



LGBT+ Business Climate Score

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The business Climate Score rating is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.

1.5

0	1	2	3	4	5	6	7	8	9	10
1. Are consensual homosexual acts between adults legal?			0 <i>No</i>		6. Is sex reassignment surgery at birth for intersex children prohibited?			0 <i>No</i>		
2. Are marriage or civil unions for same-sex couples available?			0 <i>No relationship recognition</i>		7. Are sexual orientation and gender identity discrimination in the provision of goods and services prohibited?			0 <i>No</i>		
3. Is being LGBT+ punishable by death?			0.5 <i>No but extrajudicial killings occur</i>		8. Is there a US State Department warning against travel for LGBT+ individuals?			0.5 <i>No official warning but restrictions and potential difficulties detailed</i>		
4. Are sexual orientation and gender identity discrimination in employment prohibited?			0 <i>No</i>		9. Do companies sponsor Pride?			0 <i>No</i>		
5. Can transgender people legally change their gender markers?			0 <i>No</i>		10. Are there laws prohibiting freedom of assembly or speech for LGBT+ people (i.e. "anti-propaganda laws", media gags, etc)?			0.5 <i>No law prohibiting freedom of assembly, but certain laws have been used to restrict freedom of speech for LGBT+ people, including censoring LGBT content in films and other multimedia forms</i>		

How to Use This Brief

As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

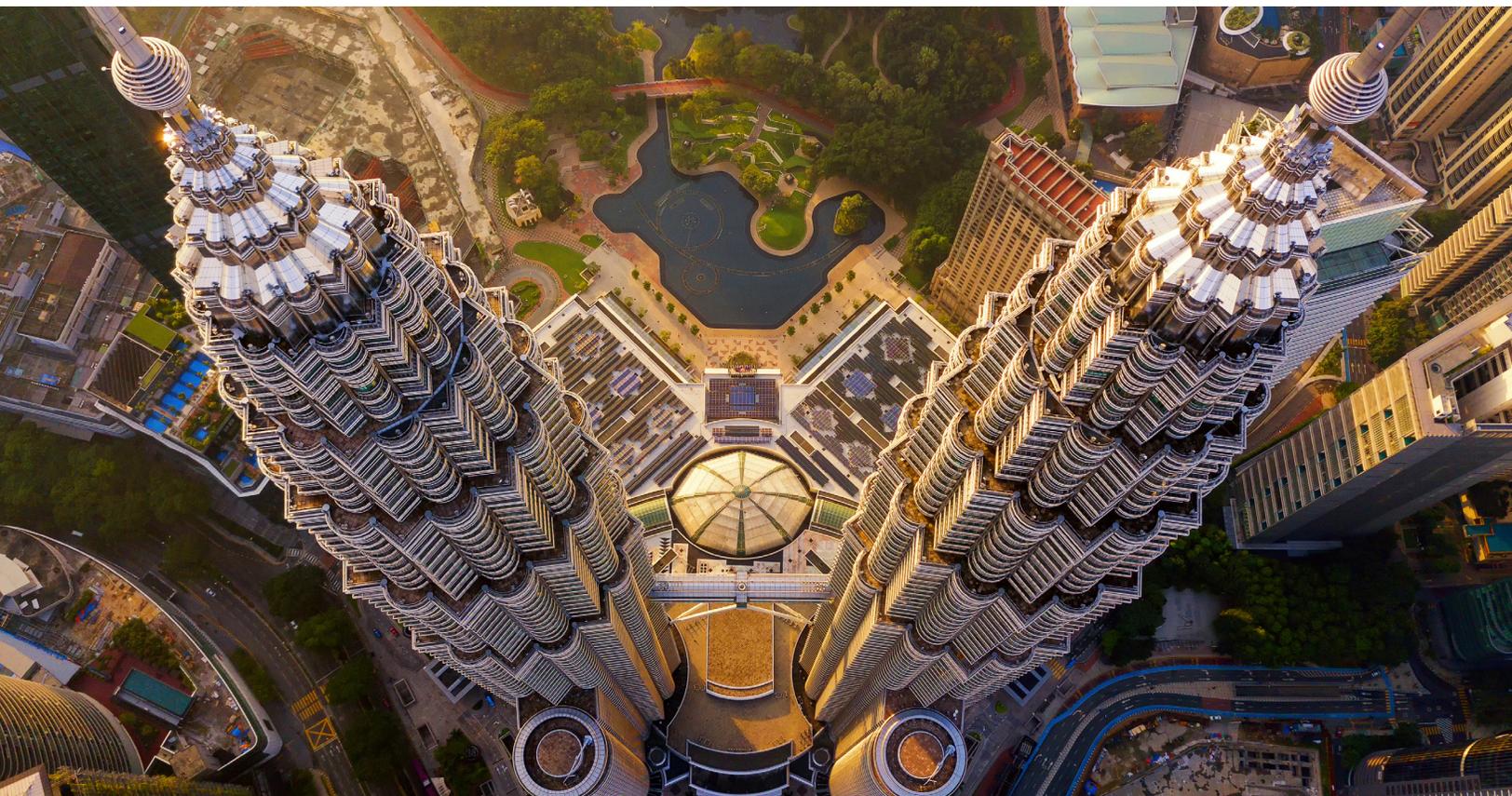
Internal Staff: Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

