

Malaysia

Capital City	Kuala Lumpur
Major Financial Center	Kuala Lumpur
Population (2020)	32.7 million
Location	Southeast Asia, peninsular between Thailand and Singapore, and Malaysian Borneo bordering Indonesia, and Brunei
Major Languages	Malay (official), English, Chinese dialects, Tamil, Telugu, Malayalam
Legal System	Common Law
Square Miles	127,355 sq mi
Gross Domestic Product (2020)	USD 336 billion
Major Exports	Electronic equipment, petroleum and petroleum products, gas, chemicals, palm oil
Currency	Ringgit (RM)
U.S. Dollar Exchange Rate (as of January 2020)	USD 1 = RM 4.04
Euro Exchange Rate (as of January 2020)	EUR 1 = RM 4.94

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Chapter 25

What Type of Entity Should We Use to Set Up Our Business?

One of the first issues faced by prospective investors in Malaysia is choosing the appropriate type of legal structure through which to operate their business. Generally, the following are the most common structures adopted by foreign investors doing business in Malaysia:

- i. Private limited company
- ii. Branch office
- iii. Representative office
- iv. Regional office

Malaysia law defines a “foreign company” as:

- (a) a company, corporation, society, association or other body incorporated outside Malaysia: or
- (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other office of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia.

Private Limited Company

The private limited company (“company”) is the most commonly adopted structure for doing business in Malaysia. This type of company must always include the words “Sendirian Berhad” or the abbreviation “Sdn. Bhd.” in its name.

A company must be owned by a minimum of one shareholder and managed by a minimum of one resident director. The liability of each shareholder is generally limited to the amount unpaid on the shares held (if any) and shareholder(s)' direct participation in the company's affairs is normally quite limited. It is the directors who are responsible for managing the company's affairs and who owe various fiduciary duties to the shareholder(s) and the company (duty of care, duty to act honestly, etc.).

Unlike a branch office, representative office, and regional office, a limited company is treated under Malaysian law as a stand-alone legal entity.

EXAMPLE: If a multinational wishes to establish a subsidiary in Malaysia it will likely do so as a private limited company. If individual investors wish to establish a stand-alone business to generate income in Malaysia, they will most likely do so as a private limited company.

EXAMPLE: Suppose a multinational establishes a wholly-owned subsidiary in Malaysia as a limited company. That new limited company then executes a contract with another Malaysian company to supply construction materials, but then fails to supply those materials. In this situation, the Malaysian purchaser would generally be limited to suing the Malaysian subsidiary of the multinational for the breach of contract, not its headquarters overseas.

Branch, Representative Office, and Regional Office

Many times, however, foreign investors will not want to operate as a limited company. This is most likely to be true when a multinational company seeks to establish a presence in Malaysia, but does not wish to establish a separate legal entity. For accounting, tax, and other reasons, the multinational company may instead want the Malaysia office to function as a part of the head office overseas. If that is the case, the multinational will normally choose to establish a representative office, branch office, or regional office, not a limited company.

Malaysian law treats each of these three entities as extensions of the head office overseas, not as separate legal entities. The employees are the employees of the foreign company. Their activities are the activities of the head office.

There is no requirement for a local agent for a representative office or a regional office.

Branch

In many ways the branch structure is very similar to that of a limited company. Both are allowed to earn income in Malaysia, and similar tax rules apply to both. Also, the rules governing the activities of a branch are the same as the rules governing the activities of a foreign-held limited company.

It is with issues concerning liability where the branch and limited company structures fundamentally differ. For a limited company, liability arising from the actions of the business or its employees is generally limited to the Malaysian company only. The same is not true for a branch. Malaysian law treats a branch as merely an extension of its head office overseas.

EXAMPLE: A foreign company establishes a branch in Malaysia, and the branch thereafter enters into a contract to supply computer-related services to a Malaysian purchaser. If the branch fails to perform its obligations under the contract, the Malaysian purchaser could then sue the head office of the foreign company directly.

Amongst the legal requirements to establish a branch office is that it will be required to appoint a local agent, who is either an individual residing in Malaysia or a Malaysian registered company.

EXAMPLE: A German company establishes a branch office in Malaysia and appoints a Malaysian national as its local agent. The German company is later sued in Malaysian civil court by a third party. In this situation, the Malaysian court may view the address of the local agent as the German company's address in Malaysia for purposes of effecting service of process, notices, etc.

Representative Office and Regional Office

The representative office and regional office structures are very different from those of the branch office and limited company. Unlike a branch or limited company, representative offices and regional offices are not allowed to earn income. Just as with a branch, representative offices and regional offices merely serve as extensions of their head offices overseas. They are not stand-alone legal entities. They are also strictly regulated to performing specific functions, designated by the Malaysian Ministry of International Trade and Industry, on behalf of their head offices overseas.

The main criteria to set up a representative office / regional office in Malaysia are:

- i. The representative office / regional office should be completely funded from sources outside of Malaysia;
- ii. The operational expenditure of the representative office / regional office must be at least RM300,000 per annum or such higher figure as proposed by the representative office / regional office.

A representative office and a regional office are allowed to carry out the following activities:

- i. Planning or coordinating business activities
- ii. Gathering and analysis of important information or undertaking feasibility studies on investment and business opportunities in Malaysia and the region
- iii. Identifying sources of raw materials, components, or other industrial products
- iv. Undertaking research and product development
- v. Acting as a coordination center for the corporation's affiliates, subsidiaries, and agents in the region
- vi. Other activities which will not result directly in actual commercial transactions

Representative offices and regional offices are specifically prohibited from engaging in the following activities:

- i. Engaging in any trading (including import and export), business, or any form of commercial activity.
- ii. Leasing warehousing facilities; any shipment, transshipment, or storage of goods shall be handled by a local agent or distributor.
- iii. Signing business contracts on behalf of the foreign corporation or providing services for a fee.
- iv. Participating in the daily management of any of its subsidiaries, affiliates, or branches in Malaysia.

Capital Required

The rules governing the amount of investment required for a limited company are set forth in Chapter 26.

A representative office and a regional office are not subject to any minimum capital requirement or any equity condition; however, they must both be completely funded for all staff salaries, rent, and other operating expenses to be paid from sources outside Malaysia.

Branch Registration and Official Fees

A Malaysian branch of a foreign company to be located in Kuala Lumpur is required to register with the Companies Commission of Malaysia (CCM) before commencing operations. If the branch is to be located outside of Kuala Lumpur, then the foreign company has the option of either registering with the CCM in Kuala Lumpur or with the local office of the CCM in the state in which the branch is to be established.

For a branch office, the registration process is as follows:

- i. Conduct a name search to check the availability of the name to be used to register the foreign company (which should be the same as registered in the place of origin). Application to confirm name availability should be submitted to CCM via the MyCoID 2016 portal at <https://mycoid2016.ssm.com.my/> along with the prescribed fee of RM50 for each name. The approved name will be valid for thirty (30) days from date of approval.
- ii. Applicant is required to submit the following documents to CCM within thirty days from date of approval of proposed name:
 - (a) Application for Registration for foreign company;
 - (b) A certified copy of the certificate of incorporation or registration of the head office overseas;
 - (c) A certified copy of the head office overseas' statute or Memorandum and Articles of Association or other instrument defining its constitution;
 - (d) If the directors residing in Malaysia who are members of the local board of directors of the head office overseas, a memorandum stating their powers that are executed by or on behalf of the head office overseas, should be submitted to CCM;
 - (e) A memorandum of appointment or power of attorney authorising one or more persons (agent) residing in Malaysia, to accept on behalf of the head office overseas, service of process and any notices required to be served on the branch/head office overseas;
 - (f) Statement by the agent confirming his consent for the appointment;
 - (g) Copy of application of reservation of name and copy of email from CCM approving the name of the head office overseas.

Note that a certified translation of any of the above documents in Bahasa Malaysia or English is required if such documents are in languages other than Bahasa Malaysia or English.

The official fees associated with registration of a branch depend on the authorized share capital of the head office overseas and are as follows.

Foreign Company Share Capital (RM Equivalent)	Applicable Official Fee
Up to RM1,000,000	RM 5,000
RM 1,000,001 – RM 10 Million	RM 20,000
RM 10,000,001 – RM 50 Million	RM 40,000
RM 50,000,001 – RM 100 Million	RM 60,000
RM 100,000,001 and above	RM 70,000

Also, note that if the head office overseas establishing the branch has no share capital, a flat rate of RM70,000 will be applicable.

The approval process normally takes one working day only, provided that the application and all relevant documents are in order and procedures have been complied with. Upon approval, a notice of registration of foreign company will be issued by CCM.

iii. After registration of the foreign company is completed, the following must be observed:

- (a) any future changes in the particulars of the foreign company or the foreign company's name shall be filed with the CCM within 14 days from date of change together with the prescribed fee;
- (b) any future changes in the foreign company's share capital shall be notified to the CCM within 14 days of such change;
- (c) proper accounting records for the foreign company shall be kept; and
- (d) lodging with the CCM of annual tax returns once every calendar year not later than 30 days from the anniversary of its registration date.

