



Investing in Asia Pacific 2015: Malaysia

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INTRODUCTION

Welcome to the Crowe Horwath International “Investing in Asia Pacific 2015: Malaysia” guidebook.

This guide forms a part of the “Investing in Asia Pacific 2015” series and provides a quick reference for those interested in investing in Malaysia. While it is not exhaustive, this guide aims to answer some of the key questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

The guidebook will cover five main topics as follows:

- Establishing the business entity
- Tax information
- IPO quick facts
- Human resource requirements
- Withdrawal procedures

ABOUT CROWE HORWATH INTERNATIONAL

The Crowe Horwath network consists of more than 200 independent accounting and advisory services firms and in over 120 countries around the world.

Crowe Horwath International member firms are known for their local knowledge, expertise, and experience balanced by an international reputation for the highest quality in audit, tax, advisory and risk services. They are unified through a shared commitment for impeccable quality service, highly integrated service delivery processes and a common set of core values and management philosophies that guide their decisions daily.

This unique combination of talent provides Crowe Horwath International the worldwide capabilities of a highly integrated network to deliver value to multinational clients doing business across borders.



MALAYSIA

Establishing the business entity

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1. Formation and costs

Company

Company formation takes about a month. There are no special licences or approvals required except for certain sensitive industries eg telecommunications, etc.

The cost of forming a company is in the region of MYR 5,000. Annual maintenance fees for secretarial, tax and audit services for a dormant company are in the region of MYR 5,000.

Branch

Same as for company.

Representative Office

A representative office requires registration with the Malaysian Industrial Development Authority (MIDA) and takes approximately two (2) months. There are no special licences or approvals required except for certain sensitive industries.

The cost of registering a representative office is in the region of MYR 5,000. Annual maintenance fees are minimal as a representative office does not require secretarial, tax or audit services.

2. Investment incentives

Company

- Reinvestment allowance – no prior approval required.
- Pioneer status or Investment Tax Allowance for promoted products or promoted industries – prior approval required from the MIDA and takes about three (3) to six (6) months.
- Multimedia Super Corridor status – prior approval required from the Multimedia Development Corporation (MDec) and takes about (3) to six (6) months.

Branch

Reinvestment allowance – no prior approval required.

Representative Office

Representative offices are not allowed to do business in Malaysia.

3. Foreign ownership restrictions

Company

Generally, no foreign ownership restriction except for certain industries eg. banks, certain hotels that enjoy tax incentives, property owning companies that own more than MYR 20 million of properties, etc.

Branch

No restriction on foreign ownership.

Representative Office

Same as for branch.

4. Work permits and visas

Company

Work permits are allowed for key posts in companies approved by the MIDA. The application takes about three (3) months.

Branch

Work permits are only allowed if the foreign company can prove that local staff are not able to perform the work of the foreigner.

Representative Office

Work permits are only allowed if the foreign company can prove that local staff are not able to perform the work of the foreigner. For rep office, at least one (1) work permit will usually be allowed.

5. Accounting standards and audit requirements

Company

- Companies have to follow either one of the two accounting frameworks in Malaysia; Malaysian Financial Reporting Standards ("MFRSs") or Private Entity Reporting Standards ("PERSs") in 2012. MFRSs are equivalent to IFRSs in all aspects other than the adoption of IFRIC 15 and IAS 41.
- All companies require an annual audit.

Branch

- Branches have to follow either MFRSs or PERSs.
- All branches require an annual audit.

Representative Office

- Representative offices are not required by law to be audited.

6. Residential directors / promoters requirements

Company

Minimum of two (2) directors who are residents in Malaysia.

Branch

Same as for company.

Representative Office

Same as for company.

7. Foreign ownership over tangible assets

Company

- Foreign owned companies are not allowed to own certain properties such as those built on Malay Reserve Land.
- Acquisition of property by foreign interests has to be registered under a local company and will be subjected to conditions pertaining to equity, employment, capital and land redevelopment.
- Acquisition of agricultural land is only allowed under certain conditions.
- Companies that own properties which are worth more than RM20 mil will be subject to a 30 percent Bumiputera shareholding requirement.

Branch

Same as for company.

