EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Malaysia – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
Unit trust	The Securities Commission (SC) had issued Guidelines on 'Property Trust Funds' in 2002, which were superseded by the issuance of REIT Guidelines in January 2005. Further updates were issued by way of Guidance Notes issued in 2005, 2006 and 2007. All of the above were further superseded by the revised Guidelines on REITs issued by the SC on August 21, 2008 with subsequent amendments made in 2012.	- Capital Markets and Services Act, 2007 (CMSA). - SC Guidelines on REITs of 2012. - Malaysia Income Tax Act, 1967 (MITA). - SC Guidelines for Islamic REITs of 2005.	Trust type.

The Real Estate Investment Trust is a part of Malaysian law. Specific REIT guidelines have been issued and REIT-specific tax provisions have been introduced. The REIT guidelines were amended in 2005, 2006, 2007, 2008, 2011 and 2012.

Malaysian Islamic REIT:
The Islamic REIT is a collective investment scheme in real estate, by which the unit holders conduct permissible activities according to Sharia Law. Specific Islamic REIT guidelines were issued in 2005.

Currently there are 16 REITs operating. Market capitalisation is approximately RM 33 billion (approximately USD 8.64 billion) at an exchange rate of RM 3.9739 per USD 1 in July 2016.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Malaysia	16	4	€ 6.381	0.18%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield %	% of Global REIT Index
IGB Real Estate Investment Trust	€ 1.266	25.19%	3.82%	0.06%
Pavilion Real Estate Investment Trust	€ 1.212	19.35%	3.51%	0.03%
Sunway Real Estate Investment Trust	€ 1.108	N/A	4.47%	0.06%
CapitaLand Malaysia Mall Trust	€ 711	-2.52%	3.96%	0.03%

EPRA * All market caps and returns are rebased in EUR and are correct as at 29 July 2016. The Global REIT Index is the FTSE EPRA/NAREIT Global REITs Index. *EPRA, August 2016*.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Registered trust. - Trustees must be approved by the SC. - Management company. - Real estate held by the trust must be managed by a qualified property manager. - Appoint a Sharia committee or a Sharia advisor (for Islamic REITs only).

In Malaysia, the establishment and registration of a trust requires the approval of the SC. A trustee must be appointed for a REIT and the appointment of the trustee must also be approved by the SC. Furthermore, the trustee must also be registered with the SC.

The trust must be managed and administered by a management company approved by the SC. The management company (except where the management company is licensed by the SC) must be a subsidiary of (a) a company involved in the financial services industry in Malaysia, (b) a property development company, (c) a property investment holding company or (d) any other institution which the SC may permit.

Foreigners can hold up to 70% of the equity of the management company. At least 30% of the equity of the management company must be held by local (i.e. Malaysian resident) shareholders. As in previous years, a minimum shareholders' reserve of RM 1 million (approximately USD 0.25 million, based on an exchange rate of RM 3.9739 to USD 1 in July 2016) must be maintained by the management company at all times.

Real estate held by the REIT must be managed by a qualified property manager who has been approved by the trustees.

Malaysian Islamic REIT:
Same requirements as above and additionally a Sharia committee or a Sharia advisor must be appointed to ensure that any property acquired by an Islamic REIT is Sharia-compatible.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Unit trust	RM 100 million (approx. USD 25 million in July 2016)

Legal form
A REIT takes the form of a unit trust fund. It must be registered in Malaysia and approved by the SC.

Minimum initial capital
The minimum fund size is RM 100 million (approximately USD 26 million, based on an exchange rate of RM 3.9739 to USD 1 in July 2016).

If any trustee member of the REIT is a tax resident in Malaysia in the basis period for a tax year, the REIT will be a tax-resident person for Double Taxation Treaty purposes. There is uncertainty as to whether a distribution from a REIT would fall under the dividend article, business profit article, or the other income article. Pending the amendment to existing Double Taxation Treaty to be in line with OECD's proposal on REIT's distribution, the REIT's distribution is likely to be categorised as "other income" unless the non-resident recipient can demonstrate otherwise (e.g. business profits).

2.3 Unit holder requirements / Listing requirements

Unit holder requirements	Listing mandatory
No requirements	No

Unit holder requirements

There are no requirements.

There is no restriction on foreign unit holders in the REIT, but foreigners cannot hold more than 70% of the equity in the REIT's management company.