Representative Office and Regional Office Registration

An application with complete information for the establishment of a representative office and a regional office (excluding banking and financial services) should be submitted in three sets to the Chief Executive Officer of the Malaysian Industrial Development Authority (MIDA), MIDA Sentral, No. 5, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia, Tel: (603)2267-3633,

Fax: (603)2274-7970, Email: investmalaysia@mida.gov.my, Website: www.mida.gov.my.

The application must be signed by the authorised person from the applicant company accompanied by a cover letter.

The following documents and information are required:

- i. Three sets of Application Form RE/RO-1, which can be obtained from MIDA's official website located at www.mida.gov.my.
- ii. A certified true copy of the Certificate of Incorporation of the parent company
- iii. Latest audited financial statement of Parent Company (2 years)
- iv. Company Profile – English version
- v. If there are foreigners to be appointed as directors, certified true copies of their passports, their resumes, and their certified academic qualifications.

Chapter 26

What are the Legal Issues Associated with the Start-Up of a Company?

There are several legal and practical issues associated with the legal start-up of a private limited company (“company”). The start-up process involves registration with the Companies Commission of Malaysia (CCM), as well as obtaining other government licenses and approvals that may be required, depending upon the business activities the company seeks to engage in. Shelf companies are available in Malaysia and will be discussed in the last section of this chapter.

1. Promoters and Subscribers

The parties responsible for registering the company with the CCM are referred to as the company’s promoters. The promoters (minimum one) must be individuals (not business entities), and they must be available to sign documentation, as required, during the registration process and incur the initial company expenses for the incorporation process.

The subscribers are the parties responsible for subscribing to the first shares of the company and may either be individuals or business entities.

Malaysian law requires a minimum of one subscriber, and the subscribers may or may not have acted as company promoters.

Each subscriber is required to hold a minimum of one share upon the company’s registration; however, they are generally free to transfer those shares to any party, thereafter, if they wish to do so. A subscriber’s liability is normally limited to the unpaid amount on their shares.

2. Directors

The company is required to have a minimum of one director for a private company and two directors for a public company, each of whom must maintain their primary residence in Malaysia and it shall not include an alternate or substitute director.

EXAMPLE: A Korean investor registers a private company in Malaysia, and the new company has five directors. The law requires that a minimum of one of the five directors maintain their primary residence in Malaysia at all times.

It is quite common, as a controlling mechanism, for a company to designate the authority of a director to sign on behalf of the company, whether alone, (for example by the managing director) or together with another director. Also, many companies will impose a requirement that in order to execute documents on behalf of the company, the company seal must be affixed to the document, together with the signatures of two directors or a director together with the company secretary. This makes the physical presence of the company seal another kind of control mechanism.

Note that, unlike shareholders, directors incur legal obligations and substantial liability associated with the actions of the company. A person should carefully take into consideration the substantial liability associated with being a company director before agreeing to be appointed and serve as one.

3. Reservation of Company's Name

The first step of the company registration process is the application for confirmation of availability of the company's proposed name and reservation of the company's proposed name. In order to confirm the availability and reserve the proposed name, the applicant is required to submit the relevant application forms to the CCM online at <https://mycoid2016.ssm.com.my/>. However, this application shall only be made by a person with a registered user name and password with the CCM. Accordingly, most of these applications are submitted via a registered company secretary or a lawyer already having such user name and password.

Applicable law provides that a name is available if it is not:-

- i. undesirable or unacceptable;
- ii. identical to an existing company, corporation or business;
- iii. identical to a name that is being reserved; and
- iv. a name of a kind that violates applicable rules.

CCM has issued additional guidelines on permissible company names which may be found at the following link:

https://www.ssm.com.my/Pages/Legal_Framework/PDF%20Tab%202/guidelines_on_names.pdf

Note that the company name must have the words Sendirian Berhad (which means Private Limited) as part of its name or the abbreviation “Sdn Bhd”.

Note that names such as Chartered, Pioneers, Bumiputra, ASEAN, UNESCO, or a person’s name that is not the name of a director will not be approved by the CCM for incorporation unless consent of the Minister of Domestic Trade and Consumer Affairs has been obtained.

The Registrar has considerable discretion with regard to his consideration of the company names requested. Many times, the first name is rejected for violating one of the four rules stated above, and the applicant will be required to resubmit the application requesting a different name. After the proposed company’s name is approved by CCM, it may be reserved for thirty days from the date of submission of the application for reservation of name or longer period as the Registrar may allow.

The applicant should, therefore, not invest in marketing materials containing the company’s intended name until an approval from the CCM confirming that the requested name has been approved.

4. Constitution

Most companies in Malaysia maintain a Constitution which is referred to as the Memorandum and Articles of Association (“M&A”) under the previous law. The Constitution contains the basic rules, which the company is to follow with regard to calling and holding shareholders and directors’ meetings, the appointment of offices, timing of required meeting, etc.

5. Address

It is the normal situation in Malaysia for the company to maintain an official registered office and a separate business address. The registered office address is usually the address of the appointed company secretary. The business address of the company is the address where the actual place of business of the company is located.

EXAMPLE: A Belgian company establishes a subsidiary in Malaysia to produce wooden furniture and establishes a factory in Penang, Malaysia, but its company secretary resides in Kuala Lumpur, Malaysia. In this situation, the company may choose to have its official registered office address in Kuala Lumpur, while having its primary business address in Penang.

6. Share Capital Requirements

Share capital refers to the total financial responsibility of the company's shareholders with respect to the company. Each individual shareholder may make this investment in the company using either cash or non-cash assets. Under Malaysian law, there are no generally applicable minimum capital requirements for company registration, however, minimum capital requirements may apply in association with work permit / visa requirements (see Chapter 28) or see to specific capital requirements.

7. Official Fees

The registration fees for the incorporation of a company varies from RM 1,000 to RM 3,000, based on the following schedule.

Type of Company	Applicable Registration Fee
Company limited by shares	RM 1,000
Company limited by guarantee	RM 3,000
Unlimited company	RM1,000

8. Timing

Registration of the company can normally be accomplished within two to three weeks, depending on whether all the documents required for incorporation are complete and comply with applicable regulations.

9. Filings

After company registration is completed, other various statutory filings are required to be submitted to the CCM within one month from the date of incorporation. These filings are fairly routine. For instance, the company shall appoint a registered company secretary within thirty the days after incorporation and the company secretary shall be registered with CCM and possess a valid practising certificate issued by CCM.

10. Public Access to Company Details

After the company is successfully registered, many details regarding the company's structure are easily available to the public at the CCM. These details include the company's list of shareholders and directors, registered capital, details of company charges, balance sheet for the preceding year, etc.

The company information can be generated from CCM e-Info Services for a fee of RM 15.00. CCM e-Info Services is an online service which enables users to search and purchase a company profile (ROC) and business profile (ROB) from CCM in Portable Document Format (PDF) file.

11. Purchase of Shelf Companies

As an alternative to incorporating a new company (as outlined above), the applicant may wish to purchase a shelf company. A shelf company is a company which has already been registered by formation agents for the purpose of sale to third parties.

The transfer of ownership of a shelf company is accomplished via a transfer of shares from the initial subscribers to the purchasers of the company.

EXAMPLE: A Taiwanese company has submitted a bid for a telecommunication contract in Malaysia, and the terms of the bid state that the bidder must establish a company in Malaysia very shortly after winning the bid or risk forfeiture. The Taiwanese company wins the bid. In this situation, in order to save time, the Taiwanese company may elect to purchase a shelf company.

Chapter 27

What are the Legal Issues Associated with Operating as a Foreign-Held Company?

The Malaysian government regulates foreign investment within the country through guidelines and policies issued by regulating authorities such as the Ministry of International Trade and Industry (“MITI”), the Malaysian Investment Development Authority (“MIDA”), the Economic Planning Unit (“EPU”), the Central Bank of Malaysia (“CBM”), the Malaysian Securities Commission (“SC”), and others as set forth below.

1. Definition of Foreign

Normally, any project within Malaysia designated as “foreign” requires registration and approval from the designated government agency (see Section 4 below).

Under Malaysian law, the definition of foreign is quite broad and includes any company incorporated outside of Malaysia and any company whose head office or principal place of business is not in Malaysia.

A foreign-held company can generally be defined as a company owned and/or controlled by a non-citizen or by a foreign company whose headquarters is located in a foreign country.

Also meeting the definition of “foreign” is any Malaysian registered company which is legally classified as a foreign interest.

The definition of foreign interest includes foreign nationals (including foreign nationals who have permanent residence in Malaysia) and local companies and local institutions in which foreigners hold more than 50% of the voting rights in that local company or local institution.

EXAMPLE: A US investor registers a company in Malaysia together with a Malaysian investor in which the US investor holds only 25% of the total company shares, and the Malaysian investor 75% of the shares, but the US investor controls 65% of the voting rights through provisions of the shareholders' agreement and company articles. In this situation, the Malaysia registered company would be classified as a foreign interest.

EXAMPLE: Same facts as above, but the shareholding of the US company is 40%, and the company holds only 40% of the total company voting rights. In this situation, the company would not be legally classified as a foreign interest.

2. Bumiputera Requirements

In Malaysia, certain legal rights and privileges are reserved for those Malaysian nationals who qualify as ethnic Malay or aboriginal, also referred to as Bumiputera. These rights and privileges sometimes affect the requirements imposed on foreign investors in Malaysia.

