effective from year 2009, a claim for RA is not allowed for an asset purchased by a company from a related company within the same group where RA had already been claimed on that asset.

Application for RA should be submitted to the Inland Revenue Board ("**IRB**"), while applications for the surrender of Pioneer Status for RA should be submitted to MIDA. It should be noted that RA does not require prior approval from MIDA.

1.4 Accelerated Capital Allowance

After the 15-year period of eligibility for RA, companies that reinvest in the manufacture of promoted products are eligible to apply for Accelerated Capital Allowance ("**ACA**"). The ACA on capital expenditure is to be utilised within three years, i.e. an initial allowance of 40% and an annual allowance of 20%. For companies which incur capital expenditure on purchase of moulds used in the production of Industrialised Building Systems (IBS) in the construction industry, they are eligible to apply for ACA on related equipment to be fully written off within a period of three years.

Applications should be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted products.

The accelerated capital allowance with an initial allowance of 20% and an annual allowance of 40% on capital expenditure incurred in relation to the purchase of information technology and communication equipment such as access control system, banking systems; barcode equipment etc. has been extended for 3 years effective from YA 2014 to YA 2016.

1.5 Incentives for Export

Manufacturers producing for the export market are eligible to apply for the following:

a) <u>Double Deduction for Promotion of Exports</u>

Deductions for promotion of export are available to resident companies in Malaysia involved in manufacturing, trading and agricultural activities for the relevant year of assessment. Any expenses incurred after 1 January 1986 by a company in its business primarily and principally for the purpose of seeking opportunities or in creating or increasing demand for the export of goods or agricultural produce manufactured, produced, assembled, processed, packed and graded or sorted in Malaysia are eligible for deductions.

The expenses incurred in relation to the registration of patents, trademarks or product licensing overseas which previously qualified for single deduction are now given double deduction for expenses incurred for registration fees and other expenses directly incurred for the registration of patents, trademarks or product licensing such as stamp duty, legal fees and consultancy fees.

A single deduction is allowed for expenses on bringing potential importers to Malaysia as a follow-up to the trade or investment missions organized by government agencies or industrial or trade associations as verified by Malaysia External Trade Development Corporation ("**MATRADE**"). Visits by potential importers must fall within a period of 12 months after the mission overseas.

Other expenses which are eligible for further deductions for promotion of exports are publicity and advertisement in any media outside Malaysia save for publicity on billboards and vehicles, provision of samples, export market research, tender for supply of goods, negotiating or concluding contracts, participation in approved trade fairs or exhibitions by MATRADE, provision of technical information, public relations, maintaining sales office overseas and professional fees incurred on packaging design.

As a continuous effort to promote Malaysia products or agriculture produce in the international market, the following expenses have been included as qualifying expenses for the promotion of exports and thus qualify for further deductions:- participation in a trade portal, virtual trade shows and the cost of maintaining warehouse overseas.

b) Tax Exemption on the Value of Increased Exports

To promote exports, manufacturing companies in Malaysia qualify for:

- a tax exemption on the statutory income equivalent to 10% of the value of increased exports, provided that the goods exported attain at least 30% value-added; or

- a tax exemption on the statutory income equivalent to 15% of the value of increased exports provided that the goods exported attain at least 50% value-added.

To further encourage the export of Malaysian goods, a locally-owned manufacturing company with Malaysian equity of at least 60% is eligible for:

- a tax exemption on the statutory income equivalent to 30% of the value of increased exports, provided the company achieves a significant increase in exports;

- a tax exemption on the statutory income equivalent to 50% of the value of increased exports, provided the company succeeds in penetrating new markets; or

- a full tax exemption on the value of increased exports provided the company achieves the highest increase in export in its category.

This allowance is not available to companies that are currently enjoying Pioneer Status, ITA, RA or for the export of non-qualifying products specified under the Income Tax (Allowance for Increased Export) Rules 1999.

c) Export Credit Refinancing ("**ECR**") Scheme

In line with the Malaysian Government's objective to promote the exports of manufactured goods, Malaysian exporters can avail themselves of ECR which provides short-term credit at preferential rates of interest.

This facility is operated by the commercial banks, while the Export-Import Bank of Malaysia ("**Exim Bank**") will refinance those commercial banks which have extended export credit to eligible exporters (which comprise of direct and indirect exporter, the former consists of manufacturing company, agricultural products producer and trading company while the latter consists of supplier of domestic input. The exporter may invoice his exports in any currency but financing is made available only in Malaysian ringgit. There are two types of facilities available under the scheme: the pre-shipment ECR facility which provides working capital to direct and indirect exporters (i.e. domestic suppliers of inputs to final exporters) and the post-shipment ECR facility which enables Malaysian exporters to obtain immediate funds upon shipment of eligible goods sold on credit terms.