Representative Office

Same as for company.

8. Country quirks

Companies are the most common form of entity for doing business in Malaysia.

Tax information

1. Tax rates on corporate income

25% (20% on first MYR 500,000 for small scale companies with share capital not exceeding MYR 2.5 million).

Effective from the year of assessment 2016, the rates of 25% and 20% would be reduced to 24% and 19% respectively.

2. Other taxes

Good and Services Tax (GST)	Effective 1 Apr 2015, GST applies - 6%.
Value Added Tax (VAT)	No VAT in Malaysia
Sales tax	Sales tax on manufactured goods and imported goods - 10% (certain categories are taxed at 5% or 15%). Effective 1 Apr 2015, GST replaces Sales tax.
Service tax	Service tax on taxable services - 6%. Effective 1 Apr 2015, GST replaces Service tax.
Import duties	Import duties on goods imported into Malaysia - various rates.
Real property gains tax	30% on gains from disposal of properties or shares in real property companies within three (3) years from acquisition, 20% for disposals in the fourth (4) year, 15% for disposals in the fifth (5) year and 5% for disposals in the sixth (6) year or thereafter.

3. Branch income

Taxed like normal income applicable to companies.

4. Income determination

- Inventory valuation - weighted average and FIFO are acceptable.
- Capital gains - not taxable except for capital gains on disposal of real property or shares in real property companies, in which case, the capital gains are subject to real property gains tax.
- Intercompany dividends from overseas - not taxable.
- Intercompany dividends from local companies - not taxable, all dividends are either single tier dividends or tax exempt dividends.
- Foreign income - not taxable if the income is sourced from overseas.
- Stock dividends - not taxable.

5. Deductions

- Depreciation and depletion – depreciation allowances are given in the form of capital allowances at prescribed rates.
- Operating losses may be carried forward indefinitely unless there is a change in shareholding after the company has become dormant.
- Payments to foreign affiliates – transfer pricing rules apply. Some payments are subject to withholding tax eg technical fees for services rendered in Malaysia, commissions, rentals for hire of moveable equipment, interest, royalties, etc.
- Interest is allowed for tax deduction but subject to restriction if the loans borrowed are used to invest in non-business assets.
- Taxes – not deductible except for indirect taxes eg service tax paid on tax allowable services purchased, sales tax, import duties on imported goods, excise duties, export duties.
- Entertainment – certain entertainment and promotional expense is not allowed eg entertainment of potential clients and suppliers.

6. Group taxation policies

Group relief is allowed up to 70% of the income of the surrendering company but subject to conditions. Group consolidated returns are not allowed.

7. Tax incentives

- Reinvestment allowance – tax exemption equivalent to 60% of capital expenditure on qualifying plant and factory building.
- Pioneer status – 100% or 70% tax holiday for five (5) to ten (10) years.
- Investment Tax Allowance - tax exemption equivalent to 60% or 100% of capital expenditure on plant and factory building.
- Multimedia Super Corridor status – 100% tax holiday for five (5) or ten (10) years.

8. Withholding tax

Dividends	Nil
Interest	15% unless reduced by tax treaty
Royalties	10% unless reduced by tax treaty
Technical fee	10% unless reduced by tax treaty
Commission	10%. Nil if the commission income is treated as the payee's business income
Branch profit	N/A

9. Tax administration

- Tax returns have to be filed annually within seven (7) months from a company's financial year end.
- Payment of tax – companies have to estimate their tax at the beginning of a year and pay the tax progressively by twelve (12) installments. The balance of tax has to be paid on submission of tax returns.

10. Taxable incomes for non-residential companies and individuals

- Non-resident companies are taxed in the same way as resident companies, and only on income derived from Malaysia.
- Non-resident individuals are taxed at a flat rate of tax (25%) on income derived from Malaysia but cannot enjoy personal reliefs.

11. Other pertinent information

Malaysia operates a self-assessment system where the taxpayer volunteers his own taxes but may be subject to tax audit by the tax authorities.

IPO quick facts

1. Bourses in the country

- a. Bursa Malaysia Securities Berhad – Main Market.
- b. Bursa Malaysia Securities Berhad – ACE Market.