Historically, Malaysian law has imposed the following minimum shareholding quotas on Malaysian registered companies with foreign shareholders through the establishment of the Foreign Investment Committee ("FIC"):

- 30% minimum Bumiputera shareholding
- 40% Malaysian (non-Bumiputera) shareholding permissible
- 30% maximum foreign shareholding permissible

Note that the above quotas have largely been repealed in the past 20 years, however, are still applicable to certain sectors.

The following are the list of sectors allowing up to 100% foreign equity participation.

- Telecommunication
- Healthcare Services
- Professional Services (accounting, legal services, engineering and etc.)
- Distributive trades (departmental stores, courier services and etc.)
- Education Services
- Environmental Services
- Courier Services

The following are the subsectors which have been liberalized with no equity conditions imposed:

- Computer and Related Services
- Transport Services
- Sporting and other recreational services
- Business Services
- Health and Social Services
- Tourism Services
- Rental/Leasing Services without Operators
- Supporting and Auxiliary Transport Services

Note that Bumiputera quotas may still be applicable (or at least a factor) when a company with foreign shareholders requests registration and/or approval to carry on business in Malaysia, depending on the area of investment, the region within which the investment is to be made, the amount of investment to be made, the policy of the controlling government agency, as well as other factors.

3. Nominee Shareholders

Nominee shareholders are usually appointed by foreign-held companies to meet equity requirements as may be imposed by the relevant authorities. Generally, nominee shareholders are individuals or companies that agree to hold shares on behalf of the true owner(s) of the shares. Under this arrangement, typically the nominee shareholder and the true owner execute an agreement stating that the nominee shareholder agrees to hold the shares in name only. The nominee shareholder's conduct and power is governed and limited by a deed of trust or nominee agreement whilst the true owner retains all rights of ownership and control (voting rights, rights to transfer, rights to receive dividends, etc.) of the shares.

Contractual arrangements between foreign investors and Malaysian parties in the form of nominee agreements, voting agreements, etc. are legally enforceable and common place in Malaysia. Investors should note, however, that these arrangements are enforceable only against the party to the contract and are not binding on the company itself.

EXAMPLE: A Canadian company executes a contract whereby a local individual agrees to hold 30% of the shares of a Malaysian registered company on the Canadian company's behalf as its nominee, with the local individual's name to appear on all registration documents. The Malaysian individual later breaches the contract by refusing to transfer dividends received from the Malaysian company to

the Canadian company as set forth in the contract. In this situation, the Canadian company would be limited to only pursuing a legal claim against the Malaysian individual for breach of contract but would have no direct recourse against the Malaysian company.

In Malaysia, there is no legal procedure for compelling a nominee holding shares in a private company (or non-voting shares in a publicly listed company) to disclose the identity of the beneficial owner. However, Malaysian law does state that a company may require any shareholder to inform the company whether the shareholder holds any voting shares as beneficial owner or trustee and if the shareholder holds the shares as trustee, to indicate (so far it is possible to do so) the name and other sufficient particulars of the persons for whom the members holds the shares in order to enable those persons to be identified as well as the nature of their interest.

4. Registration

Unlike many other countries, Malaysia does not have a central registration authority for foreign investment, but rather uses a system whereby specific governmental agencies are responsible for different areas of foreign business.

Each of these agencies has its own procedures, requirements, and approval criteria. The chart below lists the government agencies responsible for specific sectors of foreign investment and the normal processing time for registration approval.

To conduct business in Malaysia, companies would be required to apply for the relevant licences and seek approval from the respective agency to carry on their business in the specific sector. The Malaysian Investment Development Authority (“MIDA”) requires that any foreign company seeking obtain a manufacturing licence must incorporate a local company in Malaysia to apply for the licence.

Sectors of Investment	Responsible Agencies	Processing Time (approx.)
Manufacturing and services	MIDA (http://www.mida.gov.my)	2 to 3 weeks
Manufacturing	MITI (http://www.miti.gov.my)	Within 4 weeks from the date completed information received
Finance and banking	CBM (http://www.bnm.gov.my)	2 to 12 months
Hotel management	Ministry of Tourism (http://www.motour.gov.my)	1 to 3 weeks
Construction Local contractor: time-based frame Foreign contractor: Project-based scheme	Construction Industry Development Board (http://www.cidb.com.my)	1 to 14 days
Consumer marketing consulting	Ministry of Domestic Trade, Co-operatives and Consumerism (http://www.kpdnkk.gov.my)	Minimum period of 1 month
*Real estate	EPU and the relevant State Authorities (http://www.epu.gov.my)	10 days to 2 weeks

*For the rules applicable to foreign ownership of land see Chapter 30.

Chapter 28

What Is the Process to Obtain a Work Permit?

This chapter summarizes the authorizations and application procedures required for foreigners to work in Malaysia under either an Employment Pass or a Visit Pass. The first part of the chapter explains the requirements of each and the second part explains the application processes for each.

1. Employment and Visit Pass

The standard authorization required for foreigners to work and live in Malaysia is either an Employment Pass or a Visit Pass, depending upon the situation. All applications for Employment Passes and Visit Passes shall be made online through the Expatriate Services Division (“ESD”) online system.

ESD offers services to foreign applicants with respect to the issuing of an Employment Pass, Residence Pass-Talent, Professional Visit Pass, Dependant Pass, Long-Term Social Visit Pass, and Social Visit (Temporary Employment) and cooperates with various government agencies to accelerate the application process.

a. Employment Pass

An Employment Pass is a work permit that allows a foreign applicant to work in Malaysia. Work permits are divided into three categories as follows:

Matters	Types of Employment Pass		
	Employment Pass for Expatriate (Category I)	Employment Pass For Expatriate (Category II)	Employment Pass Knowledge/Skilled Worker (Category III)
Salaries (Ringgit Malaysia(RM))	Minimum monthly basic salary of RM10,000 per month.	Basic monthly salary between RM5,000 to RM9,999 per month.	Basic monthly salary between RM3,000 to RM4,999 per month.
Duration	Employment contract up to 60 months/5 years.	Employment contract up to 24 months/2 years.	Employment contract must not exceed 12 months/1 year.
Dependants	Dependants allowed.	Dependants allowed.	Dependants not allowed.
Maids	Hiring of maid(s) is allowed.	Hiring of maid(s) is allowed.	Hiring of maid(s) is not allowed.

An application for an Employment Pass must be completed by the company which intends to hire the foreigner. The requirements for the Employment Pass application are as follows:

- i. the hiring company must be registered with the ESD which is under the purview of the Immigration Department of Malaysia;
- ii. the position is approved by a designated government agencies and/or regulatory bodies or the Expatriate Committee (the Immigration Department of Malaysia act as the Secretariat) overseeing the hiring company (see below);
- iii. the applicant has an employment contract to work in Malaysia for a specified duration (as stated in the table above) with the hiring company;
- iv. the applicant is required to attain a certain amount of salary per month (as described in the table above) from the hiring company. Companies who intend to apply for Employment Pass Category III must seek prior approval from the Ministry of Home Affairs (MOHA) for the exemption of the minimum salary requirement of RM5,000 before they can submit applications for Employment Pass (Category III); and

- v. application for Employment Pass for regulated sectors which falls under the purview of a specific regulatory body must be accompanied by a supporting letter from the relevant regulatory body for each Employment Pass (Category I, II and III) while application for Employment Pass for unregulated sectors will be assessed by the Expatriate Committee. Please refer to Section 2(a) for the list of regulated sectors and the relevant regulatory bodies.

i. Validity Period

The validity period for the Employment Pass depends on the duration of the employment contract of the foreign worker. The Employment Pass can be renewed upon the expiry of the employment period depending on the necessity of the hiring company and the demand in the market which will be assessed and approved by the designated government agencies and/or regulatory bodies or the Expatriate Committee save for Employment Pass (Category III). An Employment Pass (Category III) can only be renewed twice, subject to the review by the Expatriate Committee.

ii. Minimum Requirements

There are certain minimum requirements that must be met by a foreigner who wishes to apply for an expatriate post to work in Malaysia depending upon the position. The minimum requirements are as follows:

- (a) at least three years of experience in the relevant field of the holder of the degree;
- (b) at least five years of experience in the relevant field of the diploma holder; or
- (c) at least seven years of experience in the relevant field of the holder of technical certificate or equivalent.