To be eligible for the ECR facility, exported goods should not be listed in the "negative list" and it should have a minimum value added of 20% and a minimum domestic resource content of 30%. For products that do not fulfil these requirements, exemption is given by Exim Bank on a case-by-case basis.

The eligible amount of the pre-shipment facility is up to 95% on the value of export orders for the order-based method. If the certificate of performance method is used, then the eligible amount would be 100% of export value for a direct exporter and 80% of local sales for an indirect exporter. For the post-shipment facility, the eligible amount of financing is 100% of the invoice value.

d) Industrial Building Allowance ("**IBA**")

Expenditure incurred in the construction or purchase of industrial buildings qualifies for IBA. In this regard, companies are eligible for an initial allowance of 10% and an annual allowance of 3% so as IBA can be claimed within 30 years. For this purpose, IBA is defined to include a factory, a dock, wharf, jetty, or other similar building, a warehouse let out to the public, buildings used in the utility business, or telecommunication services, buildings used in the working of a mine or farm, or mill, workshop in connection with the working of mine. Currently, for purposes of IBA there is a difference in the specific treatment of a building which is constructed and purchased.

The method of computing industrial building allowances on the purchase of used buildings is such that it will be based on the purchase price of the building instead of the original cost incurred by the seller in the construction of the building. This is effective from YA 2005. Where part of a building or structure is, and part is not, an industrial building and the cost of the latter is 10% or less of the total cost of the building, the whole building qualifies for IBA i.e. the cost of building must be apportioned and only the industrial part is eligible for IBA.

e) Incentives for outsourcing manufacturing activities

To reduce the cost of doing business and enhance competitiveness, the owners of Malaysian brands who outsource manufacturing activities are given import duty and sales tax exemptions on raw materials which are not manufactured locally and semi-finished goods imported from contract manufacturers abroad. The foregoing incentive is effective for applications received by MIDA from 11 September 2004.

2. Tax Incentives for Manufacturing Related Services

Companies eligible for incentives are those providing the following value added manufacturing related services:

a) **Integrated logistic services** comprising the entire supply chain management, including procurement of software and hardware, warehousing, distribution (transportation and freight services), packaging activities and customs clearance;

b) **Integrated market support services** comprising the activities of brand development, consumer development, packaging design, advertising and promotion; and

c) **Integrated central utility facilities** which provide services including the supply of steam, demineralised water and industrial gas.

As a measure to increase the efficiency in distribution, to promote more aggressive marketing and to reduce production costs by adopting Just In Time practice, companies providing the above value-added manufacturing related services will be given the following tax incentives:

a) income tax exemption of 70% of the statutory income for a period of 5 years;

b) income tax exemption of 85% of the statutory income for a period of 5 years for projects in the Eastern Corridor of Peninsular Malaysia, Sabah and Sarawak; and

c) exemption of import duty and sales tax on equipment in the related projects.

3. Incentives for the Machinery and Equipment Industry

Currently, a company which intends to produce machinery and equipment is eligible for Pioneer Status with 70% income tax exemption for a period of 5 years or Investment Tax Allowance of 60% for a period of 5 years. These incentives are available only if the project complies with:

a) the value added criteria of at least 40%; and

b) the Managerial, Technical and Supervisory Index of at least 25%.

To increase investments in machinery and equipment industry, so as to reduce dependence on imports, it is proposed that:

a) companies undertaking activities in the production of the following specialised machinery and equipment:

- machine tools;
- plastic injection machines;
- material handling equipment;
- robotics and factory automation equipment; and
- parts and components of the above machines and equipment

be granted the following incentives:

- Pioneer Status with tax exemption of 100% of statutory income for a period of 10 years; or
- Investment Tax Allowance of 100% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted for each year of assessment to be set off against 100% of statutory income.

These incentives are to be granted on condition that the companies comply with the value added criteria of at least 40% and the Managerial, Technical and Supervisory Index criteria of at least 25%.

The proposal is effective for applications received by the MIDA from 20 October 2001.

In order to further develop the machinery and equipment industry, the tax incentives above are extended to manufacturers of the following categories of specialised machinery and equipment:

- specialised/process machinery or equipment for specific industries;
- packaging machinery;
- plastic extrusion machinery; and
- parts and components for the above machineries and equipment.

The proposal is effective for applications received by the MIDA from 21 September 2002.

The following additional incentives are granted to existing locally owned companies which <u>reinvest</u> in the production of machinery and equipment (including specialised machinery and equipment and machine tools):

a) Pioneer Status with tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from reinvestment for a period of 5 years (10 years for value added products); or

b) Investment Tax Allowance of 60% (100% for valued added products and promoted areas) on additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted for each year of assessment to be set off against 70% (100% for promoted areas) of statutory income.

