U.S. DEPARTMENT OF STATE
DIPLOMACY IN ACTION

Executive Summary

The Government of Malaysia in general strongly encourages foreign direct investment (FDI), although it maintains restrictions or limits on investment in some sectors. It actively reaches out to targeted industries and negotiates incentive packages to attract FDI. Malaysia provides a number of incentives, particularly in export-oriented high-tech industries and "back office" service operations. Prime Minister Najib Razak (Najib) has made generating new domestic and foreign investment a centerpiece of his economic reforms. Despite this, while FDI inflow continues to recover from the effects of the 2008-2009 global financial crises, Malaysia's performance in attracting FDI relative to both earlier decades and the rest of the Association of Southeast Asian Nations (ASEAN) has slowed.

According to a recent Organization for Economic Cooperation and Development (OECD) Investment Policy Review of Malaysia, FDI to Malaysia began to decline in 1992, and private investment overall started to slide in 1997 following the Asian financial crises. The OECD concludes that Malaysia's FDI levels are at record high levels in absolute terms, but at an all-time low as a percentage of GDP. Moreover, Malaysia's percentage of foreign direct investment into the ASEAN member states is now lower than its share of the group's GDP.

As a destination for FDI, Malaysia's attractiveness for lower-wage manufacturing has diminished as years of steady economic growth have increased average wage levels making Malaysia an upper middle-income country. The Malaysian Government seeks to move the economy further "up the value chain" to high income status by promoting investment in higher value added manufacturing and service sectors. The National Economic Advisory Council (NEAC), a blue ribbon panel of experts on Malaysia's economy, in 2010 issued two reports identifying shortcomings in Malaysia's investment climate and proposing policies necessary to improve Malaysia's competitiveness as a foreign investment destination and meet the country's goal of becoming a high-income economy by 2020.

Since then, the Najib administration has progressively introduced a series of initiatives, including the Economic Transformation Program (ETP) in 2010, focusing on policy measures to improve competitiveness and investment in 12 key economic areas to accelerate economic growth. Another initiative, the Government Transformation Program (GTP) addresses governance and quality of life issues, and aims to reduce corruption and crime, to improve education, urban public transport and rural basic infrastructure, and to reduce the number of low-income households. The Tenth Malaysia Plan (10MP) underpins these programs and guides public sector capital expenditures. The ETP identified 12 specific sectors in which the Malaysian government is encouraging foreign and domestic investment, including: electrical & electronics; medical devices; green energy, machinery & equipment; oil and gas, and transportation equipment. Also targeted for growth are a number of resource-based industries and some services sub-sectors including logistics, although the sectors are subject to foreign investment conditions or restrictions. The ETP announced in mid-2013 that that 86% of committed investments for projects in 2011 and 2012 had been realized.

The ETP can be found at: http://etp.pemandu.gov.my/
The GTP can be found at: http://www.pemandu.gov.my/gtp/
The 10MP can be found at http://www.epu.gov.my/en/tenth-malaysia-plan-10th-mp-

U.S. investors have a significant presence in the oil and gas sector, manufacturing, and financial services. U.S. firms with significant investment in Malaysia's petroleum and petrochemical sector include: ExxonMobil, Caltex, ConocoPhillips, Murphy Oil, Hess Oil, Halliburton, Dow Chemical and Eastman Chemicals. Major semiconductor manufacturers, including Freescale, Texas Instruments, Intel, and others have substantial operations in Malaysia, as do electronics manufacturers Western Digital, Honeywell, Komag, Agilent, and Motorola. In recent years Malaysia has attracted significant investment in the production of solar panels, including from U.S. firms. Virtually all major Japanese consumer electronics firms (Sony, Fuji, Panasonic, Matsushita, Hitachi, etc.) have facilities in Malaysia.

1. Openness to, and Restrictions Upon, Foreign Investment

Malaysia has one of the world's most trade-dependent economies with trade reaching 165% of annual GDP according to the World Trade Organization. The Malaysian government values foreign investment as a powerful force for the continued economic development of the country, but is hampered by restrictions in some sectors and an at times burdensome regulatory regime. However, the government continues to liberalize and in some cases remove investment restrictions.

In 2009, Malaysia removed its former Foreign Investment Committee (FIC) investment guidelines, enabling transactions for acquisitions of interests, mergers, and takeovers of local companies by domestic or foreign parties without FIC approval. While the FIC itself still exists, it now only reviews the purchase by foreigners of commercial properties valued greater than at RM20 million (approximately $6.5 million) from Bumiputras (ethnic Malays and other indigenous ethnicities in Malaysia).

The Ministerial Functions Act grants relevant ministries broad discretionary powers over the approval of specific investment projects. Investors in industries targeted by the Malaysian government often can negotiate favorable terms with ministries regulating the specific industry or other regulatory bodies. This can include assistance in navigating a complex web of regulations and policies, some of which can be waived on a case-by-case basis. Foreign investors in non-targeted industries tend to receive less government assistance in obtaining the necessary approvals from the various regulatory bodies and therefore can face greater bureaucratic obstacles.