2. Admission requirements

Main Market

a. Company Size

Market Capitalisation Test

- A total market capitalisation of at least MYR 500 million upon listing; and
- Incorporated and generated operating revenue for at least one (1) full financial year prior to submission

b. Trading record

Uninterrupted profit after tax (PAT) of three (3) – five (5) full financial years, with an aggregate of at least MYR 20 million and PAT of at least MYR 6 million for the most recent full financial year.

c. Public spread

At least 25% of the Company's share capital and minimum of 1,000 public shareholders holding not less than 100 shares each.

d. Bumiputera Equity Requirement*

Allocation of 50% of the public spread requirement to Bumiputera investors on best effort basis.

**Companies with MSC status, BioNexus status and companies with predominantly foreign-based operations are exempted from the Bumiputera equity requirement.*

e. Qualitative requirements

- An identifiable core business which it has majority ownership and management control.
- Core business should not be holding of investment in other listed companies.
- Continuity of substantially the same management for at least three (3) full financial years prior to submission.
- For market capitalisation test, since the commencement of operations (if less than three (3) full financial years).
- Sufficient level of working capital for at least twelve (12) months.
- Positive cashflow from the operating activities for listing via profit test and market capitalisation test; and
- No accumulated losses based on its latest audited balance sheet as at the date of submission

ACE Market

a. Company Size

No minimum operating track record or profit requirement.

b. Trading record

No minimum operating track record or profit requirement.

c. Public spread

At least 25% of the Company's share capital and minimum of 200 public shareholders holding not less than 100 shares each.

d. Bumiputera equity requirement

No requirement upon initial listing. Allocation on best effort basis of 12.5% of their enlarged issued and paid up share capital to Bumiputera investors within one (1) year after achieving Main Market profit track record or five (5) years after being listed on ACE Market, whichever is earlier.

**Companies with MSC status, BioNexus status and companies with predominantly foreign-based operations are exempted from the Bumiputera equity requirement.*

e. Qualitative requirements

- Engage a Sponsor to assess the suitability for listing
- Sponsorship is required for at least three (3) years post listing
- Core business should not be holding of investment in other listed companies
- Continuity of substantially the same management for at least three (3) full financial years prior to submission or since its incorporation (if less than three (3) full financial years)
- Sufficient level of working capital for at least twelve (12) months

3. Specific requirements for specific Industries

For infrastructure project corporation, a company must have the right to build and operate an infrastructure project in or outside Malaysia with project costs of not less than MYR 500 million and for which a concession or licence has been awarded by a government or a state agency in or outside Malaysia, with remaining concession or licence period of at least fifteen (15) years.

4. Moratorium imposed

Main Market

- Promoters' entire shareholdings for six (6) months from the date of admission.
- Subsequent sell down with conditions for companies listed under Infrastructure Project Corporation test.

ACE Market

- Promoters' entire shareholdings for six (6) months from the date of admission.
- Subsequently, at least 45% must be retained for another six (6) months and thereafter, further sell down is allowed on a staggered basis over a period of three (3) years

5. Securities quoted allowed in foreign currency

Applicant is required to consult Bursa Malaysia and obtain approval of the Controller of Foreign Exchange for quotation of securities in a foreign currency.

6. Transaction with related parties

- Must be based on terms and conditions which are not unfavourable to the company
- All trade debts exceeding the normal credit period and all non-trade debts, owing by the interested persons to the company or its subsidiary companies must be fully settled prior to listing.

7. Timeline

Six (6) to nine (9) months.

8. Approving authorities

Securities Commission of Malaysia, Bursa Securities Malaysia Berhad and other relevant authorities (where applicable).

9. Estimated cost involved

Main Market: Depending on the size and complexity of the case as well as the amount to be raised.

ACE Market: MYR 1.5 – MYR 3 million.

10. Listing of foreign companies

- Primary listing is allowed on Main Market and ACE Market.
- Secondary listing is allowed on Main Market only.