This is effective for applications received by the MIDA from 13 September 2003.

4. Incentives for Research and Development (“R&D”)

Under the Promotion of Investments Act 1986, R&D is defined as “any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes, but does not include quality control of products or routine testing of materials, devices, products or produce, research in the social sciences or humanities, routine data collection, efficiency surveys or management studies, and market research or sales promotion.”

4.1 Tax Exemptions and Capital Allowances

A contract R&D company (i.e. a company which provides R&D services in Malaysia only to companies other than its related companies) is eligible to apply for Pioneer Status with full income tax exemption at statutory income level for 5 years or an ITA of 100% on qualifying capital expenditure incurred within 10 years. The ITA can be utilised to offset against 70% of the statutory income in the year of assessment.

An R&D company (i.e. a company which provides R&D services in Malaysia to its related companies or to any other companies) is eligible to apply for an ITA of 100% on qualifying capital expenditure incurred within 10 years. The ITA can be utilised to offset against 70% of the statutory income in the year of assessment. R&D companies are given a second round of Pioneer Status for another five years or Investment Tax Allowance for a further 10 years.

Contract R&D and R&D companies are eligible to apply for the various incentives provided they fulfil the following criteria:

a) research undertaken should be in accordance with the needs of the country and bring benefit to the economy;

b) at least 70% of the income of the company should be derived from R&D activities;

c) for manufacturing-based R&D, at least 50% of the workforce of the company must be appropriately qualified personnel performing research and technical functions; and

d) for agriculture-based R&D, at least 5% of the workforce of the company must be appropriately qualified personnel performing research and technical functions.

Companies which carry out in-house research in Malaysia (i.e. R&D carried out within a company for the purpose of its own business) are eligible to apply for ITA of 50% on research capital expenditure incurred within 10 years. The ITA can be utilised to offset against 70% of the statutory income in the year of assessment.

IBA in the form of an initial allowance of 10% and an annual allowance of 3% is available for buildings used for the purposes of approved R&D.

Machinery/equipment, materials, raw materials/component parts and samples used for R&D purposes are eligible for exemption from import duties, sales tax and excise duties.

4.2 Double Deduction of Expenses

Double deduction is allowed on revenue expenditure incurred by a person on research directly undertaken by him or on his behalf, which is approved by the Minister of Finance, and on payment for the use of services of approved research institutes, R&D companies or contract R&D companies, as well as cash contributions made to approved research institutes.

All approved R&D expenditure incurred during the Pioneer period will be allowed to be accumulated and carried forward to be given another deduction after the Pioneer period. Expenditure on R&D activities undertaken overseas, including the training of Malaysian staff, will be considered for a double deduction on a case-by-case basis.

Companies which incur expenditure in obtaining certification for recognised quality systems and standards, and halal certification, evidenced by a certificate issued by an approved certification body will be permitted to claim double deduction in relation to the expenditure.

Companies (at least 70% Malaysian owned and who are the registered proprietor of the Malaysian brand name registered locally and overseas) which incur expenditure on advertising Malaysian brand name goods will be entitled to claim double deduction of advertising expenses incurred. Effective from YA 2007, the above double deduction of advertising expenses will be extended to a company within the same group which has incurred the advertising expenditure provided that more than 50% of the company is owned by the registered proprietor of the Malaysian brand name and the deduction is claimed by one company in a YA.

4.3 Incentives for Researchers to Commercialise Research Findings

Effective from the YA 2004, researchers who undertake research focused on value creation will be given a 50% tax exemption for five years on the income that they receive from the commercialisation of their research findings. The undertaking has to be verified by the Ministry of Science, Technology and Environment.

In order to encourage Malaysian-owned companies to spearhead the commercialisation of local R&D findings, a locally-owned company which invests and owns at least 70% equity in the company that undertakes commercialisation projects will be granted:

- tax deductions equivalent to the amount of actual investment; and
- Pioneer Status of 100% for a period of 10 years.

Applications for this incentive should be made through a committee at MIDA that includes a representative from the Ministry of Science, Technology and Innovation. This is effective for applications received from 11 September 2004.

5. Incentives for the Agricultural Sector and Tourism Industry

Incentives similar to those available in the manufacturing sector in respect of Pioneer Status, ITA, RA, double deduction for promotion of exports, tax exemption on the value of increased exports, IBA, and ECR scheme, are also available to the agricultural sector. There are additional incentives for companies engaged in certain industries such as deep sea fishing, processing of promoted food products, chicken and duck rearing and planting of rubberwood trees.