Listing requirements

A REIT can be either listed or unlisted. A REIT seeking to list its units must comply with the listing requirements, as detailed in chapter 4 of the Bursa Malaysia Securities Berhad (LR) and in chapter 13 of the REIT guidelines. These requirements include the following:

- the applicant must have at least 25% of the total number of units for which listing is sought in the hands of a minimum number of 1,000 public unit holders holding not less than 100 units each;
- for the purpose of calculating the required minimum public holding, holdings by the management company, its directors and any person connected with such management company or directors shall be disregarded;
- the applicant must ensure that at least two directors or 1/3 (or the nearest number) of the board of directors of the applicant, whichever is higher, are independent directors; and
- the management company of the REIT is subject to the SC's approval and a prospectus of the public offering is to be issued and registered with the SC. Subsequently, an application is to be made with Bursa (the Malaysian Stock Exchange) for listing of and quotation for the units.

2.4 Asset levels / activity test

Restrictions on activities / investments
- Restriction applies on the level of investments. - Additional restrictions for Islamic REITs.

A REIT may only invest in the following:

a. Real estate;
b. Single-purpose asset owning companies (a 'single purpose company' means an unlisted company whose principal assets comprise of real estate);
c. Real estate related assets;
d. Non real estate related assets; and
e. Cash, deposits, and money market instruments.

At least 50% of the REIT's total asset value must be invested in real estate and/or single-purpose companies investing into real estate at all times.

A REIT's investment in non real estate-related assets and/or cash, deposits and money market instruments must not exceed 25% of a REIT's total asset value.

The above applies to both listed and unlisted REITs.

All REITs may acquire real estate located outside Malaysia where the real estate is viewed as a viable investment. The management company must ensure that the relevant rules, guidelines and laws are complied with and that approval / authorisation from the relevant authorities (domestic and foreign) has been obtained prior to acquisition.

All REITs may invest in real estate-related assets and non real estate-related assets, and these assets may consist of foreign investments traded in or under the rules of a foreign market (a market where the regulatory authority is a member of the International Organisation of Securities Commissions (IOSCO)).

REITs are not permitted to conduct the following activities:
a. extension of loans or any other credit facility;
b. property development; and
c. acquisition of vacant land.

REITs may acquire property that is under construction or uncompleted real estates of up to 10% of its total asset value, provided that certain criteria listed in the SC Guidelines are met.

The REIT's investment may consist of placement of deposits provided it is with a licensed institution.

A REIT may not invest in any other companies apart from single-purpose companies.

Malaysian Islamic REIT:
Further restrictions apply to the Islamic REIT. Islamic REITs are permitted to acquire real estate for the purpose of various activities. However, the fund manager must ensure that the rental income from non-permissible activities under Sharia Law does not exceed 20% of the total turnover of the Islamic REIT.

The Islamic REIT cannot accept new projects which are composed of fully non-permissible activities or purchase existing projects which are composed of non-permissible activities.

Non-qualifying/permissible rental activities are financial services which are based on riba (interest). Such activities include gambling/gaming, the manufacture or sales of non-halal products or related products, conventional insurance, entertainment activities that are non-permissible according to the Sharia, the manufacture or sale of tobacco-based products or related products, stock brokerage or share trading in Sharia non-compatible securities and hotels and resorts.

2.5 Leverage

Leverage
Borrowing may not exceed 50% of the total asset value.

The basic rule is that the total borrowings may not exceed 50% of the total asset value of the fund unless authorised by the unit holders by way of an ordinary resolution.

A Malaysian REIT can only borrow from institutions that are licensed (or deemed to be licensed) under the Financial Services Act 2013 and Islamic Financial Services Act 2013. It can also issue debentures.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of total income	N/A	Annually

Operative income
Malaysian REITs are not required to make any minimum distribution of income but REITs will only benefit from a tax exemption provided at least 90% of their total income for the year of assessment is distributed to its investors.

Capital gains

There is no requirement in the MITA for capital gains to be distributed every year. The 90% threshold applies to total income of the REIT. Total income refers to income of a REIT that would ordinarily be chargeable to tax. It should be noted that there is no capital gains tax in Malaysia, except for real property gains tax (RPGT) for disposal of real properties and shares in real property companies. With effect from January 01, 2014, the RPGT rates for disposals by a REIT are between 5% and 30% depending on the length of the holding period of the real properties or shares in real property companies as follows:

Date of disposal	RPGT rates
Within 3 years from the date of acquisition	- 30%
In the 4th year	- 20%
In the 5th year	- 15%
In the 6th year and subsequent years	- 5%

2.7 Sanctions

Penalties / loss of status rules
Various sanctions possible, including revocation of approval.