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

Malaysia's new National Auto Policy (NAP), launched in February 2014 after being under review since 2011 provides modest opportunities in Malaysia's auto sector for foreign investment in an effort to transform the country into a regional hub for producing energy efficient vehicles. Previously, manufacturing licenses were only given to foreign manufacturers for the assembly of passenger vehicles of at least 1.8 liter engine capacity and priced at no less than 150,000 Malaysian ringgit (about U.S. $50,000). This odd investment barrier limiting domestic production has been used to protect the national car company Proton.

Under the new NAP, licenses to foreign manufacturers to assemble energy efficient vehicles in Malaysia will not contain engine size-capacity restrictions or include additional requirements such as local equity requirements or minimum export or production volumes. The new NAP also extends import duty and excise tax exemptions on locally assembled hybrid cars until December 31, 2015. Finally, the Government will provide customized incentives for energy efficient vehicle manufacturers. The new NAP has an expansive definition of energy efficient vehicles that is not limited to hybrid or electric vehicles. Vehicles in seven classes ranging from "micro-cars" to large 4X4 trucks can qualify as energy efficient vehicles if they meet specific category specific curb weight and fuel efficiency requirements.

Foreign Direct Investment Statistics

According to Malaysian central bank, Bank Negara Malaysia (BNM) Malaysia received approximately $34.3 billion in new actual FDI in 2013, down from about $36 billion in 2012. According to BNM, the United States was the fifth largest source of new FDI to Malaysia in 2013 with $2.8 billion in new investments. BNM reported Singapore as Malaysia's largest source of new FDI, with $5.2 billion in investments, followed by Japan with just under $4.8 billion, the Netherlands with $4.1 billion, and Hong Kong with $3.7 billion. BNM lists the United States as Malaysia's third largest source of cumulative investment stock, with $11.7 billion as of 2012. BNM claims Singapore is Malaysia's largest holder of investment stock with $23.9 billion, followed by Japan at $19 billion.

However, Malaysia's Trade Minister has repeatedly said the United States is both Malaysia's largest cumulative investor and provided the most new FDI in 2013. In fact, there is reason to believe both official U.S. and Malaysian statistics likely undercount the amount both new and total stock U.S. investment, possibly due to underreporting by firms, failure to include investments in services and the oil and gas sector, and improbably large amount of investments into Malaysia from tax havens such as Bermuda and the Cayman Islands (totaling over $2 billion in 2013). For example, while official U.S. statistics estimate cumulative U.S investment in Malaysia totals $15 billion, a 2005 survey by the American Malaysian Chamber of Commerce claimed this number was actually more than US $30 billion.

There are no statistics available for actual new FDI by sector. According to the Malaysian Investment Development Authority (MIDA), Malaysia received $72.16 billion in new approved FDI in 2013, up 29 percent from $55.9 billion in 2012. MIDA reports that new approved FDI in 2013 included about $10 billion in the manufacturing sector, $6.3 billion in the services sector, and $3.3 billion in the primary sector (mining, agriculture, commodities, and upstream oil and gas activities).

MIDA reports that approved U.S. FDI in Malaysia is led by the manufacturing, oil and gas, financial services and consumer products sectors. According to MIDA, the total stock of approved U.S. manufacturing FDI in Malaysia was approximately $14.37 billion from 2002 to 2013. Including FDI in the services and oil and gas sectors, would make total U.S. FDI significantly higher (perhaps more than $30 billion).

(Note: Approval statistics are not directly comparable to actual FDI statistics and can be found at www.mida.gov.my. Also, MIDA's manufacturing and services statistics, BNM's, do not capture investments in some downstream oil and gas activities.)

The Malaysia Investment Performance 2013 can be found at:
http://www.mida.gov.my/env3/uploads/PerformanceReport/2013/MediaStatement-2.pdf
http://www.mida.gov.my/env3/uploads/PerformanceReport/2013/IPR2013

2. Conversion and Transfer Policies

The Malaysian central bank states that Malaysia maintains liberal foreign exchange administration policies. A series of sequenced and progressive liberalization initiatives gradually relaxed controls on foreign direct investment flows, wages, dividends, interest, and rental income earned in Malaysia, to the point that capital now moves freely in and out of Malaysia.

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

BNM manages a floating exchange rate against a trade-weighted basket of currencies. The exchange rate against the USD stood at 3.28 on December 31, 2013. All payments to other countries must be made through authorized foreign exchange dealers. Banks must record the amount and purpose of each cross-border transfer over RM 200,000 (approximately $58,000). More information on Malaysia's foreign exchange administration can be found at http://www.bnm.gov.my/index.php?ch=fea_adm&pg=fea_adm&lang=en

3. Expropriation and Compensation

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

4. Dispute Settlement

Malaysia has signed and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Malaysia became a Contracting State on October 14, 1966 when the Convention entered into force, granting jurisdiction over investment disputes between the Government of Malaysia and non-Malaysian citizens to the International Center for Settlement of Investment Disputes (ICSID). https://icsid.worldbank.org/ICSID/Index.jsp Malaysia also is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The domestic legal system is accessible but generally requires any non-Malaysian citizen to make a large deposit before pursuing a case in the Malaysian courts (i.e., $100,000), and can be slow, bureaucratic, and is regarded by some observers as politically influenced.