Agro-based cooperative societies and associations, sole proprietorships and partnerships engaged in agriculture, producing promoted products or engaged in promoted activities in the agricultural sector qualify for the following incentives:

a) Pioneer Status

70% exemption of payment of statutory income tax for 5 years commencing from the day of first sale of the agriculture produce.

Applications received from companies located in the promoted areas i.e. the States of Perlis, Sabah and Sarawak and the designated “Eastern Corridor” of Peninsular Malaysia will enjoy a 100% tax exemption on their statutory income during their 5 year exemption period. All project applications received by 31 December 2010 will be eligible or this enhanced incentive.

b) ITA

Allowance of 60% on its qualifying capital expenditure incurred within 5 years from the date on which the first qualifying capital expenditure is incurred.

Companies can offset this allowance against 70% of their statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of the statutory income is taxed at the prevailing company tax rate.

In view of the time lag between start-up and processing of the produce, integrated agricultural projects qualify for ITA for an additional 5 years for expenditure incurred for processing or manufacturing operations.

The availability of several pre-existing tax incentives were also extended to 2010 to encourage food production such as vegetable farming, aquaculture and cattle rearing. The 2005 Budget proposed that the write off period for capital expenditure on machinery and equipment used in the agriculture sector be reduced from between 4 and 8 years to 2 years. The 2009 Budget extended the tax incentives available to chicken and duck rearers to include those who reinvest to expand the closed house system in existing or new locations approved by the Ministry of Agriculture and Agro-based Industry.

In the tourism industry, Pioneer Status, ITA and IBA are also available on the same basis as those available for the manufacturing sector.

Applications received by MIDA from 13 September 2003 from companies to reinvest in the expansion, modernisation and renovation of hotels and tourism projects will be given another round of Pioneer Status or Investment Tax Allowance.

The 2009 Budget extended the tax incentives to hotel operators undertaking new investments in four and five stars hotels in Sabah and Sarawak as part of the Government's objective to boost development of economic corridors in Sabah and Sarawak and further upgrade the country's tourism infrastructure as well as increase tourism in these two states.

6. Approved Service Projects ("ASP")

Projects in the transportation, communications and utilities sub-sectors of the service sector, approved by the Minister of Finance are eligible for tax incentives. The incentives are as follows:

6.1 Tax Exemptions

A company undertaking an ASP will be granted partial exemption on 70% of the statutory income for five years (85% for an ASP in Perlis, Sabah, Sarawak or the designated eastern corridor of Peninsular Malaysia). An ASP of national or strategic importance will be granted full exemption from income tax for 10 years.

6.2 Investment Allowance

A company undertaking an ASP will be granted a 60% Investment Allowance for qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be used to set off against 70% of the statutory income (80% and 85% respectively for an ASP in Perlis, Sabah, Sarawak or the designated eastern corridor of Peninsular Malaysia). An ASP of national or strategic importance will be granted a 100% Investment Allowance on the qualifying capital expenditure incurred within 5 years, which may be set off against 100% of the statutory income. Any unutilised investment allowance may be carried forward until it is fully utilised.

6.3 Additional Incentives

Imports of raw materials and components not available locally and used directly to implement ASPS are eligible for exemption from import duty and sales tax, while locally purchased machinery or equipment are eligible for exemption from sales tax and excise duty. Companies providing services in the transportation and telecommunications sectors, power plants and port operators can apply for import duty and sale tax exemption on spares and consumables that are not produced locally.

7. Principal Hub

The Principal Hub incentive has replaced previous incentives given to International Procurement Centers (“**IPC**”), Regional Distribution Centers (“**RDC**”) and Operational Headquarters (“**OHQ**”), as of 1 May 2015. No applications for the IPC, RDC or OHQ may be made after 30 April 2015. A Principal Hub is defined as a locally incorporated company that uses Malaysia as a base for conducting regional and global businesses and operations to manage, control and support key functions including management of risks, decision making, strategic business activities, trading, finance, management and human resource. The Principal Hub incentive will be provided pursuant to Section 127(3) of the Income Tax Act 1967 and approved through the National Committee on Investment (NCI). A company with approved Principal Hub status will be eligible for a 3-tiered corporate taxation rate as follows:

Tiers	**Tier 3**		**Tier 2**		**Tier 1**	
Years	5	+5 (subject to meeting certain conditions	5	+5	5	+5
Tax Rate	10%		5%		0%	

Other benefits of the Principal Hub incentive include:

(a) 100% foreign ownership;

(b) expatriate posts based on requirements of the applicant company;

(c) acquisition of fixed assets by foreign companies in connection with the carrying out of business operations by the applicant company;

(d) use of foreign professional services where locally-owned services are not available;

(e) customs duty exemption for importation of raw materials, components or finished products into free industrial zones (FIZs), free commercial zones (FCZs), licensed manufacturing warehouses (LMWs) and bonded warehouses for production, re-packaging, cargo consolidation and integration before distribution to its final consumers; and

(f) foreign exchange administration flexibilities.