Government Leaders: In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

In-country Business Partners: In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

Talking Points

- In Malaysia, the LGBT community is often regarded as a taboo. Strict conformity to the traditional binary classification of gender has resulted in discrimination against the LGBT community and violations of their human rights. Their life has become a challenge and the LGBT community can be classified as a marginalized group.
- Consensual same-sex acts are illegal and punishable by imprisonment in Malaysia under Federal law and Sharia law, and same-sex marriage is not recognized in Malaysia. Such an anti-LGBT environment makes it hard to build a case for doing business in Malaysia or moving top LGBT+ talent here.
- In 2018, the Islamic Development Department of Malaysia (Jakim) estimated that the number of gay men in Malaysia was estimated to be 310,000 (approximately 1% of the population) and the transgender population was about 30,000.



Current Status of LGBT+ People

Legal Status of the Lesbian, Gay, and Bisexual Community

- Malaysia has a dual legal system comprising secular laws and Islamic laws (or Sharia laws). Article 3 of the Federal Constitution provides that Islamic law is a state law matter with the exception of the Federal Territories of Malaysia. Consensual same-sex acts are illegal in Malaysia and punishable under federal law, and the penalties thereunder include fines, prison sentences of up to 20 years and whipping. In some Malaysian states (e.g., Syriah), Islamic Sharia laws, which only apply to Muslims, criminalize homosexual acts with up to three years imprisonment and whipping.
- Same-sex marriage is void and there is no legal recognition of same-sex relationships in Malaysia. On July 16, 2019, Dr Mahathir Mohamad, the Malaysian prime minister, described in his Cambridge Union talk same-sex marriage as a "regressive way of thinking" and reiterated that Malaysia will not recognize same-sex marriage.
- The Federal Constitution provides that no person shall be deprived of his life or personal liberty, and protects freedom of expression. There are no LGBT-specific restrictions with respect to such rights. The Federal Constitution also protects the right to equality before the law for citizens regardless of religion, race, descent, place of birth or gender. Sex orientation and gender identity are not included in this list.
- The Malaysian military has the toughest stand against homosexuality in Asia. According to the LGBT Military Index 2014, Malaysia came in 92nd out of a list of 103 countries, making its armed forces the 12th most hostile towards homosexuals. Gay people are not allowed to serve in the military. The LGBT Military Index shows both male and five females were criminalized for homosexual activities, and people were excluded from the military on grounds of sexual orientation and gender identity.