11. Listing of Special Purpose Acquisition Companies ("SPAC")

- SPAC is allowed on Main Market only.
- Minimum Fund Raised of RM150 million.
- Management Team must in aggregate own at least 10% in the SPAC on the date of its listing.
- Management team's entire interest from date of listing until completion of the qualifying acquisition.
- Upon completion of the qualifying acquisition, sell down is allowed on a staggered basis over a period of two (2) years.
- Must place at least 90% of the gross proceeds raised in a trust account and may only be released by the custodian upon termination of the trust account.
- At least 80% of the amount in trust account to be used for qualifying acquisition.
- Must complete qualifying acquisition within 36 months from the listing date.

12. Language required for:

- Prospectus: English and Bahasa Malaysia
- Annual reports: English
- Audit reports: English

13. Requirements of External Auditors to be appointed

Must be a member of the Malaysian Institute of Accountants and registered with Malaysian Audit Oversight Board as auditors for public interest entities.

Human resource requirements

1. Special labour standards to take heed of

Hours of Work

An employee shall not be required under his contract of service to work :

- more than five (5) consecutive hours without a period of leisure of not less than thirty (30) minutes duration;
- more than eight (8) hours in one day;
- in excess of a spread over period of ten (10) hours in one (1) day;
- more than forty-eight (48) hours in one (1) week:

Children & Young Person Employment

"Young person" means any person who has not completed his sixteenth year of age. Young person is prohibited:

- to work between the hours of 8 o'clock in the evening and 7 o'clock in the morning;
- to work for more than three (3) consecutive hours without a period of rest of at least thirty (30) minutes;
- to work for more than six (6) hours in a day or,
- to commence work on any day without having had a period of not less than fourteen (14)

consecutive hours free from work.

Minimum wage

RM900/month

2. Social welfare: insurance, pension, etc

Insurance: EMPLOYEES' SOCIAL SECURITY FUND

Monthly contribution by employer and employee as per Third Schedule.

Pension: EMPLOYEE PROVIDENT FUND.

Monthly contribution by employer and employee at 11% and 12% of wages respectively.

3. Requirements for retirement benefits

It is not mandatory to set retirement benefits.

4. Legal annual leave and public holidays

Public Holiday

Every employee shall be entitled to a paid holiday at the ordinary rate of pay for ten (10) gazette public holiday in any one (1) calendar year.

Annual Leave

An employee shall be entitled to paid annual leave of:

- a. eight (8) days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of less than two (2) years;
- b. twelve (12) days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two (2) years or more but less than five (5) years; and
- c. sixteen (16) days for every twelve (12) months of continuous service with the same employer if he has been employed by that employer for a period of five (5) years or more.

Medical Leave

An employee shall be entitled to paid medical leave of:

- a. fourteen (14) days in the aggregate in each calendar year, if the employee has been employed for less than two (2) years;
- b. eighteen (18) days in the aggregate in each calendar year, if the employee has been employed for two years or more but less than five (5) years;
- c. twenty-two (22) days in the aggregate in each calendar year, if the employee has been employed for five (5) years or more.

5. Brief information on labour unions

It is not mandatory to set union within a Company.

6. Country quirks

Lawful Deduction

No deduction shall be made by an employer from the wages, other than statutory deductions. If any, prior approval must be granted from the Director General of Labour.

Withdrawal procedures

1. Company: legal procedures required for liquidation

Voluntary liquidation can be in the form of a member's liquidation whereby the company must be solvent (i.e. sufficient assets to pay off the liabilities within a period of twelve (12) months from date of liquidation). If the company is not solvent, then a creditors' voluntary liquidation can be subjected to the company whereby generally majority of the creditors in value need to approve the liquidation.

2. Company: tax requirements

Liquidation proceeds are generally not taxable. However generally, the liquidator needs to obtain the necessary tax clearances from the local tax authority in relation to the company's tax matters prior to the finalisation of the liquidation process.

3. Branch: legal procedures required for closing branch

Same as for company.

4. Branch: tax requirements

Tax clearance is required for branches prior to closure. Branch profits may be remitted back to Head Office without any tax implications.

5. Representative office: legal procedures required for closing office

Inform the Ministry of International Trade and Industry.

6. Representative office: any tax requirements

No tax on closure of representative offices. Representative offices are not allowed to do business in Malaysia and therefore should not have any profits that are subjected to tax.



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