FDI Guide
Malaysia

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Foreword: Malaysia does not have any overarching legislation or guideline that requires that all foreign direct investment (FDI) be first approved by a central governmental body. Approvals for FDI may be required depending on the sector or industry involved.

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1.	**Principle**	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	FDI in Malaysia depends on the sector or industry involved. The relevant law or policy may disallow foreign investment, or if allowed, require the prior approval of the specific sector regulator or be subject to foreign ownership restrictions. Where foreign ownership restrictions apply, it may be a requirement that the remaining shares be held by local shareholders and/or Bumiputera[1] shareholders. Malaysia has an exchange control regime that is administered by the Central Bank of Malaysia (Bank Negara Malaysia or BNM). The main laws governing exchange control are the Financial Services Act 2013, Islamic Financial Services Act 2013 and Foreign Exchange Policy Notices issued on 1 June 2022. There is, however, no restriction on inflow funds into Malaysia for the purchase of shares or real estate. There is also no restriction on the repatriation of dividends or proceeds of sales, provided that the funds are repatriated in foreign currency.
2.	**Legal regime** **Authority(ies) in charge**	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/…).	Restrictions or prohibitions may be imposed under legislation, government guidelines and policies (written or unwritten), and conditions to licences and permits. Below we discuss examples of legislation, guidelines and policies that contain FDI restrictions. In this questionnaire, we have not discussed situations in which there are restrictions that apply generally to investments or change of control (whether by way of change in shareholding or directors) and are not specifically targeted at foreign ownership. Similarly, we have not discussed any merger control requirements applicable to the telecoms and aviation sectors in Malaysia. Currently, there is no general merger control regime, but it is slated to come into force later in 2023.

1 ‘Bumiputera’ generally means Malay and indigenous individuals in Malaysia (including Sabah and Sarawak).

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			Legislation *National Land Code 1965 (NLC)* The NLC is the primary law governing land matters in West Malaysia with respect to land tenure, registration of land titles, transfer of land, land dealings, and other rights and interests in land. Foreign companies (as defined in the NLC) and non-citizens are required to apply for and obtain the prior written consent of the relevant state authority for any acquisition and dealing of land.
			Guidelines/circulars Certain ministries, government agencies and regulatory authorities have issued guidelines, circulars and policy documents containing foreign ownership restrictions that are industry or sector specific. Some, but not all, of such guidelines and circulars were issued pursuant to legislation. Some examples are set out below. *Economic Planning Unit (EPU), Prime Minister's Department's Guideline on the Acquisition of Properties* The EPU's guideline sets out real estate that may not be purchased by foreigners and acquisitions by a foreign interest that require prior approval of the EPU. Any acquisition of property valued at more MYR 20m that would result in a dilution of Bumiputera interest and/or the interest of a government agency requires the approval of the EPU. *Ministry of Domestic Trade and Consumer Affairs' (MDTCA) Guidelines on Foreign Participation in Distributive Trade Services in Malaysia 2020* The MDTCA has issued guidelines to regulate foreign participation in distributive trade services in Malaysia. The level of foreign participation permitted depends on the format of the distributive trade. *MDTCA's Guidelines on Permission under the Petroleum Development Act 1974* The downstream activities of marketing or distributing petroleum are under the purview of the MDTCA. A company is required to apply for permission from the MDTCA for the marketing and distribution of petroleum or petrochemical products. The level of