With regards to an Employment Pass application for an employer company shareholder, he or she must have a minimum of 30% equity in the company and must be a CCM (Companies Commission of Malaysia) registered director and/or hold a key position in the company. Note that any changes in the applicant's allotment of shares will affect the eligibility requirement. Where there are any changes in the applicant's allotment of shares, the applicant needs to officially inform the relevant authority in writing of such changes, together with a copy of the relevant documents. The approval of the application is subject to the discretion of the Expatriate Committee.

iii. Required Documents

The application for Employment Pass must include the following documents and be submitted online to ESD:

- (a) recent passport photo;
- (b) copy of passport (full booklet with cover);
- (c) copy of highest educational certificates (to include copy of Professional certificate (if any));
- (d) latest comprehensive Resume;
- (e) release letter from previous employer in Malaysia (applicable for change of employer only);
- (f) copy of Employment Contract (duly stamped by Malaysia Inland Revenue Board);
- (g) supporting document from the relevant approving agency or regulatory body (if applicable);
- (h) detailed Job Description printed on the company's letterhead;
- (i) latest 3 months' salary slips (applicable renewal of Employment Pass and change of position);
- (j) latest e-BE /e-M tax filing (applicable for renewal of Employment Pass or change of position or change of employer);
- (k) tax payment receipts (if any);
- (l) latest EA Form (for renewal of Employment Pass or change of position or change of employer);
- (m) account statement from Malaysia Inland Revenue Board (only when requested); and
- (n) other specific documents which may be requested.

b. Visit Pass

There are three types of Visit Passes namely:

- i. Professional Visit Pass;
- ii. Visit Pass (Temporary Employment); and
- iii. Social Visit Pass – Internship (SVP-I).

i. Professional Visit Pass

A Professional Visit Pass (PVP) is a pass that allows the holder to enter Malaysia and provide services to a Malaysian company for a short period of time whilst

still being under the employment of a company in his home country. A PVP will only be issued to foreign employees who possess acceptable professional qualifications and/or specialist skills. A person who holds a PVP can enter the country and provide services or undergo practical training with a Malaysian company on behalf of an overseas company.

The position to be undertaken by the foreigner shall be a non-salaried position. The employment contract of the holder of a PVP must be limited to a period of up to twelve months only and shall be restricted to one contract and/or project at a time.

The application should be submitted by the sponsor in Malaysia prior to the entry of the applicant into the country. The payment and endorsement of the PVP can be done at the State Immigration Office. The foreign applicant intending to apply for a PVP must possess professional and/or specialist skills (evidenced by the applicant's education background) and fulfil one of the following categories:

Category	Matters
Category I	Expertise Transfer
Category II	Research
Category III	Training at ESD-registered companies
Category IV	Volunteering
Category V	Exhibitors under regulation of Malaysia Convention & Exhibition Bureau (MyCEB)
Category VI	Student Internship under: <ul style="list-style-type: none"> (a) foreign embassies. (b) ESD-registered companies. (c) hotels.

An approval letter from the relevant regulatory bodies and/or approving authorities must be obtained before the applicant may enter Malaysia for this purpose. Applicants who have entered the country will have fourteen days from entry date to have the PVP sticker endorsed.

The maximum duration of a PVP is twelve months and no extensions are allowed beyond the twelve months.

In the event there is a change of employer while the pass is still valid, the holder of the PVP must cancel the current pass and wait three months before applying for a new PVP with the new employer.

The documents that are required to be submitted online for an application for PVP are as follows:

- (a) application letter from sponsor (must be signed by an authorized endorser);
- (b) recent passport photo;
- (c) copy of passport - passport must have a minimum 12 months validity period;
- (d) offer letter or agreement for services or sponsor contract or internship offer in Malaysia (duly stamped by Malaysian Inland Revenue Board);
- (e) confirmation letter by home-/base-country Company on the applicant's employment;
- (f) detailed Job Description printed on the company's letterhead;
- (g) copy of highest educational certificates;
- (h) latest updated comprehensive Resume;
- (i) Personal Bond form (not applicable to persons of Chinese nationality and citizens of Bangladesh) (duly stamped by the Malaysian Inland Revenue Board) or Security Bond and Bank Guarantee (for persons of Chinese nationality and citizens of Bangladesh);
- (j) letter of Award (LOA) or Contract (if applicable); and
- (k) supporting document from the relevant approving agency or regulatory body (if applicable).

There are also some additional documents required to be submitted for foreigners who will be involved in the following specific activities:

- (a) machinery or equipment installation or commissioning or maintenance;
- (b) secondment in mining activities;
- (c) flight simulator testing;
- (d) internship; and
- (e) hotel trainee.

Information on the additional documents for the specific activities can be obtained from the ESD Guideline which is accessible through <https://esd.imi.gov.my/portal/pdf/tc-esd-quick-guidev3-20181102.pdf>

ii. Visit Pass (Temporary Employment) (VP(TE))

Generally, there are two types of Visit Passes (Temporary Employment), namely:

- (a) Temporary Employment Pass for Foreign Worker; and
- (b) Temporary Employment Pass for Foreign Domestic Helper.

However, in this chapter, we will only focus on one type of Visit Pass (Temporary Employment) that is the Temporary Employment Pass for a Foreign Worker.

(a) Temporary Employment Pass for Foreign Worker

A VPTE for a Foreign Worker is considered as a temporary employment pass for foreign workers who are semi-skilled and/or unskilled which allows them to work in six (6) sectors and six (6) sub-sectors in West Malaysia as follows:

- i. manufacturing;
- ii. construction;
- iii. plantation;
- iv. agriculture;
- v. mining and quarrying; and
- vi. services (which shall be limited to the subsectors as set out under item 6 in the below table).

Note that foreign workers are not allowed to be accompanied by their family members while working in Malaysia and are prohibited from working as front liners. Further, changing of employers or employment sectors is not allowed.

Before an employer can proceed with applying for the VP(TE) for foreign workers, the employer must first make an application for approval of quota of foreign workers from the Foreign Worker One Stop Approval Centre which is under the purview of the Malaysian Ministry of Home Affairs except for employers intending to employ foreign workers in East Malaysia (i.e. Sabah and Sarawak). The approval for employment of foreign workers in East Malaysia falls under the purview of the respective State Government.

The process for the intake of foreign workers involves the employer or owner of the company or authorized representative of the company to be interviewed by the relevant ministries or regulatory agencies as follows:

No.	Sectors	Ministry
1.	Manufacturing.	Ministry of International Trade and Industry (MITI)
2.	Construction.	Construction Industry Development Board (CIDB).
3.	Agriculture.	Ministry of Agriculture and Agro-Based Industries.
4.	Plantation.	Ministry of Plantation Industries and Commodities.
5.	Mining and Quarrying.	Ministry of Natural Resources and Environment.

No.	Sectors	Ministry
6.	Services:	
	a. Restaurant sub-sector (cooks only).	Ministry of Domestic Trade and Consumer Affairs.
	b. Cleaning and sanitization sub-sector.	Ministry of Domestic Trade and Consumer Affairs.
	c. Island Resorts sub-sector.	Ministry of Tourism and Culture.
	d. Hotels sub-sector.	Ministry of Tourism and Culture.
	e. Golf Caddy (men).	Ministry of Tourism and Culture.
	f. Cargo Handling (Airports and Seaports)	Ministry of Transport.

Foreign workers which may be employed must be from the following approved source countries:

- | | |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Thailand; | (i) Pakistan; |
| (b) Cambodia; | (j) Sri Lanka; |
| (c) Myanmar; | (k) Turkmenistan; |
| (d) Laos; | (l) Uzbekistan; |
| (e) Vietnam; | (m) Philippines (male only); |
| (f) Kazakhstan; | (n) Indonesia (male workers prohibited from working in the manufacturing sector); and |
| (g) Bangladesh; | (o) India (limited to high tension cable only in the construction sector; agricultural and plantation sector and cook for restaurants, goldsmith, wholesale or retail, metal or scrap materials, recycling, textile and barbers in the services sectors). |
| (h) Nepal; | |

Below are the requirements that must be met by the foreign workers to be eligible to work in Malaysia under VP(TE):

- i. the foreign workers must be between 18 to 45 years old at the time of application;
- ii. the foreign workers must be certified PASS for the Malaysian Immigration Security Clearance (ISC) at the source countries and certified as fit and healthy by the approved medical centres in the source countries;

- iii. the foreign workers should not be listed as a foreign individual who are prohibited from entering Malaysia under Section 8(3) of the Immigration Act 1959 and 1963;
- iv. the foreign workers are citizens of approved source countries as stated above.

Each VP(TE) is valid for a period of twelve months. However, foreign workers are allowed to work in Malaysia for a period of up to ten years. Employers must ensure that the application for extension of the VP(TE) is made before the VP(TE) expires, failing which will result in the application to be referred to the Immigration Enforcement Division for consideration. The application for extension of VP(TE) can be made three months prior to the expiry of the VP(TE).

Note that although generally foreign workers are allowed to work in Malaysia for ten years, those registered under the 6P Program (i.e. an initiative program established by MOHA to legalize as many as 2 million illegal immigrants working in Malaysia at that time) are allowed to work in Malaysia for up to three years only.

Upon completion or termination of employment, the employer must ensure that the foreign workers are deported back to their original countries.

All foreign workers applications must be made through an online system at:

- (a) <https://www.eppax.gov.my> for all foreign workers application except from Bangladesh; or
- (b) <https://www.sppa.com.my/> for foreign workers application only from Bangladesh.

Once the VP(TE) application is approved, the employer will receive an approval acknowledgement from MOHA. The employer would thereafter be required to make the levy payment within thirty days from the approval date. Failure to do so may result in the cancellation of the approved application. A Letter of Conditional Approval will be released to the employer once the levy payment is settled.

