COUNTRY: **MALAYSIA**

SCORE: 69.66 | RANK: 13/24

Malaysia has modern electronic signature laws, electronic commerce laws, and privacy laws in place. These measures provide a strong level of protection for the digital economy and cloud computing in Malaysia.

Malaysia's copyright laws are aligned with international standards, although enforcement remains patchy.

Malaysia has a moderate level of broadband penetration. In 2015, the government committed to new broadband targets: by 2020, 100% of households in capital cities and high-impact growth area to have access to speeds of 100 Mb/s and 50% of households in suburban and rural areas to have access to speeds of 20 Mb/s.

Malaysia remained steady in its position at 13th place.

Q MALAYSIA	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY (SCORE: 5.9/10 | RANK: 16/24)		
1. Are there laws or regulations governing the collection, use, or other processing of personal information?	✔	The Personal Data Protection Act 2010 covers only the private sector. The law came into full force Jan. 1, 2013.
2. What is the scope and coverage of privacy law?	Sectoral	The Personal Data Protection Act 2010 covers only the private sector; government agencies are exempt.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	◑	The Personal Data Protection Act 2010 closely mirrors the principles in the European Union (EU) Directive, with some variations that appear to adopt parts of the Asia-Pacific Economic Cooperation (APEC) Privacy Framework. The act does not cover the government sector.
4. Is the privacy law compatible with the Privacy Principles in the APEC Privacy Framework?	✔	Malaysia is a member of APEC. The Personal Data Protection Act 2010 closely mirrors the principles in the EU Directive, with some variations that appear to adopt parts of the APEC Privacy Framework.
5. Is an independent private right of action available for breaches of data privacy?	Not available	An independent right (outside the provisions in the Personal Data Protection Act 2010) is not available in Malaysia.
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	National regulator	A Personal Data Protection Department <www.pdp.gov.my> has been established to administer the law. It is not a completely independent regulator.
7. What is the nature of the privacy regulator?	Other government official	The regulator is a government department and may not be as independent as commissioners in other jurisdictions.
8. Are data controllers free from registration requirements?	◑	Data controllers are required to register with the Personal Data Protection Department <www.pdp.gov.my> if they are involved in specific classes designated by the minister of the Malaysian Communications and Multimedia Commission <www.skmm.gov.my>. As of 2015, these classes are processes that involve communications, banking and finance, insurance, healthcare, tourism and hospitality, transportation, education, direct sales, services, real estate and utilities sectors. The law grants the minister the prerogative to designate classes.
9. Are cross-border transfers free from registration requirements?	✔	Although other rules apply for cross-border transfers, there are no specific cross-border registration requirements in Malaysian privacy law.
10. Is there a breach notification law?	✘	Malaysia does not have a breach notification provision or law.