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			foreign participation permitted depends on the activities carried out and the type of petrochemical products distributed. *Petronas Guidelines with respect to Licence and Registration Applications* Petroleum Nasional Berhad ('Petronas') is a wholly government-owned company vested with the entire ownership of and exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum in Malaysia, both onshore and offshore. It has a set of guidelines for companies to comply with when they apply for and hold a licence issued by Petronas. The guidelines stipulate, inter alia, minimum Bumiputera equity and Bumiputra representation on the board of directors, management and staffing of the applicant.
			Licence conditions Regulatory authorities may also impose foreign ownership restrictions as conditions to a licence. The conditions vary depending on the type of licence and the activities to be undertaken. For example, some licences may contain a condition that the approval of the relevant authority is required prior to the sale or disposal of shares held by a foreign interest or the sale or disposal of shares to a foreign interest. As elucidated above, no central agency in Malaysia governs foreign investment. Where FDI restrictions apply, the approval of the relevant ministries or regulatory authorities in charge of the specific sector may be required. Below, we have set out the authorities in charge of several key sectors where FDI restrictions may apply: • banking and financial institutions: Ministry of Finance and Central Bank of Malaysia; • manufacturing: Ministry of International Trade and Industry, and Malaysian Industrial Development Authority; • telecoms: Ministry of Communications and Multimedia, and Malaysian Communications and Multimedia Commission; • healthcare facilities and services: Ministry of Health and Malaysia Healthcare Travel Council;

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			• education: Ministry of Education and Ministry of Higher Education; • distributive trade: Ministry of Domestic Trade and Consumer Affairs; and • logistics: Ministry of Transport, Land Public Transport Agency and Road Transport Department Malaysia.
3.	**Transactions that may be subject to FDI** • Type • Materiality thresholds • Rights of evocation	Describe the nature of the transactions that may be subject to FDI rules. In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.	As there is no overarching FDI regime in Malaysia, foreign equity restrictions and FDI thresholds vary between sectors, depending on the applicable laws, policies, regulatory authority and the respective commitments under free trade agreements (FTAs) entered into by Malaysia. Below, we have set out examples of some regulated sectors and activities that have foreign ownership restrictions. **Acquisition of land** *National Land Code 1965* The approval of the relevant state authority is required for the acquisition and leasing of land by a non-citizen or foreign company, which includes companies incorporated in Malaysia with 50 per cent or more of their voting rights held by non-citizens or foreign companies. *EPU's Guideline on the Acquisition of Properties* 'Foreign interests' are not allowed to acquire: (1) properties valued at less than MYR 1m per unit; (2) residential units coming under the categories of 'low cost' and 'low-medium cost' property, as determined by the relevant state authorities; (3) properties built on Malay reserve land; and (4) properties allocated to Bumiputera interests in any property development project, as determined by the relevant state authorities. Acquisitions of property require the prior approval of the EPU: (1) the direct acquisition of a property valued at MYR 20m and above, which results in a dilution in the ownership of such property held by Bumiputera interests and/or government agencies; or (2) the indirect acquisition of property by interests other than Bumiputera interests, through the acquisition of shares that results in a change of control of a company: (i) owned by Bumiputera interests and/or government agencies; and (ii) holding property

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			amounting to more than 50 per cent of its total assets in value, where such a property is valued at more than MYR 20m. **Distributive trade services** *MDTCA's Guidelines on Foreign Participation in Distributive Trade Services in Malaysia 2020:* • Hypermarket operators are allowed to be up to 70 per cent foreign owned, with at least 30 per cent Bumiputera ownership. • Departmental stores (as defined in the guidelines) are allowed to be up to 100 per cent foreign owned. • Convenience stores (as defined in the guidelines) are allowed to be up to 30 per cent foreign owned, with at least 30 per cent Bumiputera ownership. **Oil and gas** *Petronas Guidelines with respect to License and Registration Applications* The Bumiputera requirement to hold a Petronas licence for upstream activities range from 30 per cent and 51 per cent to 100 per cent, depending on the type of services to be provided. *MDTCA's Guidelines on Permission under the Petroleum Development Act 1974* • A maximum of 30 per cent foreign equity is allowed and a minimum of 30 per cent Bumiputera equity holding for the marketing and distribution of petroleum products other than wholesale liquefied petroleum gas in Malaysia. • No foreign equity is allowed and a minimum of 51 per cent Bumiputera equity holding for the marketing and distribution of wholesale liquefied petroleum gas in Malaysia.
		Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a	This depends on the wording of the relevant legislation, guidelines or licence conditions as some extend to both direct and indirect acquisition, and certain authorities may require the details of the shareholding up to the ultimate beneficial ownership. As an example, the Financial Services Act 2013, which regulates financial institutions, adopts the concept of 'interest in shares', which captures not only direct shareholders holding

