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LEP strengthens long-term ties with Malaysia

2023 marks the 40th anniversary of Malaysia's co-operation with South Korea since adopting its Look East Policy (LEP) to learn from East Asian work culture. The enduring relationship saw bilateral trade reaching MYR114.55 billion (USD26 billion) last year, which Malaysia hopes to boost by 20%.

The government is also committed to strengthening Malaysia's economic and investment landscape to grow foreign direct investment (FDI).

FDI: MITI AND MIDA

Malaysia's FDI remains resilient, exceeding pre-pandemic performance with a targeted approach attracting quality and high-impact investment. The Malaysian Investment Development Authority (MIDA) is the principal investment promotion agency of the Ministry of International Trade and Industry (MITI), facilitating foreign investors seeking to establish business hubs.

The MITI remains the central authority in charge of planning and implementing international trade and industrial policies to promote Malaysia as the investment destination of choice for South Korean business, as well as exported Malaysian products and services.

Most recently, in March, the MITI and various investment promotion agencies reported another MYR24 billion of potential investment during a trade and investment mission to Seoul.

COMPANIES ACT

The Companies Act 2016 is the main legislation governing companies and business. Foreign companies must register to carry out business, or alternatively incorporate a local company or register a branch in Malaysia.

A foreign company may also set up a representative office as a non-trading entity, enabling those in the manufacturing and services industry to explore business and market opportunities. They are permitted to conduct research and development, business, and promotional and liaison activities, but not commercial transactions.

Foreign investors in regulated sectors should also take note of equity restrictions imposed by relevant sector regulators, which may require minimum Malaysian equity.

FOREIGN EXCHANGE CONTROLS

The central bank maintains a liberal foreign exchange policy (FEP), supporting competitiveness of the Malaysian economy with an environment conducive for domestic and cross-border economic activity.

From an investment perspective, the FEP provides that a foreign investor is free to undertake any type of investment in Malaysian ringgit or foreign currency (FC) – whether direct or portfolio investment – without restriction; open a ringgit or FC account (FCA) with a licensed onshore bank; and repatriate divestment proceeds, profits, dividends or any income arising from the investments in Malaysia in FC.

Foreign investors also have flexibility to hedge foreign exchange exposure arising from their investments in Malaysia, either via a licensed onshore bank or an Appointed Overseas Office (AOO).

RENEWABLE ENERGY

The 10th Malaysia-South Korea Energy Corporation Workshop was reminded earlier this year that Malaysia is committed to implementing energy transition towards a low-carbon electricity supply industry in line with the country's aspiration to achieve net-zero greenhouse gas emissions by 2050.

Malaysia also aspires to achieve 70% of renewable energy (RE) capacity in its energy mix by 2050, an increase from its previous target of 40% by 2035. In tandem with such aspirations, key points of interest to foreign investors include:

Virtual PPAs. Malaysia's Corporate Green Power Programme (CGPP) allows corporate customers to enter into virtual power purchase agreements (VPPAs) with solar power producers (SPPs) for the virtual sale and purchase of their renewable energy.

Besides facilitating corporate customers to obtain renewable energy credits and fulfil their ESG goals, the CGPP is also an avenue for investors to develop solar power plants. Foreign investors may hold up to 49% equity interest in an SPP via joint venture to fulfil Malaysia's 51% equity interest criteria.

Applications for the CGPP quota are open to the SPPs until 31 December 2023, or until the 800MW quota is fully allocated.

Under the CGPP, the SPP generates and supplies electricity to Tenaga Nasional Berhad (TNB) and is paid the system marginal price for electricity generated.

The corporate customer continues to purchase electricity from TNB. Under the VPPA, the SPP and corporate consumer settle the difference between an agreed VPPA price and the system marginal price for the sale of virtual power and renewable energy certificates.

Exporting RE. Malaysia has also lifted a previous export ban on RE to facilitate cross-border trade. This opens up opportunities for energy players to capitalise on robust demand for RE in the region, for example, via participating in the Request for Proposal launched by Singapore's Energy Market Authority for import of low-carbon electricity.