The levy payment rates imposed by MOHA as at 27th of March, 2020 are as follows:

Sectors	Levy Rate (Ringgit Malaysia (RM))
Manufacturing.	1,850.00
Construction.	1,850.00
Plantation.	640.00
Agricultural.	640.00
Mining and Quarrying.	1,850.00
Services.	1,850.00

The documents that need to be submitted to the Immigration Department of Malaysia for the application of the VP (TE) for Foreign Workers by the employer (after having obtained approval and paid levy at the Foreign Worker One Stop Approval Centre) are:

- (a) application letter from employer;
- (b) Visa applications by reference form;
- (c) letter of approval from MOHA;
- (d) original receipts evidencing the payment of levy;
- (e) Form IMM.12;
- (f) payment form;
- (g) VDR Application form for new foreign workers;
- (h) Bank draft (payment of PLKS, PROCESS and VISA);
- (i) Deposit or Insurance Guarantee or Bank Guarantee (valid for at least 18 months);
- (j) copy of worker's passport;
- (k) worker's photograph;
- (l) stamped personal bond; and
- (m) medical report from the country of origin approved by the Ministry of Health of Malaysia.

The following additional documents for the same application are required for foreign workers who require Visa with Reference (VDR) to work in Malaysia:

- (a) copies of the registration form (Form 49 or Form B and D) of the Representative Company Card (Yellow Card) for Foreign Workers Application VDR (Employer or Company Representative); and
- (b) the original approval letter for outsourcing foreign workers, and certified copies of VDR application for outsourcing foreign workers (outsourcing company).

The foreign workers should remain outside the country while the application is being processed and will only be allowed to enter Malaysia through the permitted entry points after the application for VDR and VP(TE) have been approved. The VP(TE) will only be issued once the foreign worker is certified fit by clinic/medical centre registered with FOMEMA and such issuance will be made at the Immigration Office which issued the VDR approval letter.

EXAMPLE: A German individual is to be employed as the Managing Director at a Malaysian manufacturing company. His contract of employment is for five years, his salary is RM8,000 per month, and he is approved for the post by MIDA. Using these facts, the German would qualify for an Employment Pass (rather than a Visit Pass).

(b) Pass for Dependants

Only foreigners who hold an Employment Pass (Category I) or an Employment Pass (Category II) are allowed to bring their dependants to Malaysia. There are two types of passes which may be applied for to allow the dependants of expatriates holding Employment Pass (Category I) and Employment Pass (Category II) to enter and live in Malaysia for a specific period, namely:

- i. Social Visit Pass (Long Term); and
- ii. Dependant Pass.

The two types of passes have different eligibility requirements and features. Below is a comparison of aspects of the Dependant Pass and the Social Visit Pass (Long Term).

Subject	Dependant Pass	Social Visit Pass (Long Term)
Eligibility	<ul style="list-style-type: none"> • legal spouse of Employment Pass holder; or • children below 18 years old (including biological, stepchild or legally adopted child) of Employment Pass holder; or • disabled child regardless of the age of the Employment Pass holder. 	<ul style="list-style-type: none"> • children above 18 years old until 25 years old (including stepchild and legally adopted child except for children with disabilities) of the Employment Pass holder; or • parents & parents-in-law of Employment Pass holder; or • common law spouse of Employment Pass holder.
Features	<ul style="list-style-type: none"> • allows the holder to stay in West Malaysia. • employment not allowed and requires conversion to Employment Pass. • for social and welfare purposes, the holder may request for special permission to undertake activities from the Immigration Department of Malaysia. 	<ul style="list-style-type: none"> • allows the holder to stay in West Malaysia. • employment is not allowed and requires conversion to Employment Pass. • one time application and change of partner is not allowed for common law spouse.

Subject	Dependant Pass	Social Visit Pass (Long Term)
<p>Documentation</p>	<ul style="list-style-type: none"> • recent passport photo; • copy of passport; • copy of marriage certificate (for legal spouse) translated * into English (if applicable) and attested/Certified True Copy (CTC) by the Embassy/ High Commission/ Consulate General of respective country OR respective Embassy/High Commission/ Consulate General in Malaysia; • copy of Birth Certificate (for children below 18 years old) translated* into English (if applicable) and attested / Certified True Copy (CTC) by the Embassy/High Commission/ Consulate General of respective country OR respective Embassy/High Commission/ Consulate General in Malaysia; and • other documents specified upon request; • the application can be submitted to the Immigration Department of Malaysia either at the same time as the application of an Employment Pass or after the Employment Pass application has been approved. <p><i>* Translation must be done either by the Respective Embassy/ High Commission/Consulate General or Institut Terjemahan Buku Malaysia.</i></p>	<ul style="list-style-type: none"> • recent passport photo; • copy of passport; • copy of Birth Certificate (for children above 18 years old) translated* into English (if applicable) and Certified True Copy (CTC) by the Embassy/High Commission/ Consulate General of respective country OR respective Embassy/High Commission/ Consulate General in Malaysia; • copy of Birth Certificate of Employment Pass holder / Employment Pass holder's spouse (for Parents and Parents-in-law) translated * into English (if applicable) and Certified True Copy (CTC) by the Embassy/High Commission/Consulate General of respective country OR respective Embassy/High Commission/ Consulate General in Malaysia; • affidavit / acknowledgement letter from the Employment Pass holder's Embassy / Consulate General on the relationship status (for common law spouse); • personal bond form (duly stamped by Malaysia Inland Revenue Board); and • other documents specified upon request <p><i>* Translation must be done either by the Respective Embassy/High Commission/Consulate General or Institut Terjemahan Buku Malaysia.</i></p>

2. Application Process for Employment Pass and Visit Pass

The process for the foreign employee to be employed and be given either an Employment Pass or Visit Pass (collectively known as Authorization) involves the following two steps:

- i. obtaining initial approval from the designated government agency (depending on the area of employment); and
- ii. applying for the relevant passes from the Immigration Department.

Note that a company intending to apply for an Employment Pass or Visit Pass must now register itself with the ESD of the Immigration Department of Malaysia via their online portal before submitting any applications. Once the registration of the company is completed, the company may access the system and lodge online application for the passes.

(a) Initial Approval

Malaysia adopts a system whereby specific government agencies and/or approving agencies are designated to initially process the application for employment of foreigners, depending on the specific economic sectors. Under this system, each of the designated government agencies and/or approving agencies are authorized to set their own application requirements and procedures for approval of the employment of foreigners in the respective sectors.

EXAMPLE: The application for the employment of a foreigner in the area of product manufacturing must be submitted to the Malaysian Industrial Development Authority (“MIDA”) for approval.

EXAMPLE: The application for the employment of a foreigner in the finance sector must be submitted to Bank Negara Malaysia (“BNM”) for its approval.

The table below illustrates the approving agencies and the relevant agencies which are responsible for the specific sectors.

Sectors	Approving Agencies / Regulatory Bodies
Agriculture	Ministry of Agriculture and Agro-Based Industries
Aviation	Department of Civil Aviation, Ministry of Transport
Biotechnology	Malaysian Bioeconomy Development Corporation Sdn. Bhd.
Construction	Construction Industry Development Board
Companies operating within East Coast Economic Region	East Coast Economic Region Development Council
Companies operating within Iskandar Malaysia.	Iskandar Regional Development Authority
Education	Ministry of Education
Employers under ICAEW/ACCA/NKEA	Talent Corporation Malaysia Berhad
Entertainment and performance	PUSPAL unit, Ministry of Communications and Multimedia
Financial, banking and insurance	Central Bank of Malaysia
Government contractual positions	Public Service Department Malaysia
Healthcare	Ministry of Health
Manufacturing and services	Malaysia Investment Development Authority
Mining	Department of Mineral and Geoscience, Ministry of Natural Resources and Environment
Information Technology	Malaysia Digital Economy Corporation
Securities and future market	Securities Commission
Sports	National Sports Institute, National Sports Council and related associations under the Ministry of Youth and Sports
Tourism	Ministry of Tourism and Culture

The estimated processing time for the initial approval from the government agencies are as below:

Areas of Industries of Employment	Government Agencies	Est. Processing Time
Manufacturing and related services sectors.	Malaysia Industrial Development Authority.	7 working days to 4 weeks.
Information technology sector.	Multimedia Development Corporation.	3 working days.
Financial, insurance and banking sectors.	Central Bank of Malaysia.	7 working days.
Securities and futures markets.	Securities Commission.	3 days.
Biotechnology industry.	Malaysian Bioeconomy Development Corporation Sdn. Bhd.	7 to 10 days.
Other sectors.	Expatriate Committee.	7 days.

(b) Approval from the Immigration Department

Prior to or after receiving initial approval from the designated government agencies and/or regulatory bodies, the company intending to employ expatriates should register itself with the ESD through their online system. The company may only make the application for the relevant passes once its registration is successful. The process for registration of the company with ESD normally takes fourteen working days, if everything is in order. The application for the passes to the Immigration Department must be done by the hiring company employing the foreigners.

The entire process for applying for the relevant work passes involves four main stages which are:

- Stage 1 – Company Registration.
- Stage 2 – Company Activation.
- Stage 3 – Expatriate Application (application of relevant passes).
- Stage 4 – Passport Endorsement.

The hiring company will be required to apply for a projection on the number of expatriates it plans to hire for the current year which will be based on the number of expatriates it has identified, including existing expatriates for renewals and also new hires. Where the numbers under the projection requested for the year has been fully utilized, the hiring company may request a new projection number with the appropriate justification.

The eligibility criteria applicable to hiring company is as follows:

- a. registered with the Companies Commission of Malaysia (SSM) under the Malaysian Companies Act 1965 or 2016; or
- b. registered with the Registry of Societies Malaysia (ROS) under the Organization Act 1966; or
- c. firms incorporated under specific acts. e.g. law firms and accounting firms; or
- d. organizations supported by Ministries or Government Agencies; or
- e. international organizations certified by the Malaysian Ministry of Foreign Affairs.