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		parent company outside the jurisdiction)? Are share transfers involving a group company internal restructuring covered? Are greenfield investments covered?	shares in the company but also other corporations or individuals who have an indirect interest in the shares. There are no central FDI regulations that set out the specific timelines, approvals or formalities required. Where approvals are required for a change in shareholding, an application for approval has to be submitted to the relevant authority. It depends on the language of the legislation or licence conditions. Some regulatory authorities make a distinction between greenfield investments and investments into existing companies, and in such cases, different rules on foreign ownership are applied. However, the rules on foreign ownership vary and are applied differently by the regulatory authorities in charge of each sector.
		Does the FDI Authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	Not applicable. There is no central authority in charge of FDI in Malaysia.
4.	**Sectors falling under the FDI scope**	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply. Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	Please refer to items 1–3 above; FDI in Malaysia is sector-specific and regulated by the specific ministries or government agencies that supervise these sectors.

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5.	**Qualified investors**	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	There is no concept of 'qualified investors'. Malaysia welcomes FDI. Malaysia has entered into 16 FTAs (including bilateral and regional FTAs), of which 15 have been implemented, under which Malaysia has committed to allow foreign equity participation in certain sectors. The level of foreign equity participation allowed depends on the sector involved and the country the foreign investor is from. Malaysia does not have an official diplomatic relationship with Israel. As such, there are no FDIs from Israel.
6.	**Procedure** 6.1 Before or post-closing filing		The filing procedure in relation to FDI is subject to sectoral requirements. Each sectoral regulator may have its own set of procedures or policies to regulate the transaction.
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	
8.	6.3 In the case of post-closing, what are the powers of the authority?		
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what	

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		other flexibility may exist de facto or *de jure*.	
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	
		Are there any guidelines issued by the authority?	
13.	(iv) Filing fees	Is there a filing fee?	
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	
16.	**Conditionality of approval** (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to	There is no central authority in charge of FDI approvals in Malaysia. The conditions for approval vary depending on the regulatory authority and type of regulated activity that is undertaken. Some examples of conditions that may be imposed are minimum levels of divestment of foreign equity to a lower threshold (eg, for the financial service sector)

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		control/monitor the satisfaction of such conditions/commitments.	capital commitment and hiring a minimum number of local workers in the company's workforce.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	
18.	(iii) Risk of veto	Describe a topical case. Statistics	
19.	**Role of other national Authorities**	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	Generally, the application is submitted to the respective authority in charge. Nevertheless, such an application may be referred to another authority or government agency internally.
20.	**Sanctions**	Describe the type of sanctions that may be imposed by the authority in the case of:	The type of sanction depends on whether the breach amounts to a contravention of any legislation or directive having the force of law or of any licence conditions.
		• breach of conditions and/or commitments attached to the approval; and • investment carried out without prior approval.	If the breach amounts to the breach of a law, directive or guideline having the force of law, legislation may provide that non-compliance may result in a fine or imprisonment. Additionally, any licence, approvals and/or registration may be revoked by the relevant regulatory authority. Non-compliance with any equity restriction under a guideline or circular that does not have the force of law in itself would not result in any fine or imprisonment. However, as the guideline or circular represents the policy of the Government of Malaysia, it may be given effect by the regulatory authorities. For example, when processing applications for licences, approvals and/or registrations, these authorities may ask for evidence of

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			compliance with the equity conditions stipulated in the guideline or circular applicable to the applicant.
21.	**Covid – special regime**	Please describe specific rules applicable as a result of the Covid-19 pandemic	There are no specific rules relating to FDI introduced as a result of the Covid-19 pandemic. However, the Malaysian Government introduced a number of economic stimulus measures to attract FDI. Among these initiatives are: 1. the provision of tax incentives given to companies to relocate their businesses to Malaysia, and such incentives apply to companies who apply by 31 December 2022; and 2. speedy processing of applications for manufacturing licences for non-sensitive industries.