Q MALAYSIA	RESPONSE	EXPLANATORY TEXT
SECURITY (SCORE: 6/10 | RANK: 11/24)		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✔	Under the Digital Signature Act 1997, digital signatures are to be the equivalent of signatures in the traditional sense. The legal framework of the act was strengthened to encourage future use, by way of the Digital Signature (Amendment) Act 2001. In addition, the Electronic Commerce Act 2006 contains broad (technology neutral) provisions on electronic signatures.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	✔	The Communications and Multimedia Act 1998 established the Malaysian Communications and Multimedia Commission <www.skmm.gov.my>, which is empowered to regulate the information technology and communications (ITC) industries. The act empowers the commission with broad authority to regulate online speech, providing that "no content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person." Publishers of media content in violation of this provision may face criminal penalties. The act also establishes the Content Forum, which formulates and implements the Content Code — voluntary guidelines for content providers concerning the handling of content deemed offensive and indecent. In practice, the Malaysian government has pledged not to censor the Internet. There is no evidence of technological Internet filtering in Malaysia. However, state controls on traditional media spill over to the Internet at times, leading to self-censorship and occasional investigation of bloggers and online dissidents.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Limited coverage in legislation	The security principle contained in the Personal Data Protection Act 2010 states: "Security Principle: A data user shall take practical steps to protect the personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction." This principle is supported by the Personal Data Protection Standard issued in December 2015, <www.pdp.gov.my>. The standard includes physical security measures, the management of access controls, the maintenance of a register of individuals with access to the data, and specific data retention and destruction periods.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	None	There are no security audit requirements in Malaysia.
5. Are there security laws and regulations requiring specific certifications for technology products?	Limited requirements	In 2011, Malaysia was accepted as a Certificate Authorizing Member (the highest level) of the Common Criteria Recognition Agreement (CCRA) <www.commoncriteriaportal.org>. Certifications have been required in a small number of national flagship projects.
CYBERCRIME (SCORE: 7.2/10 | RANK: 18/24)		
1. Are cybercrime laws in place?	✔	The Computer Crimes Act 1997 prohibits four relatively limited categories of activities related to unauthorized entry into computer systems, which are: • Section 3. Acts committed with intent to secure unauthorized access to programs or data stored in any computer; • Section 4. Acts committed with intent to secure unauthorized access to programs or data stored in any computer; • Section 5. Acts committed with the knowledge that the act will cause unauthorized modification of the contents of any computer; • Section 6. Wrongful communication of any password, code or means of access to a computer to any person who is not authorized to receive the same. Also, any person who has in his custody or control any computer program or data that he is not authorized to hold is presumed to have obtained unauthorized access to such program or data. These provisions cover most, but not all, cybercrime activity.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	◑	The provisions in the Computer Crimes Act 1997 are more aligned with computer crimes, than cybercrimes. They do not follow the Convention closely. However, provisions contained in e-commerce laws and copyright laws (updated and amended in 2012) complement Malaysia's cybercrime legislation and make it more compatible with international standards.

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Q MALAYSIA	RESPONSE	EXPLANATORY TEXT
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?	Unlimited access	The Digital Signature Act 1997 gives powers of search and seizure of documents and computerized data to the police or a duly authorized officer where there is reasonable cause to believe that an offense under the Digital Signature Act is being committed. In such an event, they additionally have the right of access and the right to require the production of computerized data. Access here includes being provided with the password, encryption and decryption codes, software or hardware necessary for comprehension of the computerized data.
		Such powers are normally exercised pursuant to a warrant issued by a magistrate. The police may however search any premises without a warrant if they have reasonable cause to believe the delay in obtaining such a warrant will adversely affect investigations or is likely to lead to the tampering or destruction of evidence.
		When a subscriber uses a pseudonym, the certification authority is required to transmit data on the subscriber's identity if so requested by the proper authorities, where this is necessary to prosecute offenses or maintain public order.
		Apart from the above, various statutes give powers of search and seizure and powers to compel the production of evidence for investigations into offenses committed thereunder. Examples of such legislation include the Criminal Procedure Code, the Banking and Financial Institutions Act 1989, Anti-Money Laundering Act 2001 and the Communications and Multimedia Act 1998.
		These search, seizure and access powers are to be exercised for the purposes of investigations into offenses to which the statutes in question relate, and do not confer any general authority for access to information or the conduct of general searches and seizures.
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Section 9 of the Computer Crimes Act 1997 states that the act applies, within and outside Malaysia, where the offense in question, the computer, program or data were in Malaysia or capable of being connected to or sent to or used by or with a computer in Malaysia at the material time.
INTELLECTUAL PROPERTY RIGHTS (SCORE: 17.4/20 | RANK: 4/24)		
1. Is the country a member of the TRIPS Agreement?	✔	Malaysia became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	✔	Malaysia has implemented the TRIPS Agreement in local laws.
3. Is the country party to the WIPO Copyright Treaty?	✔	Malaysia joined the WIPO Copyright Treaty in September 2012.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	✔	Malaysian law was updated by the Copyright (Amendment) Act 2012 and is now compliant with key provisions of the treaty.
5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✔	Under Section 13(1)(aa) of the Copyright Act 1987, the copyright owner has the exclusive right to control the communication to the public of a work.
6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✔	Section 41 of the Copyright Act 1987 considers offenses, including: "(1) Any person who during the subsistence of copyright in a work or performer's right (c) distributes infringing copies; (i) in the case of an offense under paragraphs (a) to (f) , to a fine not exceeding ten thousand ringgit for each infringing copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offense, to a fine not exceeding twenty thousand ringgit for each infringing copy or to imprisonment for a term not exceeding ten years or to both."
7. Are there laws governing ISP liability for content that infringes copyright?	✔	The Copyright (Amendment) Act 2012 establishes a comprehensive scheme relating to Internet service provider (ISP) liability for infringing copyright.
8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	✔	The Copyright (Amendment) Act 2012 sets out the situations in which an ISP might be liable, as well as the requirements for them to avoid liability.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Civil	The Copyright (Amendment) Act 2012 includes civil sanctions.