Legal Status of the Transgender and Gender-Diverse Communities

- Transgender people in Malaysia face widespread stigma and human rights violations. Muslim transgender people are subject to arrests, harassment and assault from federal, state, and local Islamic religious authorities, and often avoid reporting these incidents for fear that the police will not protect them.
- The Federal Constitution prohibits discrimination based on gender, but gender identity is not included. So far it is unclear how transgender issues are interpreted in the context of gender equality.
- For a Muslim transgender person, Sharia law prohibits cross-dressing. In 2014, the Court of Appeal of Malaysia ruled that the state's Sharia cross-dressing laws are unconstitutional. However, the ruling was subsequently overturned on appeal by the Federal Court on a technicality, citing improper procedures used to challenge the Sharia law and without ruling on the substance of the constitutional challenge. Laws against cross-dressing remained in force in the rest of Malaysia's 13 states and its Federal Territories and are used against transgender people. Non-Muslim transgender people are targeted under public decency acts, often for attending group events.
- There is no legal procedure in Malaysia expressly allowing transgender people to change their names and gender markers on their identity cards. Amendment of gender on a person's ID card is not allowed unless there is a mistake or clerical error. Transgender people who have approached the National Registration Department to request such changes have been rejected. In July 2016, a High Court ruled that a person who had undergone gender reassignment surgery be declared a man and that the National Registration Department amend the person's ID card to reflect such change. But the National Registration Department successfully appealed the ruling in 2017. The Court of Appeals accepted the National Registration Department's argument that physical condition only, without testimony on chromosomes, is insufficient for change of sex marker on the ID card.
- Previously, transgender individuals could undergo gender reassignment surgery. In 1983, the National Fatwa Council of Malaysia issued a fatwa (religious ruling) prohibiting sex-reassignment surgery (SRS) among the Muslim population in Malaysia, except for intersex people, after the introduction of a fatwa regarding sex changes. Since then, few surgeons are willing to offer this service.

Government Statements and Actions

Government Statements

- Negative portrayals of LGBT+ people by senior governmental officials and the mainstream media compound the vulnerability of the LGBT+ community. The Malaysian government's increasing move towards a more conservative version of Islam has also made things more difficult for the LGBT+ community over the past few years.
- On July 10, 2020, Religious Affairs Minister Dr Zulkifli Mohamad al-Bakri announced in a social media post that he had given the Jawi (Federal Territories Islamic Religious Department) authorities "full license to carry out its enforcement actions" against transgender persons in Malaysia. He elaborated that his order goes beyond arresting transgender persons, but also giving them "religious education" so that they will "return to the right path."
- In June 2019, Prime Minister Mahathir Mohamad said in a speech that Malaysia cannot accept same-sex marriage or LGBT rights, saying "I don't understand gay marriage. In Malaysia there are some things we cannot accept, even though it is seen as human rights in Western countries," adding that same-sex marriage is a "regressive way of thinking" and that marriage was about having children, and he claimed that the institution of marriage has almost been discarded.
- Ex-Malaysian Prime Minister Najib Razak made clear in a speech in August 2015, at an international Islamic moderation seminar in Selangor, that he believed Malaysia should not support LGBT rights. Razak stated that his administration would do its best to uphold human rights but only within the confines of Islam and that Malaysia cannot defend the more "extreme aspect of human rights," such as gay, lesbian and transsexual rights.

Government Actions

- In March 2019, authorities questioned organizers of an International Women's Day march because of what were deemed to be pro-LGBT speeches and slogans. The federal minister of religious affairs said that the march was a "misuse of democratic space" because of the participation by LGBT individuals. The Center for Independent Journalism criticized local media for disproportionately covering their reporting on LGBT issues and for "using negative words in their headlines claiming that it was culturally inappropriate to raise the issue of fundamental human rights for the LGBTQ-identifying community. In June 2019, the Islamic Development Department of Malaysia



(Jakim) stated that a gender and sexuality conference to be held in Kuala Lumpur later in the year should be cancelled because it "clearly promotes LGBT in Malaysia and is against Islam and the Federal Constitution.

- In August 2018, in a homophobic crackdown, police and government officials raided a small LGBT night club. Twenty people were arrested. A week before the raid, two lesbians were punished by caning for having sex in a car. After the raid, government minister Khalid Samad talked on the motivation behind the raid, "[H]opefully this initiative can mitigate the LGBT culture from spreading into our society".
- In 2017, the health ministry launched a contest for young people on how to "prevent" homosexuality, sparking protests from activists; and Malaysia's Film Censorship Board tried to prevent the release of *Beauty and the Beast* over a "gay moment", eventually caving in to pressure and allowing the movie to be shown.