Updated RE policy. The government has announced development of a third-party access framework to enable access to the electricity grid with a transparent mechanism for wheeling fee calculation, establishing an RE exchange hub enabling cross-border RE trade.

This acts as the market aggregator, enabling monetisation of excess power generated through bilateral or multilateral power trading arrangements with neighbouring countries, and the rolling-out of a carbon pricing mechanism.

Energy transition projects. To accelerate energy transition towards cleaner sources and increased use of RE, the National Energy Transition Roadmap has identified six energy transition levers (energy efficiency, RE, hydrogen, bioenergy, green mobility and carbon capture, utilisation and storage) and 10 flagship catalyst projects and initiatives.

These flagship projects include: a green hydrogen production hub in Sarawak; development of biomass clusters using aggregated feedstock from neighbouring mills; installation of EV charging stations; electrification of public transport; and development of a biofuels hub in Pengerang, Johor state. They are estimated to create investment opportunities exceeding MYR25 billion through private and public funding.

REAL ESTATE

Foreigners are generally allowed to own properties in Malaysia, save for Malay Reserve land, low and medium-cost residential units, and properties allocated for Bumiputera (native Malay individuals or institutions) by the relevant state authority. But several key aspects must be considered. It is important to note that each state in Malaysia has its own unique policies regulating acquisition of real estate by foreigners.

For example, only residential properties priced MYR1 million and above may be purchased by a foreigner in Kuala Lumpur; and in Selangor state, the minimum price for purchasing residential property is MYR1-2 million, depending on the location.

If the relevant state criteria are met, the foreign buyer needs regulatory approval for the acquisition. These include:

Foreigner consent. The National Land Code of Malaysia provides that prior approval of the relevant state authority must be obtained for any acquisition of property by a foreigner, defined as either not a citizen of Malaysia or, if an entity, a company with 50% or more of its voting shares held by a non-Malaysian (whether directly or through intermediary holding companies).

State consent. In Malaysia, the land title may contain restrictions in interest and express conditions that govern the usage and transferability of the land. In such cases, the foreign buyer needs to seek written consent from the state authority.

EPU approval. Acquisition of a property valued above MYR20 million, resulting in the dilution of Bumiputera interest and/or interest held by a government agency, requires approval of the Ministry of Economy, known as the Economic Planning Unit (EPU). If the real estate acquisition dilutes Bumiputera or government agency interest, approval granted by EPU is subject to the foreign entity having at least 30% Bumiputera interest shareholding and minimum paid-up capital of MYR250,000.

However, certain acquisitions could be eligible for exemption from these requirements to attract foreign investment. For example, one of the exemptions is acquisition of industrial land by a licensed manufacturing company.

Foreign investors also need to take note of the costs and expenses associated with property acquisitions in Malaysia. This includes: (1) stamp duty ranging from 1% to 4% based on the purchase consideration or market value of the property, whichever is higher; (2) application fees to the state authority for foreigner consent and state consent; and (3) depending on the state, a levy may be imposed by the relevant state authority for granting foreigner consent and state consent.

CLOSING NOTE

Malaysia and South Korea have established diplomatic relations since 1960. Since then, economic relations have improved in many respects, especially with full enforcement of ASEAN-Korea Free Trade Agreement, eliminating tariffs and non-tariff barriers for goods and services since 2010 through the advanced free market system.

Today, while a bilateral free-trade agreement with South Korea is in the process of being concluded, bilateral relations have registered remarkable progress alongside economic growth of both countries.

The LEP further strengthens economic ties. Establishing meaningful ties with East Asian economies is the cornerstone for close bilateral relations with South Korea, as well as the catalyst in forging closer partnership in, among others, economic, education, cultural and tourism sectors.

Apart from the above-mentioned, both Malaysia and South Korea enjoy mutual recognition of industrial standards and test results of conformity assessment procedures, reducing the cost of doing business.