Q MALAYSIA	RESPONSE	EXPLANATORY TEXT
10. Must ISPs take down content that infringes copyright, upon notification by the right holder?	✔	The Copyright (Amendment) Act 2012 sets out a fairly basic set of copyright takedown requirements, based on a notice (and counter-notice) system. Section 43H allows a copyright holder to notify an ISP of any infringing materials and to require their removal. However, the provider of the removed material is also given the right to serve a counter-notice on the ISP asking for the material to be restored. The competing notice and counter-notice system only ends when a formal action has been filed for an injunction by the copyright holder. This is an unusual and highly administrative system and appears little used in practice.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	◑	The Copyright (Amendment) Act 2012 includes some basic notice requirements.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	Comprehensive protection	Malaysia does not have specific laws on misappropriation of cloud computing services. However, Malaysia has a good combination of Internet protocol (IP) laws and cybercrime laws, complemented by the Personal Data Protection Act 2010, and these provide a useful layer of protection against most risks to cloud computing.
SUPPORT FOR INDUSTRY LED STANDARDS & INTERNATIONAL HARMONIZATION OF RULES (SCORE: 10/10 | RANK: 1/24)		
1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?	✔	The Standards of Malaysia Act 1996 (Act 549) established Standards Malaysia and sets out some high-level rules for standards development. There are no specific rules for IT, although Malaysia is quite active in this field.
2. Is there a regulatory body responsible for standards development for the country?	✔	The Department of Standards Malaysia <www.standardsmalaysia.gov.my> is an agency established by the Ministry of Science, Technology and Innovation. Its role is to develop and promote the use of Malaysian standards and ensure compliance with international standards.
3. Are e-commerce laws in place?	✔	The Electronic Commerce Act 2006 is the key source of electronic commerce regulation for the private sector. It is complemented by the Electronic Government Activities Act 2007, which applies similar rules to the public sector.
4. What international instruments are the e-commerce laws based on?	UN Convention on E-Contracting	The Electronic Commerce Act 2006 closely mirrors the UN Convention on Electronic Contracting. This convention comes into force in March 2013.
5. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✔	No tariffs are in place, and Malaysia takes active steps to encourage foreign IT investment and development.
6. Are international standards favored over domestic standards?	✔	Malaysia prioritizes compliance with international standards.
7. Does the government participate in international standards setting process?	✔	Malaysia participates in relevant International Standards Organization (ISO) and International Electrotechnical Commission (IEC) standard-setting processes and is a full member of the ISO.
PROMOTING FREE TRADE (SCORE: 5.8/10 | RANK: 13/24)		
1. Are there any laws or policies in place that implement technology neutrality in government?	◑	The Malaysian Government Interoperability Framework (MyGIF) 2003 encourages technology neutrality. MyGIF has been supplemented by the Malaysian Government Interoperability Framework for Open Source Software (MyGIFOSS) 2008, which contains information on open-source software (OSS), open standards and technical specifications recommended for adoption in Malaysia <www.mampu.gov.my/web/en/open-source-software>.
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?	✔	There are no mandatory product requirements in Malaysia.