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

5. Performance Requirements and Investment Incentives

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

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

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

In the services sector, the government's stated goal is to attract foreign investment in regional distribution centers, international procurement centers, operational headquarter research and development, university and graduate education, integrated market and logistics support services, cold chain facilities, central utility facilities, industrial training, and environmental management. To date, Malaysia has had some success in attracting regional distribution centers and local campuses of foreign universities. For example, GE maintains its regional offices for ASEAN in Malaysia, and Bose, Hershey, and Darden all invested in new regional manufacturing, R&D, and distribution centers in Malaysia in 2013. During 2011, the government facilitated partnerships between local partners and MIT to develop a graduate program in logistics management and with Johns Hopkins University to develop its first graduate medical school located outside the United States.

Malaysia seeks to attract foreign investment in biotechnology, but sends a mixed message on agricultural and food biotechnology. On July 8, 2010, the Malaysian Ministry of Health posted amendments to the Food Regulations 1985 [P.U. (A) 437/1985] that require strict mandatory labeling of food and food ingredients obtained through modern biotechnology. The amendments also included a requirement that no person shall import, prepare or advertise for sale, or sell any food or food ingredients obtained through modern biotechnology without the prior written approval of the Director. There is no 'threshold' level on the labeling requirement. Labeling of "GMO Free" or "Non-GMO" is not permitted. The labeling requirements only apply to foods and food ingredients obtained through modern biotechnology but not to food produced with GMO feed. The labeling regulation was originally scheduled to be enforced beginning in July 2012. However, a Ministry of Health circular published on August 27, 2012 announced that enforcement would be deferred until July 8, 2014. A copy of the law and regulations respectively can be found at: http://www.biosafety.nre.gov.my/BiosafetyAct2007.shtml, and http://www.biosafety.nre.gov.my/BIOSAFETY%20REGULATIONS%202010.pdf.

6. Right to Private Ownership and Establishment

Foreigners may purchase property worth over RM 1 million (approximately $310,000) without restriction. Although the Federal government no longer requires foreigners to get approval from the FICs (Foreign Investment Committee) for the purchase of residential property, the State governments at times can be more restrictive than Federal regulation and can delay the purchase. Owning a business in Malaysia requires two local directors, though 100% of the shares can be held by foreign owners, except in sectors where foreign investment is restricted.

7. Protection of Property Rights

Real Property Rights

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

Intellectual Property Rights

Malaysia was removed from the U.S. Special 301 Watch List in 2012 following improvements in recent years in protecting IPR. In December 2011, the Malaysian Parliament passed amendments to the copyright law designed to, inter alia, bring the country into compliance with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, define Internet Service Provider (ISP) liabilities, and prohibit unauthorized camcording of motion pictures in theaters. Malaysia subsequently acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty in September 2012. In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia’s enforcement regime, including active cooperation with rights holders on matters pertaining to IPR enforcement, ongoing training of prosecutors for specialized IPR courts, and the 2013 reestablishment of a Special Anti-Piracy Taskforce.

Malaysian authorities continue to cooperate with industry to take down domestic sites that carry infringing content and dramatically increased online enforcement against internet piracy in 2013. In March 2013, Royal Malaysian Police Officers arrested a man for hosting links to illegal downloads of popular films on the local message board and file sharing site SYOK.org. In June 2013, MDTCC enforcement officials raided and arrested a man in Kelantan believed to be operating the piracy site Jiwang.org, one of the most popular sources of pirated content online in Malaysia. In December 2013, Malaysian officials disabled access to five overseas-based piracy websites, the first such action since May 2011. That 2011 action against piracy ignited public controversy over fears of internet censorship and a concerted hacker attack that temporarily disrupted 41 government websites. Malaysian authorities held firm despite the backlash. In recent years, the MDTCC has also instructed its enforcement division to begin to take ex officio action, resulting in significant seizures of pirated products.

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

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Embassy point of contact: Philip Ingeneri ingeneripm@state.gov until mid-July 2014, and then Clayton Hays HaysCP@state.gov

Local lawyers list: email KLACS@state.gov for a list

Copyright Protection and Optical Media Piracy

Copyright protection lasts for 50 years after the author's death and extends to computer software. The Copyright Act includes enforcement provisions allowing government officials to enter and search premises suspected of infringement and to seize infringing copies and reproduction equipment. The amendments to the Act passed by the Malaysian Parliament in 2011 include new authority to combat camcording activities in cinemas.

The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical discs and to fight piracy. Under the Act, manufacturers are required to obtain licenses from MITI and MDTCC, to place source identification (SID) codes on each disc, and to allow regular inspections of their operations. Malaysia has required inclusion of a hologram sticker on all copies of works on optical discs since 2003.

Despite these improvements, Malaysia continues to face challenges in ensuring the effective protection of copyrighted materials. Pirated optical discs remain available, although less conspicuously than in the past. Unauthorized photocopying of textbooks remains a particular concern. Reflecting global trends, on-line piracy and illegal downloading of cinematographic and musical works continues to grow.