To qualify for the Principal Hub incentive, companies will have to satisfy the following criteria:

(a) Paid-up capital exceeding RM 2.5 million;

(b) Minimum annual sales turnover of RM 300 million (applicable only for goods-based companies);

(c) Serves and control “network companies” in at least 3 countries outside Malaysia:
- Tier 3: minimum of 3 countries;
- Tier 2: minimum of 4 countries;
- Tier 1: minimum of 5 countries.

(d) Carries out at least three (3) qualifying services including at least one strategic service (e.g. regional profit and loss / business unit management, strategic business planning and corporate development, corporate finance advisory services, brand management, IP management), and other business or shared services (e.g. sales and marketing, business development, general administration, IT);

(e) Employment requirements:
   - Tier 3: 15 high value jobs, including 3 key strategic / management positions;
   - Tier 2: 30 high value jobs, including 4 key strategic / management positions;
   - Tier 1: 50 high value jobs, including 5 key strategic / management positions;

   At least 50% of the high value jobs must be held by Malaysians by the end of Year 3.

(f) Annual business spending as follows:
   - Tier 3: RM 3 million;
   - Tier 2: RM 5 million;
   - Tier 1: RM 10 million.

(g) Significant use of Malaysia's banking and financial services and other ancillary services and facilities (e.g. trade and logistic services, legal and arbitration services, and finance and treasury services);

(h) Income tax exemption threshold received from services/goods based company inside and outside of Malaysia is based on the ratio of 30:70 (inside:outside).

Applications for the Principal Hub incentive are to be submitted to the Malaysian Investment Development Authority ("**MIDA**") from 1 May 2015 to 30 April 2018.

Further information on the Principal Hub incentive is available upon request.

8. Infrastructure Allowance

Companies which are engaged in the manufacturing, agricultural, hotel or tourism or other industrial/commercial activities in East Malaysia and the designated eastern corridor of West Malaysia and which incur qualifying capital expenditure on infrastructure such as reconstruction, extension or improvement of any permanent structure including bridges, jetties, ports and roads, are eligible for an infrastructure allowance of 100%. Qualifying capital expenditure exclude those qualifying for investment tax allowance, capital allowance or RA and capital expenditure incurred on waste disposal or for the use of management, administrative or clerical staff. The allowance can be used to set off against 85% of the statutory income in the year of assessment. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to the subsequent years until it is fully utilised.

9. Incentives for High Technology Companies

High technology companies are companies engaged in promoted activities or in the production of promoted products in areas of new and emerging technologies. High technology companies are eligible for Pioneer Status with full tax exemption at statutory income level for a period of 5 years, or ITA of 60% on qualifying capital expenditure incurred within a period of 5 years (the allowance can be offset against the statutory income for each assessment year without any restriction).

The high technology company must incur local R&D expenditure to gross sales at least 1 % on an annual basis (companies are allowed a period of 3 years from the date of operation/commencement of business to comply with this requirement), and the percentage of science and technical staff having degrees or diplomas with a minimum 5 years experience in related fields should be at least 15% of total workforce.

10. Incentives for Multimedia Super Corridor (“MSC”)

Companies with MSC Status are entitled to operate tax free for up to 10 years or receive a 100% ITA and enjoy some of the following incentives and benefits backed by the Malaysian Government’s Bill of Guarantee (discussed in detail in chapter 11 above):

a) a five-year exemption from Malaysian income tax (Pioneer Status), renewable to 10 years, or a 100% Investment Tax Allowance (“**ITA**”) on new investments made in cybercities within 5 years;

b) Existing companies which are 100% foreign owned but are not located in the designated cybercities (whether inside or outside the MSC), are now also eligible to apply for MSC status. However, they will be required to relocate into a MSC designated cybercity within six (6) months of receiving MSC status;

c) allow freedom of sourcing capital globally for MSC infrastructure and freedom of borrowing funds;

d) no duties on the import of multimedia equipment; and

e) eligibility for R&D grants (for majority Malaysian-owned MSC Status companies).

11. Exemption from Import Duty on Direct Raw Materials/ Components

Generally, full exemption from import duty can be considered on raw materials/components irrespective of whether the finished products are sold in the domestic market or are exported, provided that the raw materials/components are not manufactured locally or where they are manufactured locally, are not of acceptable quality and price.

Companies undertaking biotechnology activities qualify for exemption of import duty and sales tax on imported raw materials/components and machinery/equipment.

