THE LEGAL LANDSCAPE

In Stonewall’s Global Workplace Equality Index, broad legal zoning is used to group the differing challenges faced by organisations across their global operations.

Malaysia is classified as a Zone 3 country, which means sexual acts between people of the same sex are illegal.

Two further zones exist. In Zone 1 countries, sexual acts between people of the same sex are legal and clear national employment protections exist on grounds of sexual orientation. In Zone 2 countries, sexual acts between people of the same sex are legal but no clear national employment protections exist on grounds of sexual orientation.

<table>
<thead>
<tr>
<th>FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY</th>
<th>FAMILY AND RELATIONSHIPS</th>
<th>EQUALITY AND EMPLOYMENT</th>
<th>GENDER IDENTITY</th>
<th>IMMIGRATION</th>
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<td>Article 10 of the Federal Constitution protects the rights to freedom of speech, expression and peaceful assembly of citizens. These rights can be restricted but there are no LGBT-specific restrictions.</td>
<td>Section 377A of the Malaysian Penal Code criminalises ‘carnal intercourse’, with a penalty of up to 20 years of imprisonment and possible whipping. State Sharia laws criminalise same-sex sexual acts with a penalty of fine, imprisonment and whipping. A marriage is void if the parties are not respectively male and female, as provided by Section 69(d) of the Law Reform (Marriage and Divorce) Act (1976).</td>
<td>There are no laws prohibiting discrimination based on sexual orientation and/or gender identity. Article 8 of the Constitution protects the right to equality before the law for all citizens regardless of religion, race, descent, place of birth, or gender. Sexual orientation and gender identity are not included in this list.</td>
<td>The legal gender and name of a person cannot be changed unless errors were made under Section 27 of the Births and Deaths Registration Act (1957) or Section 62(1)(e) of the National Registration Act (1959). However, it was decided in a recent High Court case that a person who had undergone gender reassignment surgery be declared a man and that the National Registration Department amend the person’s identity card to reflect this change.</td>
<td>There is no mention of same-sex partners in immigration laws.</td>
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<td>Section 37(e) of the Communications and Multimedia Act (1998) prohibits publishing content that is not deemed to be in-line with public policy. This has included depictions of LGBT people and issues.</td>
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<td>There is no legal recognition of same-sex relationships. Laws do not currently exist for same-sex couples to adopt children.</td>
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This overview is for guidance purposes only and does not constitute, nor should it be interpreted as a substitute for, detailed legal advice. If you have any specific legal concerns, always consult with local legal experts.
How do Malaysian laws influence the everyday lives of LGBT people?

There are Malaysian laws governing the consensual sexual acts and behaviour and LGBT people. Islamic laws banning cross-dressing are used against Muslim trans people. Under these laws, trans people are often arrested and trans women have their hair shaved off, which can be very traumatic. There has also been an unprecedented number of raids conducted by the religious authorities at trans events since some groups challenged the cross-dressing laws in court.

Non-Muslim trans people are targeted under public decency acts, often for attending group events. A remaining British colonial law prohibits same-sex sexual activity, with a penalty of up to 20 years imprisonment and whipping. This has been used against the former deputy prime minister, who was accused of engaging in same-sex sexual activity. He served six years in prison before the conviction was overturned but is serving a second prison term under different sodomy charges, supposedly until June 2018. All of these laws make LGBT people vulnerable to blackmail and to physical and verbal abuse from family, strangers and authorities. They also make LGBT people vulnerable to losing their jobs and security and prevent them from being able to be themselves.

Are there groups within the LGBT community that are specifically vulnerable?

The trans community is targeted heavily. As the state continues to appeal to Islamic populist sentiments, there is an increased targeting of Muslim LGBT people, with media linked to the government outing LGBT activists and revealing events. Young LGBT people are also particularly vulnerable, especially if they live in smaller towns. They are often rejected by their families and are on their own.

A few new LGBT groups have emerged in the past two years, but there are still too few places that young LGBT people can claim for themselves. However, some private universities are supportive of LGBT students and encourage discussion on related topics. Other extremely marginalised groups are poor LGBT people as well as asylum seekers and undocumented migrants.

How do LGBT organisations work towards change in Malaysia?

It’s difficult for organisations and individuals to work towards positive change. The concern is mostly one of security. People fear they will be arrested or fired from their jobs and often have to cancel awareness-raising events. However, the different parts of the social movement in Malaysia are very collaborative.