Pharmaceuticals

The Ministry of Health in 2011 issued revised regulations to provide data exclusivity protection for pharmaceuticals for five years for new chemical entities, and three years for new indications. The time periods would be based on a drug's approval date in its country of origin. Applications for data exclusivity for new chemical entities must be made within 18 months from the date the product is first registered and granted marketing authorization and for second indications within 12 months from the date the second indication is approved. The Malaysian law allows for the regulatory approval of generic versions of pharmaceuticals that are still patented, but prohibits marketing and commercial manufacturing during the patent validity period.

Sales of counterfeit pharmaceuticals remain a problem in Malaysia. Counterfeit medicines that have been identified include "drugs" with the wrong ingredients, insufficient active ingredients, and those with fake packaging. Unregistered generic copies of patented products are also available in Malaysia.

The Ministry of Health and the MDTCC are improving their enforcement efforts, and share information and collaborate with industry on those efforts. The Ministry of Health in late 2012 circulated for comment draft legislation that would, if passed by Parliament, significantly increase penalties against those selling counterfeit medicines.

Trademarked Consumer Products

A number of U.S. consumer product companies also have suffered losses due to the presence in the market of counterfeit trademarked products. Counterfeiters have improved the quality of packaging and marketing so that consumers are misled into purchasing the products. Most of these counterfeit products are brought into the country from China, Thailand, and India. In 2011, MDTCC launched a "Basket of Brands" initiative, a voluntary program where participating trademark holders receive more proactive protection efforts in exchange for a commitment to testify in any resulting prosecutions. In 2013, the Basket of Brands initiative was expanded to provide online verification for rights holders. MDTCC officials say over 200 companies have joined the program. Complicating enforcement of trademark-related violations is a Malaysian Court of Appeals interpretation of the trademark law that requires enforcement officials to have a "Trade Description Order" to conduct criminal raids when the counterfeit product seized is not identical to the trademarked original.

Patents

Patents registered in Malaysia generally have 20-year duration from date of filing, which can be extended under certain circumstances. The length of time required for patent registration averages five years and trademark registration averages two years. Registrations are handled by the MDTCC's Patents and Trademarks Department.

8. Transparency of the Regulatory System

In the World Bank's Global Doing Business 2014 report, Malaysia moved up from 8th to 6th place overall among the 183 economies covered in the survey. Malaysia's most improved rankings were in the standardized indicators "enforcing contracts, resolving insolvency and starting a business". Malaysia was up from 19th to 16th place for "starting a business." Malaysia's worst rankings are in "dealing with construction permits" at 43rd, "paying taxes" at 36, down two places from 2011, and "trading across borders" at 5th place, unchanged. Malaysia made tax compliance easier by improving electronic systems and the availability of software, although it also reintroduced a capital gains tax on real estate. Starting a business was made easier by merging company, tax and social security and employment fund registration at the one-stop shop and providing same-day registration.

Measure	Year	Ranking
TI Corruption Index	2013	53
Heritage Economic Freedom	2014	37
World Bank Doing Business	2014	6

To improve the business climate in Malaysia, the Malaysian government established the PEMUDAH task force, consisting of 23 top-level government officials and private sector representatives with a mandate to identify and evaluate bureaucratic impediments to conducting business in Malaysia and to make recommendations to the Prime Minister on how to address them. PEMUDAH's focus is specifically on administrative reforms designed to enhance the efficiency of the government bureaucracy's interaction with the private sector, not on deeper reform issues needed to address policy-level structural inefficiencies in Malaysia's economy. More information about the task force is available at www.pemudah.gov.my.

9. Efficient Capital Markets and Portfolio Investments

Banking

Foreign investors and foreign companies have access to credit on the local capital market. Foreign-controlled companies may seek any amount of Malaysian Ringgit credit facilities without Bank Negara Malaysia's (BNM) approval. There are no restrictions on foreign stock brokerage companies obtaining ringgit facilities to facilitate the settlement of transaction on the Malaysian stock and bond markets. There is no limit on the number of residential and commercial property loans allowed to foreigners. In 2008, the government liberalized the foreign exchange administration rules allowing borrowing in foreign currency by residents as well as borrowing and lending in ringgit between residents and non-residents. The Malaysian Deposit Insurance Company insures deposit accounts of up to RM 250,000 ($80,645) with separate funds for conventional and Islamic banking institutions.

Malaysia adopted a new Financial Services Act in late 2012 that largely reflected its latest 10-year Financial Sector Blueprint and envisages further opening of the financial sector to foreign banks but does not contain specific market opening commitments or timelines. The new Act, which follows the previous 10-year Financial Services Master Plan, does not significantly break with the existing case by case approach of the central bank, BNM, towards granting foreign banks access to Malaysia. Under the Act, issuance of new licenses will be guided by prudential criteria and the "best interests of Malaysia". Prudential criteria include consideration of the financial strength, business record, experience, character and integrity of the foreign investor, soundness and feasibility of the business plan for the institution in Malaysia, transparency and complexity of the group structure, and the extent of supervision of the foreign investor in its home country. In determining the "best interests of Malaysia", BNM will consider the contribution of the investment in promoting new high value-added economic activities, addressing demand for financial services where there are gaps, enhancing trade and investment linkages, and providing high-skilled employment opportunities. BNM has also stated that it wants to ensure that local banks have at least 50 percent of total banking assets in Malaysia (the share at present is significantly beyond that).