The minimum paid-up capital of the company shall be as follows:

Equity	Paid-Up Capital
100% Local-owned.	RM250,000
Joint venture between foreign and Malaysian entities (Note: a minimum of 30% foreign shareholding is required)	RM350,000
100% Foreign owned.	RM500,000
Foreign-owned companies (foreign equity at 51% and above) operating in the Wholesale, Retail and Trade (WRT) sectors (mandatory requirement to submit valid WRT approval letter, if applicable). Please refer to the Ministry of Domestic Trade, Co-operatives and Consumerism for WRT license application guideline).	RM1,000,000
Foreign-owned companies (foreign equity at 51% and above) involved in the sub-sectors on unregulated services are required to refer to the Services Industry Division, Ministry of Domestic Trade, Co-operatives and Consumerism on the application guideline to obtain approval.	

[Note: The above is not applicable to public limited companies, companies limited by guarantee, associations & organizations incorporated under specific acts].

The Immigration Department requires that the expiration date of the foreigner's passport must be at least eighteen months after the date of the authorization application; otherwise the application will not be approved. Also, the expiration on the passport may not be before the expiration date of the authorization.

EXAMPLE: On the date of submitting the application for a Visit Pass the expiry date on a foreigner's passport is four months from such submission. In this situation, the Immigration Department will not issue a Visit Pass.

EXAMPLE: An Australian national applies for an Employment Pass. As of the date of application, the expiration date on his passport is in two years. In this situation, he may qualify to receive an Employment Pass; however, the period of validity of the Employment Pass will not exceed two years.

3. Official Fees

Effective 1 June 2019, the ESD Application Fees are as follows:

Online Services (New & Renewal)	Fee With 6% SST
Employment Pass (EP)	RM 1,060
Dependant Pass (DP) Spouse Children below 18 years (Biological/Adopted/Step Child) Disabled Children (no age limit)	RM530
Social Visit Pass (Long Term) Common Law Spouse Children above 18 - 25 years (Biological/Adopted/Step Child) Parents/Parents-in-law	
Professional Visit Pass (PVP) Position Exempted to charges processing fee: Invited Lecturer, Invited Professor, Visiting Professor & Visitor Lecturer	RM 1,060
Transfer of Endorsement (TOE)/ Cancellation of Passes	Free of charge

[Note: MYXpats shall refund 60% of the Application charges for rejected applications, subject to Terms and Condition].

The Immigration Fees for Endorsement are as follows:

- i. Employment Pass Fee - RM200 per year.
- ii. Processing Fee for Employment Pass - RM125 per application.
- iii. PVP Fee - RM90 per quarter.
- iv. DP Fee - RM90 per year.
- v. Processing Fee for DP - RM50 per application.
- vi. Social Visit Pass (Long Term) Fee - RM50 per month.
- vii. Processing Fee - RM50 per application.
- viii. *Visa (if applicable) - refer to the Visa Table:
<https://expats.com.my/wp-content/uploads/2018/05/Immigration-Payment.pdf>).

Chapter 29

What Incentives are Available to Foreign Investors by the Government?

The government agencies responsible for encouraging and attracting specific types of business activities and projects in Malaysia include the Malaysian Industrial Development Authority and the Ministry of Finance. The incentives available from each and their criteria for granting such incentives are set forth below.

Malaysian Industrial Development Authority (MIDA)

MIDA is an agency under the Ministry of International Trade & Industry (MITI) in charge of encouraging specific types of manufacturing projects and services activities in Malaysia.

In order for a project to qualify for the incentives offered by MIDA, the project must engage in promoted activities or produce promoted products. To see a complete list of the promoted activities and products, please refer to the Appendices in the guidebook published by MIDA – ‘Malaysia: Investment in the Manufacturing Sector – Policies, Incentives and Facilities’ (“Guidebook”) – which can be accessed through the following link:

https://www.mida.gov.my/home/administrator/system_files/modules/photo/uploads/20200212162629_Malaysia%20Investment%20in%20the%20Manufacturing%20Sector%202019.pdf

Please note MIDA promotes specific types of products and activities in Malaysia only and not the company itself.

EXAMPLE: Suppose a company registered in Malaysia has a project to produce auto parts for export, and MIDA approves promotion for the project and grants a partial tax exemption. The company begins to receive income from the sale of auto parts to overseas buyers. The company also engages in the activity of providing consulting services which are not promoted by MIDA. In this situation, the income the company receives from producing auto parts for export (promoted activity) would receive the partial tax exemption, but normal tax rates would apply to the income received from providing consulting services (non-promoted activity).

There are various financial and non-financial incentives offered by MIDA with respect to promoted products and activities. The following are the three main incentives:

- i. Pioneer Status
- ii. Investment Tax Allowance
- iii. BioNexus Status

1. Pioneer Status

Companies investing in promoted activities or products may be granted Pioneer Status which entitles the companies to a tax exemption from 70% to 100% on the project's annual statutory income for a period of five to ten years. The degree of tax exemption granted will depend on the type of promoted activity/product. For example:

- (i) Promoted activities/products for the manufacturing sector: tax exemption on 70% of statutory income for 5 years.
- (ii) Promoted activities/products for high technology companies: tax exemption on 100% of the statutory income for 5 years.
- (iii) Promoted activities/products of national and strategic importance: tax exemption on 100% of statutory income for 10 years.

For a complete list of tax exemptions applicable to specific categories of promoted activities and products, please refer to the Guidebook (link provided above).

EXAMPLE: A Japanese company establishes a subsidiary in Malaysia to produce computer components, and the project applies for and obtains Pioneer Status from MIDA to pursue this project. In Year One of the project, the company realizes a statutory income of RM1000 generated from the activity. In this situation, only 30% of the Japanese project's total statutory income for the year (RM300) would be taxable (the rate of corporate income tax in Malaysia for the year 2019 was 24% of the annual net profits).

Note that the tax exemption period commences from the date production begins as determined by the Ministry of International Trade and Industry (MITI).

EXAMPLE: Same facts as above, and the project is granted the partial tax exemption for a period of five years. At the beginning of Year Six (counting from the project starting date as determined by MITI) the partial tax exemption would cease and normal tax rules would apply.

EXAMPLE: A Korean company has a long term project to produce electronic components in which the company is required to invest the equivalent of \$150 million to build the factory in Malaysia and begin operations. In this situation, if the project qualifies for Pioneer Status as a high technology industry, it would qualify to receive a 100% tax exemption on its statutory income for a period of five years.

Basically, to qualify for Pioneer Status, the company must prove to be carrying on manufacturing activities or services which are promoted by MIDA.

The form and procedure to apply for pioneer status can be accessed through the following link: <http://www.mida.gov.my/home/forms-&-guidelines-for-manufacturing-sector/posts/>

2. Investment Tax Allowance

The Investment Tax Allowance (ITA) is offered by MIDA for long term projects with large capital investments. ITA is an allowance of 60% to 100% with respect of qualifying capital expenditure which has been incurred within five to ten years from the date the first qualifying expenditure is incurred. This allowance may be used to offset against 70% to 100% of the project's annual statutory income.

Different projects which have been granted the ITA will be entitled to varying rates of allowances. Some of the examples are as follows:

- i. **Promoted activities/products for the manufacturing sector** – allowance of 60% on its qualifying capital expenditure incurred within five years which can be offset against 70% of its annual statutory income.
- ii. **Promoted activities/products for high technology companies** – allowance of 60% on its qualifying capital expenditure incurred within five years which can be offset against 100% of its annual statutory income.

For a complete breakdown of the rate of allowances applicable to specific categories of promoted activities and products, please refer to the Guidebook (link provided above).

EXAMPLE: A South African company has a long term project to produce various types of construction equipment in Malaysia and obtains ITA incentives from MIDA for the project. The South African company's total capital expenditure in the project is RM1000. In this situation, the total income tax deduction the project may use over the life of the project would be RM600 (the amount representing 60% of the total qualifying capital investment). The project may receive the benefit of this tax deduction each year until such time as the total amount of tax savings granted is fully used.

EXAMPLE: Same facts as above, and in Year One the project utilizes RM450 of its total RM600 tax deduction (calculated based upon 70% of its total statutory income in that year), and in Year Two it utilizes the remaining RM150. In Year Three normal tax rules would apply (due to the fact that all of the project's total tax savings have already been used in Year One and Year Two).

Applications for Pioneer Status and ITA incentives must be submitted in three (3) copies to MIDA before commencing production at:

Chief Executive Officer
 Malaysian Investment Development Authority (MIDA)
 MIDA Sentral
 No. 5, Jalan Stesen Sentral 5
 50470 Kuala Lumpur
 P.O. Box 10618
 50720 Kuala Lumpur
 Malaysia.
 Tel: 603-2267 3633
 Fax: 603-2274 7970
 Email: investmalaysia@mida.gov.my

To see a sample application go to: <https://www.mida.gov.my/home/forms-&-guidelines/posts/>

3. BioNexus Status

MIDA grants certain special incentives for projects engaging in activities in the biotechnology industry and which have also been approved with BioNexus Status by the Malaysian Bioeconomy Development Corporation Sdn Bhd. The incentives are as follows:

- i. For income derived from non-intellectual property qualifying activities, a tax exemption of 70% on the statutory income for a period of ten consecutive years from the first year the company derived statutory income from a new business or for a period of five consecutive years from the first year the company derived statutory income from an existing business and expansion project.