Where a person breaches the provisions of the CMSA or fails to comply with, observe, enforce or give effect to any written notice, guidelines issued or conditions imposed by the SC, the SC may take one or more of the following actions:

- direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
- impose a penalty in proportion to the severity or gravity of the breach, but in any event not exceeding RM 500,000 (approx. USD 126,000 in July 2016);
- reprimand the person in breach; and
- require the person in breach to take such steps as the SC may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach; or any other actions in accordance with the CMSA.

3 Tax treatment at the level of REIT

3.1 Corporate tax / GST/WHT

Current income	Capital gains	Withholding tax (“WHT”)	Goods & Services Tax (“GST”)
Tax-exempt if 90% of total income is distributed.	Not taxable except for RPGT for disposal of real properties and shares in real property companies.	- Creditable for taxable income. - Not refundable for non-taxable income.	- Input tax credit is subject to apportionment.

Current Income

REITs will not be taxed on their income, provided that at least 90% of their total income for the year of assessment is distributed to its unit holders. For Malaysian WHT purposes, it is a requirement for the REIT to withhold a portion of the distribution at the applicable rate (see below) and distribute the net amount to the unit holder. If the REIT is subject to income taxes on its total income, the amount distributed is taxable in the hands of unit holders as if it was received gross. However, the investors are eligible to claim tax credits.

A corporate tax deduction on start-up expenses incurred during REIT establishment (e.g. consultancy, legal and valuation fees) is available.

With effect from 2008, the year of assessment[1], a company disposing of an industrial building (on which capital allowances have been claimed previously) to REITs will not be subject to balancing adjustments while REITs would continue to claim capital allowances on such buildings based on the residual expenditure of the building in the tax returns of the seller. With effect from the 2013 year of assessment, these rules will only be applicable to a company which holds greater than the 50% of the residual profits (i.e. profits after tax depreciation) of the REITs available for distribution, or greater than 50% of any residual assets (assets after depreciation) of the REITs available for distribution on a winding up.

Capital gains

With effect from January 01, 2014, gains from the disposal of real properties and shares in real property companies by a REIT are subject to RPGT between 5% and 30% depending on the holding period of the real properties or shares in real property companies as follows:

Date of disposal	RPGT rates
Within 3 years from the date of acquisition	- 30%
In the 4th year	- 20%
In the 5th year	- 15%
In the 6th year and subsequent years	- 5%

Tax suffered at source on dividend income

Malaysia does not levy dividend withholding taxes.

With effect from January 01, 2014, all companies are on the single-tier tax system. Under this system, tax paid on profits of a company is a final tax and dividends distributed by a company into which the REIT invests (usually a minority interest) are exempt in the hands of the REIT.

If an overseas jurisdiction levies a withholding tax, the REIT will not be able to obtain a credit for such tax if the income is exempt in Malaysia. If, however, the income is taxable it may be possible for the REIT to claim a credit in respect of the foreign tax suffered.

Accounting rules

The financial statement of a REIT shall be prepared in accordance with applicable approved accounting standards (FRS), applicable statutory requirements, the deed and any regulatory requirements.

Indirect taxes

GST at 6% was implemented in Malaysia on April 01, 2015. GST is charged on the taxable supply of goods and services made in the course or furtherance of business in Malaysia by a taxable person.

1 The year of assessment or effective year of assessment refers to the tax year. The tax year follows the company's or REIT's accounting period.

GST is also charged on the importation of goods and services. GST replaced the sales tax and service tax.

A taxable supply is a supply which is either standard rated (6%) or zero rated. Exempt and out of scope supplies are not taxable supplies. GST is to be levied and charged on the value of the taxable supplies. GST can only be levied and charged if the business is registered under the GST Act 2014.

All businesses that have an estimated total value of taxable supplies of RM 500,000 or more will have to register for GST. Nevertheless, businesses that do not exceed the above registration threshold can apply to be registered voluntarily.

Even though GST is imposed at each level of the supply chain, generally the tax element does not become part of the cost of the product/service for a taxable supplier because GST paid on the business inputs for making taxable supplies is claimable as an input tax credit at each level of the supply chain. Thus GST incurred on costs of those business inputs may be offset against the GST collected on taxable supplies.

However, if the GST incurred relates to both taxable and exempt supplies, input tax credit may only be claimable (using the partial exemption apportionment method) for the portion which is attributable to taxable supplies. Effectively this should mean that where a business makes taxable supplies, the GST to be paid to the Royal Malaysian Customs Department ("Customs Department") should amount to a tax on the value that has been added by the business in that period.