There are other exemptions from import duty on raw materials/components available for the various sectors and further information is available upon request.

12. Incentives for Conservation of Energy

Companies providing energy conservation services enjoy the following incentives:

a) Pioneer Status with a tax exemption of 100% of statutory income for 10 years; or

b) ITA of 100% on the qualifying capital expenditure incurred within a period of five years, which can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised; and

c) Import duty and sales tax exemption on equipment.

Companies which incur capital expenditure for energy conservation for own consumption are also eligible for:

a) ITA of 100% on the qualifying capital expenditure incurred within a period of five years with the allowance to be offset against 100% of the statutory income for each year of assessment; and

b) Import duty and sales tax exemption on equipment

The above incentives will be valid for applications received until 31 December 2015, as announced under the 2011 Budget.

Further, to widen the usage of Energy Efficient (“EE”) equipment, an exemption of import duty and sales tax is given to importers on EE equipment such as high efficiency motors and insulation materials including authorised agents approved by the Energy Commission.

Sales tax exemption is also given on the purchase of locally manufactured EE consumer goods such as refrigerators, air conditioners, lighting, fans and televisions.

The above incentives will be valid for applications received until 31 December 2012, as announced under Budget 2011.

13. Incentive for Utilisation of Oil Palm Biomass

Value-added products

To further encourage the utilisation of oil palm biomass to produce value added products such as particleboard, medium density fiberboard, plywood, pulp and paper, new companies undertaking the foregoing activities will be eligible for Pioneer Status with full tax exemption at statutory income level for a period of 10 years, or ITA of 100% on qualifying capital expenditure incurred within a period of five years. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

Existing companies that reinvest will be eligible for the following incentives:

a) Pioneer Status with tax exemption of 100% on the increased statutory income arising from reinvestment for a period of 10 years; or

b) Investment Tax Allowance of 100% on additional qualifying capital expenditure incurred within a period of five years with the allowance deducted for each year of assessment to be set off against 100% of statutory income.

To qualify for the above incentive, company has to comply with the following criteria:

i. The value-added must be at least 60%; and

ii. The managerial, technical and supervisory (MTS) ratio must be at least 25%.

Applications must be made to MIDA.

Biomass as renewable energy

In order to promote the generation of energy from renewable and environment-friendly resources such as biomass, under the 2005 Budget the period of capital allowance for expenses incurred by companies in generating energy from renewable and environment-friendly resources for their own use, be reduced from between 4 - 8 years to one year.

14. Tax Incentive for Offshore Trading via Websites in Malaysia

To encourage the usage of ICT in trade and to establish Malaysia as an attractive business location for international trade in a borderless global market, income received by companies undertaking offshore trading via websites in Malaysia are taxed at a concessionary rate of 10% for a period of 5 years. Offshore trading is defined as the buying and selling of foreign goods to non-residents.

Applications must be made to the Ministry of Finance.

15. Incentives for Waste Recycling Activities

Pioneer status & ITA

Companies undertaking high value-added waste recycling activities and using high technology are eligible for:

a) Pioneer Status (exemption of 70% of statutory income for 5 years); or

b) ITA (exemption of up to 70% of statutory income for each year of assessment from ITA computed at 60% qualifying capital expenditure incurred within 5 years from the date which the approval is to take effect).

These activities include recycling of agricultural wastes of agricultural byproducts, chemicals and reconstituted wood-based panel boards or products.

Accelerated capital allowance

Companies undertaking waste recycling activities were given Accelerated Capital Allowance on expenses incurred for the purchase of waste recycling machinery and equipment. The allowance must be utilised within 3 years.

Import duty and sales tax

Companies undertaking waste recycling activities qualify for exemption of import duty and sales tax on imported machinery and equipment for waste recycling activities not produced locally and exemption of sales tax on imported machinery and equipment for waste recycling activities that are produced locally.

16. Real Estate Investment Trusts ("REITs")

REITs, also known as Property Trust Funds ("**PTFs**"), are presently subject to income tax at the rate of 25%.

With effect from YA2007, REITs are exempted from tax on all income provided that at least 90% of their total income is distributed to investors/unit holders. If the 90% condition is not complied with, the REIT will be subject to income tax (at the rate of 25%) whilst all their investors are eligible for tax credit on the amount of tax withheld in the distribution of dividends by the REIT to them, against their gross income. From 1 January 2009 to 31 December 2011, the final withholding tax imposed on foreign institutional investors and non-corporate investors (including all individuals and other resident entities) is 10%.

All instruments of deed of transfer executed between REITs or a PTF approved by the Securities Commission ("**SC**") and the disposer relating to the purchase of real property is exempted from stamp duty.