Pursuant to Malaysia's commitment to implement the Base Erosion and Profit Shifting (BEPS) Action Plan under the Organization of Economic Cooperation and Development, different tax exemptions will be granted for income derived from IP and non-IP activities. Whilst applications for BioNexus Status incentive for non-IP income have been open since 17 September 2019, the policy for BioNexus Status incentive for IP-income is currently under review by the Government.

Note that non-intellectual property income is income derived from knowledge/technology/processes/etc. other than IP assets.

- ii. A tax exemption of 70% on statutory income derived from a new business or an expansion project equal to 100% of qualifying capital expenditure in the project for a period of five years.

EXAMPLE: A US company engages in a biotechnology project in Malaysia and is granted BioNexus Status. The company invests \$25 million in the project over five years. In this situation, the project may be granted a 70% exemption of statutory income; however, the total amount of tax savings the project can realize would be capped at \$25 million. After that amount has been reached, the normal tax rules would apply unless MIDA has stated otherwise (see below).

- iii. A concessionary tax rate of 20% on statutory income from qualifying activities for ten years upon the expiration of the tax exemption period.

EXAMPLE: Same facts as above, and the project is granted a 20% concessionary rate (the corporate tax rate for the year 2019 is 24% of annual net profits) after the tax exemption expires. In this situation, after the \$25 million in total tax savings has been reached, the 20% concessionary tax rate would apply for an additional ten year period.

- iv. Exemption of import duty and sales tax on raw materials/components, machinery, and equipment.
- v. Double deduction on expenditures incurred for R&D.
- vi. Double deduction on expenditures incurred for the promotion of exports.
- vii. Industrial Building Allowance (IBA) to be claimed over a period of ten years if qualifying buildings used solely for biotechnology activities.

MIDA also has the authority to grant incentives to investors in BioNexus Status project companies. Investors in these companies are eligible for a tax deduction equivalent to the total investment made as seed capital.

For more information on the BioNexus Status incentive for non-intellectual property income, including the details of the tax incentives and eligibility criteria, please refer to the BioNexus Status 3.0 Framework Guideline issued by the Malaysian Bioeconomy Corporation Sdn Bhd which can be accessed through this link:

<http://www.bioeconomycorporation.my/wp-content/uploads/2020/01/GUIDE-LINE-ON-BNX-FRAMEWORK-3.0-NON-IP-FINAL-DEC-2019.pdf>

Companies intending to apply for BioNexus Status will need to register their interest through this link: <http://www.bioeconomycorporation.my/bionexus-development/bionexus-status/bionexus-interest-form/>

Once the Malaysian Bioeconomy Development Corporation Sdn Bhd (“Bioeconomy Corporation”) is informed of the company’s interest, and the company has been contacted, the company may submit the relevant application forms to Bioeconomy Corporation which can be found on their website: <http://www.bioeconomycorporation.my/bionexus-development/bionexus-status/how-to-apply/>

Applications for BioNexus Status should be submitted to Bioeconomy Corporation, at the following address:

Vice President – Processing and Performance Monitoring Department
Malaysian Bioeconomy Development Corporation Sdn Bhd
Level 16, Menara Atlan,
161B Jalan Ampang
50450 Kuala Lumpur

Tel : (603) 2116 5588

Fax : (603) 2116 5577

<http://www.bioeconomycorporation.my/>

Free Zones

Free Zones are administrated by the Malaysian Ministry of Finance and are designated as either free commercial zones or free industrial zones. Generally, being located in a Free Zone entitles a company to certain benefits in the form of exemption from customs checks.

1. Free Commercial Zones

Companies which operate within Free Commercial Zones (FCZ) are subject to greatly reduced customs formalities.

The scope of activities permitted in a FCZ includes trading (except retail trading), breaking bulk, grading, repacking, relabeling, and transit.

Currently the list of FCZs is as follows:

1. Stulang Laut, Johor
2. Port of Pasir Gudang, Johor
3. Port of Tanjung Pelepas, Johor (Phase 1)
4. Terminal 2, Port of Johor, Pasir Gudang, Johor
5. Tanjung Langsat, Johor Bahru, Johor
6. Rantau Panjang, Kelantan
7. Pengkalan Kubor, Kelantan
8. Dermaga Air Dalam, Penang
9. MAS Cargo, Penang
10. Second Air Cargo Complex, Penang
11. Bukit Kayu Hitam, Kedah
12. Pekan Bukit Kayu Hitam, Kedah
13. Northport, Port Klang, Selangor
14. Westports, Port Klang, Selangor
15. Southpoint, Port Klang, Selangor
16. Port Klang Free Zone, Selangor
17. MILS Logistic Hub, Selangor
18. Kuala Lumpur International Airport (KLIA)
19. Tasik Kenyir, Terengganu
20. Kuantan Port, Pahang
21. Pulau Layang-Layang

2. Free Industrial Zones

The activities permitted in Free Industrial Zones (FIZ) are limited to manufacturing-related activities.

Companies located in a FIZ are granted reduced customs formalities, as well as the duty free import of raw materials, component parts, machinery, and equipment specifically required in the manufacturing process.

The current list of FIZs is as follows:

1. Pasir Gudang Port, Johor
2. Port of Tanjung Pelepas, Johor (Phase I)
3. Port of Tanjung Pelepas, Johor (Phase II)
4. Tanjung Bin, Johor
5. Sultan Ismail International Airport, Johor
6. Senai Airport City Phase One, Mukim Senai, Johor
7. Senai Airport City Phase One, Mukim Tebrau, Johor
8. Batu Berendam, Melaka (Phase I)

9. Batu Berendam, Melaka (Phase II)
10. Batu Berendam, Melaka (Phase III)
11. Tanjung Kling, Melaka
12. Seberang Perai, Penang
13. Bayan Lepas, Penang (Phase I)
14. Sama Jaya, Kuching, Sarawak
15. Jelapang, Perak
16. Kinta, Perak
17. Sungai Way, Wilayah Persekutuan Kuala Lumpur
18. Ulu Klang, Selangor
19. Port Klang Free Zone, Selangor
20. Telok Panglima Garang, Selangor

Chapter 30

What are the Legal Issues Associated with Foreign Ownership of Land?

Generally, in order for a non-citizen or a foreign company to acquire land in Malaysia prior approval from the State Authority for acquiring land via an application in writing is required. The approval is subject to the fulfillment of certain conditions and restrictions imposed by the respective State Authorities.

1. Definition of Non-Citizen, Foreign Company and Foreign Interest

Malaysian law defines a “non-resident” as a natural person who is not a citizen of Malaysia and a “foreign company” as:

- a. a company, corporation, society, association or other body incorporated outside Malaysia;
- b. an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia;
- c. a company incorporated with 50% or more of voting shares held by non-citizen/foreign company or by both; or
- d. a company incorporated with 50% or more of voting shares held by company in (c).

“Foreign interest” means any interest, associated group of interests or parties acting in concert, comprising of:

- a. individual who is not a Malaysian citizen; and/or
- b. individual who is Permanent Resident; and/or
- c. foreign company or institution; and/or
- d. local company or local institution whereby the parties as stated in item a. and/or b. and/or c. above hold more than 50% of the voting rights in that local company or local institution.

Individuals or entities falling within the ambit of the definition of non-resident, foreign company or foreign interest seeking to acquire and other real property in Malaysia are required to adhere to specific conditions and restrictions stipulated under the National Land Code (“NLC”) and the EPU Guideline on the Acquisition of Properties (“EPU Guideline”) as further explained below.

2. Residential Property

Foreign individuals and foreign companies are allowed to own houses and the land upon which the houses sit, residential condominium units, and apartment units which have a minimum purchase price of RM 1 million without having to obtain approval from the Economic Plan Unit of the Prime Minister’s Department (“EPU”). However, they are still required to obtain the approval from the relevant state authority prior to purchasing any residential property in the respective state.

EXAMPLE: A Belgian investor wishes to buy land and a villa in Penang, Malaysia for a purchase price of RM 1.2 million need not request for approval from EPU. However, the Belgian investor is required to obtain the approval from the Penang State Government for the purchase of the said land and villa.

Generally, the minimum purchase price for residential property that may be purchased by foreigners is RM1 million. However, note that the state authorities may impose different minimum thresholds depending upon the state the purchase is to occur in.

In addition, the state authorities may also impose restrictions as to the types of residential properties that may or may not be purchased by non-citizens and/or foreign companies, therefore foreign purchasers should learn about the relevant state specific conditions prior to entering into negotiations with a would be seller.

Below are some of the significant issues associated with foreigners’ rights to purchase residential property in Malaysia.

a. Financing

Malaysian banks usually offer financing of up to 60% to 80% of the value of the property to foreigners. Some banks even require the non-citizen to be a permanent resident in Malaysia before providing financing.