Often LGBT rights advocates are able to exercise influence through other human rights groups focusing on multi-layered issues, such as health and education. LGBT artists have also used art as a tool of expression to work towards change for LGBT people.

What can employers do to support their LGBT employees and help affect positive change?

Inside the workplace, organisations need to make sure that anti-discrimination policies don’t only exist on paper but are also applied and followed through. Organisations should also make clear that employees’ involvement in LGBT rights activism outside the workplace won’t negatively affect them at work. Collaborating with LGBT and human rights groups can help organisations understand the local context and informs initiatives. However, these initiatives must go beyond the workplace. Organisations should support LGBT people through working on multi-layered corporate social responsibility actions. They can collaborate with LGBT people and civil society at large and support them with events, arts or other activities. Encouraging unions to come in can also help to advance workplace equality for LGBT people in the entire country.
LGBT INCLUSION IN THE WORKPLACE

THE FOUNDATIONS

There are several steps employers can take to start creating a supportive workplace environment for their LGBT employees in Malaysia:

- Consult local LGBT organisations to understand the local context for LGBT people
- Introduce explicitly LGBT-inclusive anti-discrimination and bullying and harassment policies
- Train HR staff and promote inclusive policies
- Carry out LGBT-inclusive diversity training
- Encourage senior managers to promote their commitment to LGBT inclusion and equality

NEXT STEPS

Once a foundation has been built, there are further steps employers can take to bring about positive change for LGBT people. For example:

- Establish employee engagement mechanisms like LGBT networks and allies programmes
- Carry out LGBT awareness-raising events
- Partner with local LGBT groups to advance LGBT equality beyond the workplace
- Work with suppliers and partners to advance LGBT workplace equality

Employers can improve their initiatives by participating in Stonewall’s Global Workplace Equality Index - a free benchmarking tool offering a clear roadmap to LGBT inclusion in the workplace. [www.stonewall.org.uk/gwei](http://www.stonewall.org.uk/gwei)

LEARN FROM STONEWALL’S GLOBAL DIVERSITY CHAMPIONS

BP

Aligned with the Group’s Diversity & Inclusion goals, BP in Malaysia developed and implemented a series of initiatives focused on challenging unconscious biases and being inclusive of all diversity strands, including sexual orientation and gender identity. The sessions educated employees on the value of inclusion and the importance of having conversations rather than making assumptions. The content of these initiatives matches BP’s values and behaviours, and demonstrates BP’s commitment towards diversity and inclusion in the workplace. The ask of employees is simple – ‘It starts with you – and you can make a difference’.
STONEWALL’S GLOBAL DIVERSITY CHAMPIONS PROGRAMME WORKS WITH 44 ORGANISATIONS OPERATING IN MALAYSIA.
Our team of workplace advisors offers tailored one-to-one advice on how to create LGBT-inclusive workplaces globally. If you would like to receive support or want to be featured as a case study in one of our Global Workplace Briefings, contact Stonewall.

FIND LGBT GROUPS AND COMMUNITIES

Justice for Sisters – an organisation aiming to end violence and discrimination against trans women through providing resources, legal advice and raising funds to support trans women who face prosecution in Islamic law courts. www.justiceforsisters.wordpress.com

www.groups.yahoo.com/neo/groups/LPG-community/info

Pink Triangle Foundation Malaysia – an organisation working on HIV/AIDS and sexuality issues by offering support, group seminars, care services related to HIV and sexuality, as well as operating a telephone counselling line. www.ptfmalaysia.org

PLUPenang – a support and community group for LGBT people in Penang State, providing a safe space and organising recreational events.
www.plupenang.crystaldzi.com

Seksualiti Merdeka – a group providing a platform for LGBT human rights issues, working to empower Malaysians who have been marginalised for their sexual orientation and gender identity.
www.facebook.com/Seksualiti-Merdeka-229317507083197/

Queer Lapis – an online community group for queer people and their allies.
www.queerlapis.com

GET INVOLVED
THE ANNUAL LGBT CALENDAR
In 2017, a Pride event that was to take place in Kuala Lumpur was cancelled.

Every effort has been made to ensure that the information contained in this Global Workplace Briefing is correct as of July 2018. Introducing any new initiative requires careful consideration and the safety of staff should always be of paramount importance. This overview is for guidance purposes only and does not constitute, nor should it be interpreted as a substitute for, detailed legal advice. If you have any specific legal concerns, always consult with local legal experts. Stonewall Equality Ltd, Registered Charity No 1101255 (England and Wales) and SC039681 (Scotland)

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