Further, the fees for consultancy, legal and valuation services incurred in the establishment of REIT are allowed as deductions for the purposes of income tax. A resident unit holder will need to declare his residence status to get full distributions from the REIT or PTF and pay tax on income received from the REIT or PTF.

Prior to YA 2008, if companies dispose industrial buildings to REITs, the company is subject to a balancing charge. Effective from YA 2008, companies which qualify for IBA and subsequently dispose the industrial building to REITs would not be subject to a balancing allowance. REITs are eligible to claim the balance of unclaimed IBA of the disposer of the building.

From YA 2009, companies which own new and/or upgraded existing buildings awarded the Green Building Index ("**GBI**") will be given a tax exemption equivalent to 100% of the additional capital expenditure incurred to obtain the certificate which can be set off against 100% of the statutory income for each year of assessment. This incentive is only available for the first GBI certificate issued in respect of the building and the incentive is effective for buildings awarded with GBI certificates from 24 October 2009 until 31 December 2014.

17. Developing the Islamic Financial System

17.1 Income Tax Exemption for Islamic Banking and Takaful Business

Pursuant to an income tax exemption order, international Islamic Banks, international Takaful operators and international currency business units which have been approved by Bank Negara are exempted on statutory income derived from its international currency business and qualifying Ringgit accounts with effect from YA 2007. International currency business is business carried on in a foreign currency (i.e. not in Ringgit).

17.2 Exemption or Remission from payment of Stamp Duty for Islamic Financing

To further encourage the development of the Islamic financial sector and Islamic financing in Malaysia, various stamp duty exemptions and remissions were made available to make it attractive for companies and individuals to opt for Islamic financing instead of conventional financing. Stamp duty exemption and remission orders are issued (or in the case of those which have a validity period, renewed) by the Ministry of Finance regularly to facilitate this process. Most of these exemption and remission orders would have a fixed validity period and typically will only be applicable when stamp duty has already been paid for an earlier transaction i.e. in a refinancing transaction or in a transaction whereby financing is converted from a conventional financing to an Islamic financing.

Notwithstanding the foregoing, in September 2006, the Ministry of Finance issued a remission order allowing the remission of 20% of stamp duty payable and chargeable on the principal / primary instrument of financing made in accordance with Syariah principles subject to the condition that the Islamic financial product concerned has been approved by the Syariah Advisory Council of the Central Bank. The Stamp Duty (Remission) Order 2015 has extended this from 1 January 2016 until 31 December 2017.

17.3 Tax Exemption for Companies Managing Foreign Islamic Funds

To further promote foreign Islamic fund management activities, local and foreign companies managing funds of foreign investors established under Syariah principles are given full income tax exemption on their management fees. The SC must approve such funds. The exemption has been effective since the YA 2007 and will continue to be effective until the YA 2016.

17.4 Deduction on Expenses to Establish Islamic Stock Broking Company

To support the National Agenda to make Malaysia an Islamic financial hub, expenses incurred prior to the commencement of an Islamic stock broking business will be allowed as a deduction. However, the expenses allowed for deduction are limited to claims for consultancy and legal fees, feasibility study costs and market research, and costs related to obtaining business approval and related licences. This incentive is subject to the condition that the company must commence its business within a period of 2 years from the date of approval by the SC. The exemption is effective for applications received by the SC from 2 September 2006 up till 31 December 2016.

17.5 Tax Incentive for Issuance of Islamic Securities

Expenses incurred on the issuance of Islamic securities based on leasing (Ijarah), progressive sales (Istisna), profit sharing (Mudharabah) and profit and loss sharing (Musyarakah) are allowed as deductions. This incentive is also given to all Islamic securities products approved by the SC. This is effective from the YA 2008 until the YA 2015.

17.6 Review of Tax Treatment on Special Purpose Vehicles for Islamic Financing

To obtain financing through the Islamic capital market, a company is required to establish a Special Purpose Vehicle ("**SPV**") solely as a vehicle to channel funds. As a company, the SPV is subject to income tax and is required to comply with all the administrative requirements under the Income Tax Act 1967.

To promote Malaysia as a hub for the Islamic capital market the SPV will not be subject to income tax and apart from certain minimal record keeping requirements are exempted from compliance with general administrative procedures under the Income Tax Act 1967. The company that established the SPV is also given a deduction on the cost of issuance of the Sukuk incurred by the SPV.

17.7 Tax Exemption for Non-resident experts in Islamic Finance

Tax exemption is given on income received by non-residents experts in Islamic finance (verified by the Malaysia International Islamic Financial Centre (MIFC) Secretariat) from the provision of their expertise in Islamic finance. The exemption has been effective since 8 September 2007 and will continue to be effective until 31 December 2016.