Capital Markets and Securities Trading

Foreigners may trade in securities and derivatives. Malaysia houses Asia's third largest corporate bond market, behind only Japan and Korea in market capitalization. Both domestic and foreign companies regularly access capital in Malaysia's bond market. Malaysia provides tax incentives for foreign companies issuing Islamic bonds and financial instruments in Malaysia.

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

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

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

10. Competition from State-Owned Enterprises

On April 21, 2010, the Parliament of Malaysia approved two bills, the Competition Commission Act 2010 and the Competition Act 2010. The Acts took effect January 1, 2012. The Competition Act prohibits cartels and abuses of a dominant market position, but does not create any pre-transaction review of mergers or acquisitions. Violations are punishable by fines, as well as imprisonment for individual violations. The Acts established a Competition Commission with broad investigative and enforcement powers, as well as a Competition Appeals Tribunal (CAT) to hear all appeals of Commission decisions. The CAC has since completed investigations and issued rulings since the Competition Law took effect. In the largest case to date, the CAC found national carrier Malaysian Airlines and budget airline AirAsia to have breached the Competition Act 2010 and fined both airlines of US$3.33 million each. The airlines are appealing against the decision, which will be the first case brought before the CAT.

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

In July 2011, the Government stated that 33 government-linked companies were ready for divestment, but did not identify them by name. Under the plan to rationalize the portfolio of government-linked companies (GLCs) in Malaysia, the Government will reduce its stakes in some of these companies, list a few others and sell the rest. In first quarter of 2012 Khazanah offloaded its stake in the national car company Proton to DRB-Hicom Bhd. In Sept 2013, Khazanah divested Time Engineering Bhd to private sector Bumiputra owned company Censof Holdings Bhd. Nonetheless, the majority of GLCs have not been affected by the divestment plan, and GLCs will retain a major role in Malaysia's economy.

11. Corporate Social Responsibility

The development of corporate social responsibility in Malaysia is moving to higher levels and many larger companies have CSR programs and activities. In 2006, Malaysian stock market regulator, the Securities Commission, published a CSR Framework for all publicly listed companies, which are required to disclose their CSR programs in their annual financial reports. In 2007 the Women, Family and Community Ministry launched the Prime Minister's CSR's Awards to recognize companies that have made a difference to the communities in which they are active through their CSR programs.

12. Political Violence

Malaysia has experienced political stability since its independence in 1957, with the exception of ethnic riots that followed the 1969 national elections. Najib Razak peacefully took office as Malaysia's 6th Prime Minister on April 2, 2009. The government historically denied assembly permits for anti-government street demonstrations. In April 2012, the Peaceful Assembly Act took effect, which eliminates the need for permits for public assemblies but outlaws street protests and places other significant restrictions on public assemblies. On April 28 2012, the police disrupted a large protest march that took place despite restrictions the government attempted to impose. Subsequent demonstrations and protest marches took place in 2013 and 2014 without disruption.

13. Corruption

Malaysia ranked in 53rd place in Transparency International's Corruption Perception Index in 2013 (the lower the ranking, the less perceived corruption). The Malaysian government has taken steps to address corruption, including through the establishment of the Malaysian Anti-Corruption Commission (MACC) in 2008, passage of legislation to make judicial appointments more transparent (the Judicial Appointments Commission Act) also in 2008, passage of a Whistleblower Protection Act in 2010, the introduction of procurement reforms and the launch of government initiatives to target corrupt practices. The Malaysian government considers bribery a criminal act and does not permit bribes to be deducted from taxes. Malaysia's anti-corruption law includes the criminal offense of bribery of foreign public officials, permits the prosecution of Malaysians for offense committed overseas, and also provides for the seizure of properties. Critics have questioned the MACC's ability to effectively address high-level corruption, although a number of prosecutions are ongoing The MACC conducts investigations but prosecutorial discretion remains with the Attorney General. A lack of capacity and technical skills in some areas hampers MACC's overall effectiveness. The MACC introduced a public database of those convicted of corruption offenses. There is no systematic public disclosure of assets by senior officials. Critics also note that the Whistleblower Act does not protect those who disclose allegations to the media.

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

14. Bilateral Investment Agreements

Malaysia has bilateral investment treaties with 36 countries, but not with the United States. Malaysia does have bilateral investment guarantee agreements with over 70 economies, including the United States. The Government reports that 65 of Malaysia's existing investment agreements contain Investor State Dispute Settlement (ISDS) provisions. Malaysia has double taxation treaties with over 70 countries, though the double taxation agreement with the U.S. currently is limited to air and sea transportation.