EXAMPLE: A Swiss investor wishes to purchase five units in condominium development on Langkawi Island, Malaysia with the purchase price of RM1 million for each unit. Based on the proposition provided above, the Swiss investor will only be able to locally finance between 60% and 80% of the value of the five units. He would be required to finance the remaining amount through other means or use cash. He would also need to raise sufficient financing to cover other costs associated with the purchase of the five units such as the stamp duty and legal fees.

b. Ownership Ratio

Certain legal rights and privileges are reserved for the Bumiputeras who are Malaysian nationals who qualify as Malays or aborigines (“Malays”). These rights and privileges sometimes affect foreigners’ ability to purchase residential property in the country as a certain percentage of the development has to be allocated to Bumiputeras. This is referred to as the Bumiputera Lot.

Non-citizens and/or foreign companies may only purchase properties allocated for non-Bumiputeras. This limits the number of units of properties that may be purchased and/or owned by the non-citizens and/or foreign companies.

EXAMPLE: A foreigner wishes to purchase a condominium unit in a building from a Bumiputera owner in the Federal Territory of Kuala Lumpur. The sale would however result in the total Bumiputera ownership of the building to fall below 30%. In this situation, the foreigner’s purchase of the condominium would not be allowed.

EXAMPLE: A foreigner wishes to purchase a condominium unit in a building in the Federal Territory of Kuala Lumpur. The seller of the condominium is a Malaysian citizen who is of the Chinese ethnicity (i.e. non-Bumiputera). In this situation, the foreigner’s purchase of the condominium would be allowed because it would not affect the ratio of the Bumiputera ownership as provided by the State Authority of the Federal Territory of Kuala Lumpur.

EXAMPLE: A foreigner wishes to purchase a condominium unit in a building in Penang from a developer. However, 70% of the condominium units have been sold to non-Bumiputeras. Here, the foreigner will not be allowed to purchase the condominium unit as it would violate the 30% Bumiputera quota reserved for Bumiputera for that particular building.

3. Purchases Requiring EPU's Approval

Below is a summary of the types of real estate purchases requiring prior EPU approval.

a. Non-residential Property

The EPU Guideline provides that except for residential units, EPU's approval is required for all property acquisition which results in the dilution of the interest of Bumiputera or government agency(ies) as follows:

- (a) direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputera interest and/or government agency; and
- (b) indirect acquisition of property by other than Bumiputera interest through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, the property amounts to more than 50 percent of the total assets of the company and the said property is valued more than RM20 million.

EXAMPLE: A Japanese registered company seeks to purchase an office in Kuala Lumpur currently owned by a Bumiputera individual for the purchase price of RM150 million. In this situation, the Japanese company would be required to obtain prior approval from the EPU before proceeding with the purchase.

EXAMPLE: Same facts as above, but the purchase price is RM10 million. In this situation, no EPU approval would be required (however, other government approvals may be required in some situations).

EXAMPLE: A Malaysian registered company with Singaporean shareholders holding 60% of the total voting rights seeks to acquire 100% of the shares of another Malaysian registered company which is currently held by Bumiputera shareholders and owns a hotel. The purchase price for the shares is RM55 million. For this transaction, the purchasing company would be required to obtain prior approval from the EPU before proceeding with the purchase.

b. Conditions to be Fulfilled Where EPU's Approval is Required

Note that in the case of a purchase of non-residential property by a foreign individual the EPU may (or may not) require the foreign individual to make the purchase through either a new or existing Malaysian registered company, rather than allowing the foreign individual to make the purchase in his own name.

EXAMPLE: A Dutch citizen wishes to purchase a non-residential property in Kuala Lumpur from a Malaysian citizen. In this situation, the EPU may allow the Dutch citizen to make the purchase himself, or the EPU may require the Dutch citizen to make the purchase through a new or existing Malaysian company (see shareholding and paid-up capital requirements below).

In the event that the EPU requires the foreign individual to make the purchase through a Malaysian company, the company must fulfill the following requirements:

- i. Equity condition: the Company must have at least 30% Bumiputera interest in its shareholding; and
- b. Minimum paid-up capital:
 - (a) for a local company owned by local interest (i.e. where the interest or associated group of interest comprises of a Malaysian individual or a local company whereby Malaysian citizens hold more than 50% of the voting rights), the minimum paid-up capital shall be RM100,000 paid-up capital; and
 - (b) for a local company owned by foreign interest, the minimum paid-up capital shall be at least RM250,000 paid-up capital.

EXAMPLE: Same facts as above, and the EPU requires that the Dutch citizen make the purchase through a Malaysian registered company. In this situation, the Malaysian registered company would be required to have a minimum of 30% Bumiputera shareholding. Where the Malaysian company is a local company owned by local interest, the paid-up capital of the company must be no less than RM100,000. However, if the purchase is made through a Malaysian company owned by a foreign interest, the company is required to have a minimum paid-up capital of RM250,000.

c. Purchases Exempt from EPU's Approval

Foreign interests may acquire, among others, the following without approval from the EPU, (however certain other regulations may still be applicable and the transaction may still be subject to government discretion):

- i. acquisition of residential units for accommodation purpose;
- ii. acquisition of residential unit under the “Malaysia My Second Home Programme”;
- iii. acquisition of any property Super Corridor (“MSC”) area by MSC status companies to be used for their operational activities including as residence for their employees;

- iv. acquisition of properties in the approved area in any regional development corridor by companies that have been granted the status by local authority as determined by the Government;
- v. acquisition of properties by a company that has obtained the endorsement from the Secretariat of the Malaysian International Islamic Financial Centre;
- vi. acquisition of residential units to be occupied as hostel for company's employees. Local companies owned by foreign interest are only allowed to acquire residential units valued at RM100,000 and above (subject to the jurisdiction of the relevant state authorities);
- vii. transfer of property to a foreign interest pursuant to a will and court order;
- viii. acquisition of industrial land by manufacturing company; and
- ix. acquisition of properties under privatization projects.

Note that the NLC specifically sets out that non-citizens and/or foreign companies are not allowed to bid for land ordered for sale which is subject to the category "agriculture" or "building" or "industry" or to any condition requiring its use for any agriculture or building or industrial purpose (as the case may be) without prior approval of the State Authority.

4. Restrictions on Foreign Interests

Foreign interests are not allowed to acquire the following types of properties:

- i. residential and non-residential units valued less than RM1 million per unit;
- ii. residential units under the category of low and low-medium cost as determined by the State Authority;
- iii. properties built on Malay reserved land; and
- iv. properties allocated to Bumiputera in any property development project as determined by the State Authority.

5. Additional Considerations When Purchasing Land

In addition to the above, foreigners seeking to purchase land should keep the following in mind.

a. Restriction in Interest

Some lands are subject to certain restrictions in interest. Generally, the consent and approval of the State Authority would be required for dealings involving lands with restrictions in interest. The land cannot be transferred without the consent in writing of the State Authority.

It is important that a purchaser who is interested in purchasing land in Malaysia conduct a thorough title search prior to the conclusion of the transaction. By conducting a title search, the prospective purchaser can obtain information concerning the ownership, encumbrances, registered leases, and interests registered on the property title.

EXAMPLE: An Australian citizen wishes to acquire a piece of land in Perak. Upon conducting a title search on the land, it was found that the title contains a clause on restriction of interest which spells out that, “This land cannot be transferred, charged or leased without the approval of the State Authority”. In this circumstance, the approval from the State Authority must be obtained before the Australian citizen can successfully acquire the land.

b. Malay Reserve Land

Some states such as Kelantan, Kedah, Perlis, Johor and Terengganu have enacted their own Malay Reservation Enactment to regulate the laws pertaining to Malay Reserve Land (“MRL”) in the respective states. Where land is declared as MRL and is owned by a Malaysian citizen who is of Malay race, the MRL is prohibited from being alienated, transferred, charged, leased or otherwise disposed to any person (including any institution) who is not a Malay. Any disposal of MRL to a non-Malay will be null and void.

Unlike the Bumiputera quota, no application can be made to the State Authority to allow for a non-Malay (which shall include foreigners) to acquire land which is declared as MRL and owned by a Malay.

EXAMPLE: A Singaporean wishes to purchase a piece of land in Pahang. Upon conducting the title search, it was found that the land in which the Singaporean is interested in is Malay Reserve Land. As such, the Singaporean cannot proceed with the purchase of the land.

6. Leases

Foreign interests are generally allowed to lease land and/or immovable property in Malaysia, subject only to restrictions which may be imposed by the government on certain tracts of land. If the land is subject to such restrictions, it should be stated on the property title.

Leases for a term of more than three years are required to be registered.

EXAMPLE: A citizen of UK wishes to enter into a lease for a piece of land and a house in Johor Bahru, Malaysia for a period of four years from a Malaysian company. In this situation, Malaysian law requires that the parties register the lease on the title.

EXAMPLE: Same facts as above, but lease period is for three years. In this situation, there would be no requirement to register the lease on the title.

After registration, the lease appears on the property title, which places subsequent purchasers of the property on notice of the existence of the leaseholder's rights to the property.

EXAMPLE: Suppose a foreign individual leases a track of land for a period of thirty years and registers the lease with the local Land Office. The owner then sells the land to a third party purchaser without mentioning the existence of the lease to the purchaser. In this situation, the third party purchaser would purchase the land subject to the pre-existing rights of the foreign tenant. The tenant would, therefore, be free to continue to have rights over the land (as set forth in the lease agreement) during the remaining lease term.