As a REIT generates its income principally from rental of real property (commercial) which is a taxable supply and proceeds from issuance of the REIT units to investors, an exempt supply, the REIT is required to register with the Customs Department for Malaysian GST.

As a GST registrant, the REIT will be required to charge GST at the rate of 6% on the taxable supplies (e.g. rental of real property (commercial) to its tenants) and remit to the Customs Department after deducting allowable input tax credits incurred on its costs. The issuance of the REIT units to investors/unit holders is an exempt supply and therefore no GST is applicable as will be the case for any distributions paid out to those investors.

As the issuance of the REIT units is not an incidental exempt financial supply, any input tax incurred on common expenses for taxable and exempt supplies should be subject to the partial exemption method of apportionment. It should be noted that no input tax credits may be claimed on expenses incurred specifically for the purpose of making the exempt supplies of issuance of the REIT units. Any GST on expenses directly incurred in respect of the acquisition, operation and maintenance of the rental buildings acquired by REITs for the specific purpose of the REIT's taxable (commercial) rental business should be able to be claimed in full as input tax credit.

3.2 Transition regulations

Conversion to REIT status
N/A

3.3 Registration duties

Registration duties
Stamp duty exemption.

There is a stamp duty exemption on the transfer of properties to an approved REIT. Other than stamp duty, there are currently no other duties / taxes imposed on the transfer of properties in Malaysia to a REIT.

4 Tax treatment of the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax	GST
- Income not taxed at REIT level: 19% / 24%* income tax on distributions. No tax credit is available. - Income taxed at REIT level: 19% / 24%* income tax on distributions. However, tax credits are available. - No capital gains tax.	- Income not taxed at REIT level: Withholding tax final levy at a rate of 10% applies from January 01, 2016 to December 31 2019. No tax credit is available. - Income taxed at REIT level: 0-28%** income tax (prevailing rates for year of assessment 2016) on gross income from REIT distributions in the hands of individual unit holders. Such income carries a tax credit. - No capital gains tax.	- No withholding tax levied on distributions to Malaysian resident corporate unit holders. - Withholding tax applies to Malaysian resident individual unit holders at 10% if income not previously taxed at the REIT level.	- Distribution received from REIT is not subject to GST.

Corporate unit holder

Distribution from income on which the REIT is exempt from tax:
Income distributed from the REIT will be taxed at the prevailing corporate tax rate of 24%. A preferential tax rate of 19% on the first RM 500,000 of chargeable income will apply if the corporate unit holder is a "Small and Medium Enterprise" ("SME") for the purposes of the MITA.

With effect from the year of assessment 2009, the definition of a SME has been re-defined as a company resident in Malaysia which has paid up ordinary share capital of RM 2.5 million or less at the beginning of the basis period of a year of assessment provided:

(i) not more than 50% of the paid up ordinary share capital of the corporate unit holder is directly or indirectly owned by a non SME;
(ii) the corporate unit holder does not own directly or indirectly more than 50% of the paid up ordinary share capital of a non-SME;
(iii) not more than 50% of the paid up ordinary share capital of the corporate unit holder is owned by a company that also owns more than 50% of the ordinary share capital of a non-SME.

No tax credit is available to the unit holder where the distribution of income from the REIT is exempt from tax.

Distribution from income on which the REIT has been taxed (i.e. where the relevant conditions have not been met):

The amount distributed from the REIT will be grossed up to take into account the tax already paid at the REIT level and the corporate unit holder will be taxed on the gross distribution at the prevailing corporate tax rate of 24%.

However, such distributions carry a tax credit in respect of tax chargeable to the REIT in relation to the distributed income, which is available to be offset against the income tax chargeable to the corporate unit holder on the grossed-up amount of the distributed income.

Capital gains tax

There is no capital gains tax in Malaysia, except for RPGT for disposals of real properties or shares in real property companies. Disposal of REIT units, however, will not be subject to RPGT.

Individual unit holder

Distribution from income on which the REIT is exempt from tax:
Distributions made by a REIT to individual unit holders are subject to a final withholding tax of 10% (this rate applies to the period from January 01, 2016 to December 31, 2019). Individual unit holders who receive the net amount distributed need not account for any further income tax liability.

Distribution from income on which the REIT has been taxed:
The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT and the individual unit holder will be taxed on the gross distribution at progressive tax rates ranging from 0% to 28% (prevailing rate for year of assessment 2016).

Such distributions carry a tax credit, which will be available to offset against the tax chargeable on the individual unit holder.