15. OPIC and Other Investment Insurance Programs

Malaysia has a limited investment guarantee agreement with the U.S. under the U.S. Overseas Private Investment Corporation (OPIC) program, for which it has qualified since 1959. Few investors have sought OPIC insurance in Malaysia, though in mid-2013, the OPIC Board of Directors approved a $250 million loan to help build Malaysia's first fully-integrated private medical school,

16. Labor

Malaysia's shortage of skilled labor is the most oft-cited impediment to economic growth cited in numerous studies. Malaysia has an acute shortage of highly qualified professionals, scientists, and academics. The Embassy has heard reports from some U.S. companies that the shortage of skilled labor is resulting in companies reconsidering future expansion or investment in Malaysia.

The Malaysian labor market operates at essentially full employment, with unemployment for Malaysians averaging 3. 1% in 2013. In an effort to improve the employability of local graduates, the GOM offers additional training modules at public universities in English language skills, presentation techniques, and entrepreneurship.

Malaysia is a member of the International Labor Organization (ILO). Labor relations in Malaysia are generally non-confrontational. A system of government controls strongly discourages strikes. Some labor disputes are settled through negotiation or arbitration by an industrial court, though cases can be backlogged for years. Once a case is referred to the industrial court, the union and management are barred from further industrial action.

While national unions are proscribed due to sovereignty issues within Malaysia, there are a number of territorial federations of unions (the three territories being Peninsular Malaysia, Sabah and Sarawak). The government has prevented some trade unions, such as those in the electronics and textile sectors, from forming territorial federations. Instead of allowing a federation for all of Peninsular Malaysia, the electronics sector is limited to forming four regional federations of unions, while the textile sector is limited to state-based federations of unions, for those states which have a textile industry. Employers and employees share the costs of the Social Security Organization (SOSCO), which covers an estimated 12.9 million workers. No systematic welfare programs or government unemployment benefits exist; however the Employee Provident Fund (EPF), which employers and employees are required to contribute to, provides retirement benefits for workers in the private sector. Civil servants receive pensions upon retirement.
The regulation of employment in Malaysia, specifically as it affects the hiring and redundancy of workers remains a notable impediment to employing workers in Malaysia. The high cost of terminating their employees, even in cases of wrongdoing, is a source of complaint for domestic and foreign employers. The World Bank estimates that the financial cost of firing an employee averages 75 weeks of salary for that worker.

The Embassy hears reports from some U.S. companies that the government monitors the ethnic balance among employees and enforces an ethnic quota system for hiring in certain areas. Race-based preferences in hiring and promotion are widespread in government, government-owned universities and government-linked corporations. Implementation of the Minimum Wage Order 2012 began on January 1, 2014 and fixed the rate at just under $300 per month in Peninsular Malaysia and about $260 for those in East Malaysia.

Employing Expatriates
Foreign workers are categorized as follows: “expatriates” (anyone earning at least RM 5,000 or $1,429, per month); “foreign skilled workers,” and “foreign unskilled and semi-skilled workers.” The Malaysian Government has embarked on a number of immigration liberalization initiatives aimed at expatriates and foreign skilled workers.

Employing expatriates involves two phases. First, the company must be granted approval for the expatriate post; then the individual must be approved by receiving a “reference visa” from the Malaysian embassy in the expatriate’s home country and approval from the Immigration Department. More details can be found at www.pemudah.gov.my/guidebook.pdf.
Companies in different sectors must apply for approval for expatriate posts through the respective government authority: manufacturing and manufacturing-related companies apply through MIDA; companies with “Multimedia Super Corridor” (MSC) status through the Multimedia Development Corporation; banking and insurance companies through Bank Negara Malaysia; securities brokers through the Securities Commission; biotechnology companies through Biotech Corp; and companies in other sectors through the Expatriate Committee. Each authority has its own set of requirements and decisions are made on a case-by-case basis.

Manufacturing companies that are 100% foreign-owned must have a minimum paid-in capital of RM 500,000 (as of January 1, 2010) to employ expatriates. Companies with joint foreign and Malaysian ownership must have a minimum paid-up capital of RM 350,000 while Malaysian-owned companies must have a minimum of RM 250,000. It appears that the larger a company's paid-in capital, the more expatriates the company can employ. Manufacturing-related companies in sub-sectors targeted by the government for development are given priority. These include regional establishments (operational headquarters, international procurement centers, regional distribution centers); support services (integrated logistics services, integrated market support services, central utility facilities, cold chain facilities); research and development; software development; hotel and tourism projects; technical and vocational training; some environment-related services; and film or video production. Except for manufacturing companies with automatic allowances, a firm wishing to employ expatriate personnel generally must demonstrate that there is a shortage of qualified Malaysian candidates and that a Malaysian citizen is being trained. In practice this is difficult for firms to document. In 2010, the government eliminated the six-month waiting period for determining a shortage of Malaysian candidates.