Socio-cultural Environment for LGBT+ People

Status of LGBT+ Organizing and Community

- There is no official or national organization committed to LGBT+ rights in Malaysia. In the past few years, a few voluntary nonprofit LGBT+ organizations emerged, but still the spaces for LGBT+ to claim for themselves are limited. The major concern for organizations and individuals to work towards positive change is security; especially after several LGBT+ persons receiving rare jail sentences in 2019, the LGBT+ community is on high alert.
- *Sekesualiti Merdeka*, an annual gay rights festival in Malaysia, started in 2008 and was banned in 2011 by the government.
- In 2017, a three-day LGBTI event that included a pride march organized by a group of students at Taylor's University, located near Kuala Lumpur, was cancelled by the university following protests by pro-Islamists' blogs.

Cultural Views of the LGBT+ Community

- A 2013 Pew Research Center opinion survey showed that 9% of the Malaysian population believes homosexuality should be accepted by society, while 86% believe it should not. Malaysia was one of the Asian countries polled with the least acceptance. People over 50 years old were more accepting than younger people: 11% of people over 50 believe it should be accepted, 10% of people between 30 and 49 and 7% of people between 18 and 29. There, however, has been a slight increase in acceptance since 2007, when a Pew Research poll showed that 8% of the population believed homosexuality should be accepted.
- Some transgender women in Malaysia reported abusive arrests have diminished since an appeal court ruled a state's cross-dressing laws unconstitutional in 2014 despite the Federal Court subsequently overturning the ruling on a technicality. Currently, transgender women primarily fear violence from ordinary people. A 2018 survey by a local transgender rights group reported more than two-thirds of transgender women experienced some form of physical or emotional abuse. Multiple LGBT people reported a spike in anti-LGBT hate speech on the internet since 2018.
- On January 2019, a transgender woman was killed in Klang, the third such event in Malaysia in fewer than two months.
- In August 2018, a transgender woman named Suki was beaten by eight men so severely that doctors had to remove her spleen.
- In December 2018, two men were pulled and beaten by attackers for allegedly engaging in same-sex intimacy.
- In 2017, one transgender woman named Sameera Krishnan was stabbed and shot to death in Kuantan and an 18-year-old student, T. Nhaveen in Penang, was beaten to death by high school classmates who had bullied him for being "effeminate".

Local Leaders Advocating for Equality

As appropriate, Out Leadership encourages you and your company to engage in safe and cautious discussion with local leaders around LGBT+ equality and to leverage your firm's influence to support their work. Due to conditions on the ground, activists in Malaysia are currently keenly focused on ensuring the physical safety of LGBT+ people there. [Our partners at Human Rights Watch and Outright Action International are well networked with activists in Malaysia should your company be able to offer support.] *[Drafting note: to be confirmed by OUT Leadership]*

Impact of LGBT Discrimination on Business & Talent

1 • NO RISK

2 • LOW RISK

3 • MODERATE RISK

4 • NOTABLE RISK

5 • HIGH RISK

BRAND RISK **NOTABLE RISK**

In terms of supporting LGBT+ rights, there is notable brand risk to operating in Malaysia.

CLIENT RISK **NOTABLE RISK**

Entrenched cultural and political homophobia create a notable risk that LGBT+ clients may feel alienated by business conducted in Malaysia.

TALENT RISK **HIGH RISK**

Consensual same-sex relations and sex marriage are not legal in Malaysia, making it unwise to send LGBT+ talent abroad, where they'll likely face discrimination and even punishment for same-sex relations, and their spouses won't be recognized.

MARKETING CHALLENGES **HIGH RISK**

Given same-sex relationship being punishable under Federal and States law, as well as the government authorities' negative attitude for pro-LGBT speeches and media promotion of an LGBT agenda, makes it virtually impossible to market to LGBT+ consumers in Malaysia.





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