Capital gains tax

There is no capital gains tax in Malaysia, except for RPGT for disposals of real properties or shares in real property companies. Disposal of REIT units, however, will not be subject to RPGT.

Withholding tax

A REIT does not need to withhold tax when making distributions to a resident company – such companies would need to declare the REIT distributions as taxable income and the income will be taxed at the prevailing corporate tax rate of 24%.

For resident individuals, a 10% withholding tax is applicable if the amount distributed was tax exempt at the REIT level.

Indirect taxes

The investor/unit holder is entitled to receive distributions from their investment in the REIT. The distribution income is not subject to GST.

The issue, holding and redemption of units under a trust fund, and, the transfer of ownership of securities is an exempt supply under the GST (Exempt Supplies) Order. However, any brokerage commission or clearing fee on the trading of the REIT through a GST- registered broker is subject to GST at 6%.

4.2 Foreign unit holder

- Withholding tax at 24% effective from January 01, 2016. - Withholding tax at 10% for institutional investors from January 01, 2016 to December 31, 2019 if distribution from income on which the REIT is exempt from tax.	- Withholding tax at 10% from January 01, 2016 to December 31, 2019 if distribution from income on which the REIT is exempt from tax.	- No specific relief available.

Corporate unit holder

Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident companies are subject to withholding tax of 24% from January 01, 2016 onwards.

Distributions to non-resident institutional unit holders are subject to a final withholding tax of 10% (this rate applies to the period from January 01, 2016 to December 31, 2019).

Distribution from income on which the REIT has been taxed:
Non-resident companies – A non-resident company would only be required to file a tax return in Malaysia if the company has a taxable presence / permanent establishment (as defined under the relevant double tax treaty) in Malaysia. Where the non-resident company is obligated to file a Malaysian tax return, the amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident company will be taxed on the gross distribution at the prevailing corporate tax rate of 24%, with a tax credit given on the underlying tax of the REIT.

If the non-resident company has no obligation to file a Malaysian tax return (i.e. there is no permanent establishment / taxable presence), the non-resident company would receive any distributions net of the tax suffered by the REIT. The non-resident company will also not be entitled to the tax credit from the income distributed from the REIT.

No withholding tax would be imposed on the non-resident company on income from the REIT which has been taxed previously.

Non-resident institutional unit holders – An institutional investor is defined as "a pension fund, collective investment scheme or other such persons approved by the Minister". A non-resident institutional unit holder would only be required to file a tax return in Malaysia if the unit holder has a taxable presence / permanent establishment (as defined under the relevant double tax treaty) in Malaysia. Where the non-resident institutional unit holder is required to file a Malaysian tax return, the amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident institutional unit holder will be taxed on the gross distribution at the appropriate tax rate, with a tax credit given on the underlying tax of the REIT.

If the non-resident institutional unit holder has no obligation to file a Malaysian tax return, the non-resident institutional unit holders would receive any distributions net of the 24% corporate tax. The non-resident will also not be entitled to the tax credit from the income distributed from the REIT.

No withholding tax would be imposed on the non-resident institutional unit holder on income from the REIT which has been taxed previously.

Individual unit holder

Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident individuals are subject to a final withholding tax of 10% (this rate applies to the period from January 01, 2016 to December 31, 2019).

Distribution from income on which the REIT has been taxed:
The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident individual unit holder will be taxed on the gross distribution at 28% (prevailing rate for year of assessment 2016) if their tax returns are filed in Malaysia. Where the non-resident individual does not file a tax return, he will not be entitled to the tax credit from the income distributed from the REIT.

Withholding tax

If withholding tax is levied, such tax will be a final tax for Malaysian purposes. As such, unit holders receiving the net amount distributed need not account for any further income tax liability in Malaysia.

No specific relief available under tax treaties. However depending on the practice of the receiving country treaty protection may be sought under general unilateral double-taxation elimination rules.

5 Tax treatment of foreign REIT and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Taxation subject to Double Tax Treaty	Tax-exempt.	Tax-exempt.

Foreign REIT
Income of the foreign REIT will only be taxed in Malaysia if it is accrued in or derived from Malaysia, subject to the provisions of the relevant double tax treaties between Malaysia and the jurisdictions in which the foreign REIT is established.

Corporate unit holder
Distributions received from foreign REITs would be regarded as foreign-sourced income and exempt from Malaysian tax pursuant to Paragraph 28, Schedule 6 of the Malaysian Income Tax Act, 1967 unless the recipient is a resident company carrying on the business of banking, insurance, or sea or air transport.

Individual unit holder
Same as corporate unit holders. ■

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