Q MALAYSIA	RESPONSE	EXPLANATORY TEXT
3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards or technologies?	◑	The government of Malaysia encourages the use of open-source software (OSS) in the Malaysian public sector. The Malaysian Administration Modernization and Management Planning Unit (MAMPU) <www.mampu.gov.my> of the Prime Minister's Department is given the responsibility to implement this OSS initiative.
4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider?	◑	Preferential government procurement policy favors locally owned businesses in some sectors. International tenders are sometimes invited if goods and services are not available locally. Malaysia is an observer, but not a full member, of the World Trade Organization (WTO) plurilateral Agreement on Government Procurement.
IT READINESS, BROADBAND DEPLOYMENT (SCORE: 17.4/30 | RANK: 13/24)		
1. Is there a national broadband plan?	• By 2020, 100% of households in capital cities and high-impact growth area to have access to speeds of 100 Mb/s • By 2020, 50% of households in suburban and rural areas to have access to speeds of 20 Mb/s	As part of the 11th Malaysia Plan <www.digitalnewsasia.com/sites/default/files/files_upload/11mp_book.pdf> — a whole of government strategy announced by the Malaysian government in July 2015 — the Malaysian government committed to two broadband programs. The High-Speed Broadband 2 (HSBB 2) deployment covers capital cities and designated high-impact growth areas. This is a secondary phase to the High-Speed Broadband deployment that followed the 10th Malaysia Plan. The targets for the HSBB 2 deployment are: • 250,000 ports to be installed by end of 2016, passing through 410,000 premises • 100 megabits per second (Mbps) broadband made available to all households in state capitals and high-impact growth areas by 2020 The Suburban Broadband (SUBB) deployment covers suburban and rural area. It's targets are: • Additional 420,000 ports through 750,000 premises to be installed within five years of project start • 20 Mbps broadband made available to 50% of households in suburban and rural areas by 2020
2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	No regulation and extensive public debate	There are no specific net neutrality rules in Malaysia, although the minister of communications and multimedia <www.kkmm.gov.my> has a theoretical power to set tariffs for Internet traffic under the Communications and Multimedia Act (this power has not been used).
3. Base Indicators		
3.1. Population (millions) (2014)	30	In 2014, the population of Malaysia increased by 1.6%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
3.2. Urban Population (%) (2014)	74%	[World Bank, Data Catalog, Indicators, Urban Population (2015) <data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>]
3.3. Number of Households (millions) (2014)	6	In 2014, the number of households in Malaysia increased by 1.6%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
3.4. Population Density (people per square km) (2014)	91	[World Bank, Data Catalog, Indicators, Population Density (2015) <data.worldbank.org/indicator/EN.POP.DNST>]
3.5. Per Capita GDP (US$ 2014)	$10,933	In 2014, the per capita gross domestic product (GDP) for Malaysia increased by 6% to US $10,933. [World Bank, Data Catalog, Indicators: GDP per capita, current US$ (2015) <data.worldbank.org/indicator/NY.GDP.PCAP.CD> and GDP growth, annual % (2015) <data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>]
3.6. IT Service Exports (2014) (billions of US$)	13.27	In 2014, the value of IT service exports for Malaysia increased by 14.5% to US $13.27 billion. The five-year compound annual growth rate (CAGR) from 2009-2014 was 19.2%. Please note: This 2014 amount is an estimate based upon an average growth rate calculated from previous years. As at January 2016, the 2014 amount was not available in the World Bank Data Catalog. [World Bank, Data Catalog, Indicators: ICT Service Exports US$ (Dec 2015) <data.worldbank.org/indicator/BX.GSR.CCIS.CD>]