Expatriate visas are issued for a period of up to ten years. Unskilled foreign workers receive a three-year work permit, renewable annually up to five years, and foreign skilled workers can qualify for up to 12 months. If an unskilled worker acquires "skills certificates," he/she may apply for a permit as a skilled worker after exhausting the five-year maximum as an unskilled worker. Foreign domestic helpers are permitted to remain in Malaysia on a work permit beyond ten years. Malaysia's freeze on permanent resident visas was removed in 2010 with a point system introduced for residents living in Malaysia over five years. Malaysia also has the "Malaysia, My Second Home" program and the Residence Pass that provides long-term resident visas for expatriates. Launched in April 2011, the Residence Pass – Talent (RP-T) is offered to highly qualified expatriates who can contribute towards Malaysia's economic transformation. The ten-year Pass accords eligible holders many benefits, including the ability to change employers without having to renew the pass. Details are at http://www.talentcorp.com.my. Government officials say they have taken steps to simplify and expedite permit approvals for some categories of foreign personnel. The PEMUDAH task force developed a guidebook clarifying the various procedures and requirements.

In 2010, the government implemented new regulations reducing application approval times, removing expatriate age limits, and allowing automatic approval for expatriate employees earning over $2,580 per month. The spouse of an expatriate holding a Dependent Pass is allowed to take up paid employment without converting the Dependent Pass to an "Employment Pass" or to a "Visit Pass for Temporary Employment" on the condition that permission to take up the paid employment is endorsed on his/her passport by an authorized Immigration officer.
In April 2013, the government set up of the Expatriate Services Division, an integrated facility offering services to expatriates and their dependents regarding the immigration process to facilitate and retain foreign talents.

17. Foreign Trade Zones/Free Ports

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

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

Goods sold into the Malaysian economy by companies within the FZs must pay import duties. If a company wants to enjoy Common External Preferential Tariff (CEPT) rates within the ASEAN Free Trade Area, 40% of a product's content must be ASEAN-sourced. In addition to the FZs, Malaysia permits the establishment of licensed manufacturing warehouses outside of free zones, which give companies greater freedom of location while allowing them to enjoy privileges similar to firms operating in an FZ. Companies operating in these zones require approval/license for each activity. The time needed to obtain licenses depends on the type of approval and ranges from 2-8 weeks.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table One: Sources of Approved Manufacturing Investment in Malaysia

(Value in Millions of U.S. Dollars)

	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
Total Investment	**12,532**	**17,422**	**18,146**	**9,543**	**15,317**	**17,693**	**13,666**	**17,366**
Foreign	5,512	9,717	13,323	6,475	9,434	10,772	6,933	10,166
Domestic	7,021	7,705	4,823	3,068	5,883	6,920	6,733	7,200

- Source: Malaysian Investment Development Authority.
- *Exchange Rates: U.S. $1.0=RM 3.42 (2009 rate), RM3.04 (2010 rate), 3.17 (2011 rate)*
- *Note: Approved manufacturing investment only, does not include the upstream oil and gas industry or services. "Approved investments" represent planned or proposed investment, not actual investment flows.*

Table Two: Leading Approved Foreign Investment Sources in the Manufacturing Sector

(Value in Millions of U.S. Dollars; Share in %)

	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**

Germany	63	1,092	1,287	124	629	650	231	572
United States	675	878	2,544	672	3,811	836	985	2,106
Singapore	514	858	565	585	700	825	738	1,507
Netherlands	895	491	526	140	303	336	278	794
Japan	1,202	1,896	1,637	2,047	1,308	3,367	930	1,197
Australia	698	490	3,830	94	N/A	97	500	556
Hong Kong	N/A	N/A	24	1,550	898	131	30	151
China	N/A	N/A	10	47	N/A	398	659	1,005
Korea	N/A	N/A	58	98	N/A	1,728	545	1,826
Total Foreign	5,512	9,717	13,323	6,475	9,434	11,382	6,948	10,178
U.S. Share of Total Foreign	12.2%	9.0%	19.1%	10.4%	49.8%	7.3%	14.1%	20.7%
Foreign Share of Total	44.0%	55.8%	73.4%	67.9%	81.0%	60.4%	50.7%	58.6%

- Source: Malaysian Investment Development Authority.
- *Exchange Rates: U.S. $1.0=RM 3.42 (2009 rate), RM3.04 (2010 rate), 3.17 (2011 rate)*
- *Note: Approved manufacturing investment only, does not include the upstream oil and gas industry or services. "Approved investments" represent planned or proposed investment, not actual investment flows.*

Table Three: Approved Foreign Manufacturing Investment by Sector

(Value in Millions of U.S. Dollars)

Sector	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
Chemicals	826	454	357	2,058	564	1,015	1,890	1,252
Petroleum Products	165	1,551	364	135	354	N/A	459	1,081
Electronics	2,344	3,993	5,068	1,162	3,844	5,900	1,084	2,831
Basic Metal	623	1,450	5,978	127	1,167	1,131	644	1,475

Food Manufacturing	244	107	313	273	N/A	810	372	765
Transport	59	89	249	158	N/A	336	941	720
Other	685	2,073	994	2,562	N/A	N/A	N/A	N/A
Total	**5,512**	**9,717**	**13,323**	**6,475**	**5,929**	**9,192**	**6,973**	**10,187**

- Source: Malaysian Investment Development Authority.
- Exchange Rates: U.S. $1.0=RM 3.42 (2009 rate), RM3.04 (2010 rate), 3.17 (2011 rate)
- Note: Approved manufacturing investment only, does not include the upstream oil and gas industry or services. "Approved investments" represent planned or proposed investment, not actual investment flows.