17.8 Tax Exemption on Income Derived From Dealing in ringgit denominated Sukuk

Any interest paid or credited to any non-resident companies in respect of Ringgit denominated sukuk (excluding convertible loan stock) approved by the SC or the is exempted from income tax;

17.9 Tax Exemption on Income Derived From Dealing in non-ringgit Sukuk

Between YA 2009 and YA 2011, statutory income paid or credited to any person in respect of non-Ringgit sukuk originating in Malaysia (excluding exchangeable loan stock) and approved by the SC is exempted from income tax by a Malaysian resident who is a licenced or registered person under the CMSA, as long as any income derived is kept and maintained in separate accounts.

17.10 Tax Exemption on Income of Corporate Advisors on the Issuance and Trading of Sukuk

In order to promote the issuance of sukuk in Malaysia and to strengthen Malaysia's competitiveness in the global sukuk market, fees earned by specified residents in Malaysia in undertaking activities under the CMSA in a basis period for a year of assessment from the payment of income tax in respect of statutory income derived from the regulated activity of dealing in securities and advising on corporate finance under the **Capital Markets and Services Act 2007** relating to the arranging, underwriting and distributing of sukuk are exempted from income tax until YA 2014.

To ensure tax neutrality with conventional products, any additional tax or duty is exempted or given specific treatment provided that the Islamic capital market products are approved by the Syariah Advisory Council of the SC.

17.11 Tax Deduction for Takaful Businesses

With effect from the YA 2014, deductions are available for management expenses incurred by General Takaful business and deductions for commission expenses incurred in respect of the general business shareholders' fund.

18. Banks and Financial Institutions

The Government, through Bank Negara, has deemed non-performing loan interest income as an interest in suspense and will not be treated as income for accounting purposes. It advises through the Guideline on Classification of Impaired Loans/Financing and Provisioning for Bad and Doubtful Debts for any loans which are in arrears for 6 months or more to credit all interest income arising from the same loan into an interest in suspense account. Once the interest upon the loan is recovered, it will subsequently be taxed.

This approach by the Bank Negara is central to ensuring banks are able to maintain their liquidity and further strengthen the cash flow of financial institutions in the context of ensuring competitiveness and long-term resilience.

19. Tax Rebate On Zakat For Labuan Offshore Companies

Labuan companies are subject to income tax of 3% of net profit or RM20,000 under the LBATA. Labuan companies also have the option to make an irrevocable election to be taxed under the MITA instead of the LBATA. In addition, some Labuan companies pay *zakat* and will be given an income tax rebate equivalent to the amount of *zakat* paid to the Labuan religious authority, subject to a maximum of the tax charged for the year of assessment.

20. Strategic Projects

Strategic projects involve products or activities of national importance and generally comprise of heavy capital investments with long gestation periods. Strategic projects should also have high levels of technology, generate extensive linkages and have significant impact on the economy. Such projects may qualify for:

a) Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years; Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company; or

b) ITA of 100% on the qualifying capital expenditure incurred within 5 years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

21. Industrial Linkage Program

Companies participating in a promoted activity or producing a promoted product in an Industrial Linkage Programme (being an integrated programme undertaken by a Ministry or Government agency in which a small company or medium company which is a manufacturer and supplier is linked to a larger company or to another small company or medium company through the manufacture and supply of parts and components or through technology or research and development) may be eligible for income tax exemption under the Pioneer Status incentive or ITA.

Further details on the ILP are available upon request.

22. Automotive Component Modules

Companies undertaking the manufacture of selected critical and high value-added parts and components for the automotive industry are eligible for:

- Pioneer status with income tax exemption of 100% of the statutory income for a period of 10 years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company; or
- Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within 10 years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until they are fully utilized.

The qualifying critical and high value-added parts and components for the automotive industry are available upon request.

To promote Malaysia as a regional hub for hybrid cars and as an incentive for local car manufacturers and assemblers to prepare for the assembly of such cars domestically, the Government in the 2011 Budget proposed that franchise holders of hybrid cars be given 100% exemption of import duty and 100% exemption (previously 50% exemption) of excise duty on new completely built-up (CBU) hybrid cars until 31 December 2013. These exemptions are also extended to apply to franchise holders of electric cars as well as hybrid and electric motorcycles, in line with the Government's commitment to developing green technology. The eligibility for the incentive is subject to certain conditions.

- Pioneer Status with income tax exemption of 100% of the statutory income for a period of 10 years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer can be carried forward and deducted from the post pioneer income of the company; or

- Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years. The allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilized allowances can be carried forward to subsequent years until fully utilized; or

- 50% exemption on excise duty for locally assembled/manufactured vehicles or provision under the Industrial Adjustment Fund (IAF).

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