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3.7. Personal Computers (2014) (% of households)	66%	In 2014, 66.5% of households in Malaysia had personal computers. This is an increase of 2.1% since 2013 and ranks Malaysia 59 out of 183 countries surveyed. The growth from 2013 is below the five-year CAGR from 2009 to 2014 of 4.6%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>]
4. IT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2015) (Score is out of 10 and covers 167 countries)	5.90	Malaysia's ITU ICT Development Index (IDI) for 2015 is 5.9 (out of 10), resulting in a rank of 64 (out of 167 countries). The 2015 IDI for Malaysia increased by 13.5%, and the IDI ranking improved by seven places from a rank of 71 since 2013. [International Telecommunication Union (ITU), Measuring the Information Society (Dec 2015) <www.itu.int/en/ITU-D/Statistics/Pages/publications/mis2015.aspx>]
4.2. World Economic Forum Networked Readiness Index (NRI) (2015) (Score is out of 7 and covers 143 countries)	4.85	Malaysia has a Networked Readiness Index (NRI) score of 4.85 (out of 7), resulting in a rank of 32 (out of 143 countries) and a rank of 1 (out of 40) in the upper middle income grouping of countries. The 2015 NRI for Malaysia increased by 0.5% and declined from a rank of 30 since 2014. [World Economic Forum, Global Information Technology Report (2015) <reports.weforum.org/global-information-technology-report-2015>]
4.3. International Connectivity Score (2014) (Score is out of 10 and covers 52 countries)	5.89	Malaysia has an International Connectivity Score of 5.89 (out of 10), resulting in a rank of 3 (out of 26) in the resource-driven grouping of countries. [International Connectivity Scorecard (2013) <www.connectivityscorecard.org>]
5. Internet Users and International Bandwidth		
5.1. Internet Users (millions) (2014)	20	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
5.2. Internet Users as Percentage of Population (2014)	67%	In 2014, 67% of the population in Malaysia used the Internet, resulting in a ranking of 51 out of 199 countries surveyed. This represents an increase of 1.8% since 2013. The growth from 2013 is below the 5-year CAGR from 2009-2014 of 3.7%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>] Note: There may be some variations as to how countries calculate this. Some countries base this upon all or part of the population, such as between 16 and 72 years of age.
5.3. International Internet Bandwidth (2014) (bits per second per Internet user)	27,173	The International Internet Bandwidth (per Internet user) of Malaysia has increased by 66% since 2013. The growth from 2013 is above the five-year CAGR from 2009-2014 of 24.7%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
5.4. International Internet Bandwidth (2014) (total gigabits per second [Gbps] per country)	554	Malaysia has increased its International Internet Bandwidth by 70% since 2013 to 554 Gbps and is ranked 44 out of 215 countries surveyed. The growth from 2013 is above the five-year CAGR from 2008-2013 of 31.7%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (millions) (2014)	2	Malaysia has decreased the number of fixed broadband subscribers by -1% since 2013 to 2 million, and is ranked 37 out of 215 countries surveyed. The decrease from 2013 is below the five-year CAGR from 2009-2014 of 13.1%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
6.2. Fixed Broadband Subscriptions as % of households (2014)	39%	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: This may be skewed by business usage in some countries.
6.3. Fixed Broadband Subscriptions as % of population (2014)	10%	Malaysia has increased its fixed broadband subscriptions (as a % of the population) by 2.5% since 2013, which is below the five-year CAGR from 2009-2014 of 12.6%. This ranks Malaysia 92 out of 215 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
6.4. Fixed Broadband Subscriptions as % of Internet users (2014)	12%	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2014) <www.itu.int/ITU-D/ict/publications/world/world.html>]

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7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (millions) (2014)	45	In 2014, Malaysia increased the number of mobile cellular subscriptions by 4.5% and is ranked 30 out of 215 countries surveyed. The number of subscriptions account for 151% of the population. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc.).
7.2. Active Mobile Broadband Subscriptions per 100 inhabitants (2014)	58	Malaysia has decreased the number of active mobile-broadband subscriptions (as a % of the population) by 0% since 2013. This ranks Malaysia 53 out of 215 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: This refers to the sum of standard mobile-broadband and dedicated mobile-broadband subscriptions to the public Internet. It covers actual subscribers, not potential subscribers, even though the latter may have broadband-enabled handsets.
7.3. Number of Active Mobile Broadband Subscriptions (millions) (2014)	18	In 2014, Malaysia increased the number of active mobile-broadband subscriptions by 1% and is ranked 29 out of 215. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]