Table Four: Foreign Direct Investment Flow in Malaysia by Countries

(Value in Millions of U.S Dollars)

		Singapore	*United States*	*Japan*	*Netherlands*	*Hong Kong, SAR*	*Germany*	*Thailand*	*Korea, Republic of*	*Cayman Islands*	*Australia*	*Bermuda*	*Virgin Islands (British)*	*China*	*Chinese Taipei*
2008		4,723	3,823	2,637	2,375	1,867	1,342	1,180	295	1,650	418	586	517	372	551
2009		4,093	1,277	2,519	2,134	2,357	1,009	889	377	47	436	424	554	264	147
2010		3,814	5,382	3,311	4,066	1,278	1,303	841	1,726	112	409	173	592	343	142
2011		5,748	3,966	5,584	2,784	2,377	2,112	854	364	466	500	506	-67	313	343
2012		5,659	3,819	4,520	2,673	3,197	1,161	662	450	701	1,054	433	561	773	346
2013		5,239	2,886	4,984	4,153	3,722	899	713	141	690	470	533	1,021	779	208

- Source: Bank Negara Malaysia and Department of Statistics Malaysia
- Exchange Rates: U.S. $1.0=RM 3.42 (2009 rate), RM3.04 (2010 rate), RM3.17 (2011 rate) RM3.05 (2012 rate)
- Note: Credit refers to inflow of funds or amounts received by direct investment enterprise in Malaysia from foreign direct investor and affiliate in the form of equity capital, reinvested earnings, loan transactions, trade credits as well as other capital receipts

Table Five: Foreign Direct Investment Stock, Countries

(Value in Millions of U.S Dollars)

	Singapore	*Japan*	*United States*	*Netherlands*	*Chinese Taipei*	*Virgin Islands*	*Germany*	*Hong Kong, SAR*	*Australia*	*Korea, Republic*	*Cayman Islands*	*Bermuda*	*China*	*Thailand*

						(British)				*of*				
2008	15,095.80	10,504.20	12,050.90	7,875.70	724.1	4,579.60	4,063.70	2,100.60	793.2	909.4	2,449.90	1,697.80	363.4	227.9
2009	15,956.20	10,803.90	10,375.60	8,376.90	733.6	5,022.10	4,136.90	2,969.60	1,966.70	1,060.40	2,425.40	1,819.60	228.2	86.2
2010	17,549.20	12,499.20	11,431.90	9,169.20	644.3	5,525.60	4,177.10	3,905.20	2,969.70	2,648.70	2,838.80	2,203.40	335.1	-175.3
2011	22,146.00	15,662.60	12,799.90	9,956.90	615.2	5,516.80	5,353.00	3,818.30	3,419.70	2,793.70	1,055.40	2,875.80	375.4	84
2012	23,903	19,005.33	11,796.33	10,466.66	583.33	6,083.33	5,707	4,879.66	4,070	2,777	866	3,484.33	302.66	-230.33

-Source: Bank Negara Malaysia and Department of Statistics, Malaysia
-Exchange Rates: U.S. $1.0=RM 3.42 (2009 rate), RM3.04 (2010 rate), RM3.17 (2011 rate) RM3.05 (2012 rate)

Table Six: Foreign Direct Investment Stock in Malaysia, by Sector

(Value in Millions of U.S. Dollars)

End Period	*Manufacturing*	*Financial and Insurance/Takaful Activities [1]*	*Information and Communication*	*Wholesale and Retail Trade*	*Mining and Quarrying (including oil and gas)*	*Agriculture, Forestry and Fishing*	*Construction*	*Other Services*	*Total*
2008	41,756.00	17,861.60	6,567.00	6,268.20	4,889.90	2,930.10	372.1	4,340.00	84,984.90
2009	42,225.70	21,429.20	5,754.70	7,089.90	5,718.50	3,070.40	350.6	4,533.00	90,172.00
2010	48,918.60	24,632.00	7,149.90	8,503.20	6,121.70	3,119.80	456.8	5,433.30	104,335.30
2011	57,396.20	27,118.20	8,464.90	10,106.00	7,864.90	3,157.10	461.7	6,544.20	121,113.20
2012	62,348	29,050	11,218	11,310.66	9,183.66	3,300.33	529	8,031	134,970.33

- Source: Bank Negara Malaysia and Department of Statistics, Malaysia
- *Exchange Rates: U.S. $1.0=RM 3.42 (2009 rate), RM3.04 (2010 rate), RM3.17 (2011 rate) RM3.05 (2012 rate)*
- *Note: Includes investments by holding companies*.

Source: Malaysian Industrial Development Authority
Source: Bank Negara Annual Report 2004-2007

Bank Negara Malaysia: www.bnm.gov.my
Securities Commission: www.sc.com.my
MIDA: http://www.mida.gov.my
World Intellectual Property Organization (WIPO): www.wipo.int/
LawNet : www.lawnet.com.my
E-Warta: http://www.e-warta.com.my/
MITI: http://www.miti.gov.my/
Companies Commission: http://www.ssm.com.my/
MyIPO: http://www.myipo.gov.my/

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