



**THE RESEARCH OF
LEGAL SYSTEM OF MALAYSIA AND LEGAL INFORMATION
RELATED TO TRADE AND INVESTMENT IN MALAYSIA**

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1. Laws regarding Trade and Investment

1.1 Trade Laws

1.1.1 Import and Export

Importing and exporting goods to Malaysia must follow several laws and regulations. This section will explain regulations on imports and exports in the following issues.

- (1) Customs procedures for importation
 - (2) Customs procedures for Thai products to be imported to Malaysia
 - (a) Export process from Thailand to Malaysia
 - (b) Malaysia's regulations on imported products from Thailand (a case study of certain products)
 - (3) Classification of controlled imported goods
 - (a) Prohibited goods
 - (b) Restricted goods
 - (4) Government agencies related to importation and exportation

(1) Customs procedures for importation

The main regulation governing the import and export in Malaysia is the Customs Act 1967. This law requires importation and exportation to comply with Malaysia's customs formalities. All imported goods to Malaysia by land or air transportation must be declared in written to the Customs authorities whether the imported goods must be taxed or not. Importers or agencies have to fill out the form, "Customs No.1", to declare the number of goods, characteristics, packaging list, price, weight, quantity or unit as well as origin and destination of goods. They must submit the form to the Customs authorities at the entering point where the goods are imported. The importer can appoint a registered import agent to proceed with the customs procedure on behalf of the importer. The import agent must be registered with and authorized by the Director-General of the Customs Department of Malaysia. Then, the importer must pay relevant

tariffs and fees, such as import duties and fees before goods being released from the custody of the customs.

(2) Customs procedures for Thai products to be imported to Malaysia

(a) Export process from Thailand to Malaysia

Thailand and Malaysia share their borders that stretch for 647 kilometers by four provinces in Thailand: Songkhla, Narathiwat, Yala, and Satun. Although Pattani province does not share its border with Malaysia, this province plays an important role as a trading and warehouse area. Each province has its customs house(s) to govern the transportation of products across the border by cars and trains as follows:

- Wang Pra Chan Custom House located in Satun province;
- Ban Pra Kob, Sa Dao, Padang Besar Customs Houses located in Songkhla province;
- Betong Customs House located in Yala province; and
- Tak Bai, Su-ngai Kolok and Boo Gae Ta located in Narathiwat Province

Sa-Dao Customs House makes the highest volume of imported goods from Thailand to Malaysia due to its land connection to Kedah, Malaysia's major city. The second rank is Padang Besar Customs House and Su-ngai Kolok Customs House.¹ The main mode of land transportation from Thailand to Malaysia is via car and train. The high value of the products exported from Thailand to Malaysia such as cosmetics, rubber sheets, aquatic animals, seafood, canned food, fruits and vegetables, flowers, dried fish meat, miscellaneous goods, animal fur, car, electronics devices, ready-made dress, cable electrics, brick, and processed woods.²

All imported goods are subject to taxes, such as customs duties and sales taxes before being released from the customs house. Importers must prepare the following documents and submit them to the customs house before importing goods to Malaysia:

- A Customs Entry form;
- An Evidence showing the right of legitimate entry, such as a Bill of Lading;

¹ Office of planning and international affairs, Customs department "Malaysia" [detail of the Customs agreement on the list of Country](http://plan-inter.customs.go.th) accessed on 20 August 2018, <http://plan-inter.customs.go.th>.

² Department of Trade Negotiation, Ministry of Commerce of Thailand "Detail of trade between Thai – Malaysia, Accessed on 20 August 2018, http://www.dtn.go.th/files/60/ASIA/Malaysia_2s_0960.pdf.

- A Commercial Invoice;
- A Pro-forma invoice;
- A Packing List;
- Other documents depending on the classification of goods.

Any goods entered Malaysia must be randomly inspected at the 28 entry points located around Malaysia to ensure that they meet the safety standards and legal requirements specified by government agencies, such as health agencies or the Ministry of Agriculture and Agro-based Industry. Any violation of the regulations regarding the import, or harmful to consumers or the Islamic rules must result in immediate destruction of the imported goods. The livestock products, processed meat, milk or dairy products will be randomly investigated by the officials authorized by the Department of Livestock Development of Malaysia at the entry point. Samples of products will be inspected and delivered for testing in a bio-chemical lab. The Department of Livestock of Malaysia has the right to destroy those products and to prohibit or ban the entry of such products temporarily or permanently.

Thailand and Malaysia are members of AFTA, therefore, customs tariffs are reduced to 0-5 percent for the majority of goods imported. If an origin country is not a member of AFTA, tariffs to Malaysia would be at 0-300 percent, depending on the classification of goods. Luxury goods are subject to the highest tariffs, compared to the other consumption or raw material goods.

(b) Malaysia's regulations on imported goods from Thailand (a case study of certain products)

This section will explain regulations concerning some of the top list products exported by Thailand;

1) Health products and medical foods

All of the health products and medical foods imported to Malaysia must be classified whether the health products or medical foods need to be registered by the National Pharmaceutical Control Bureau (NPCB) under the Dangerous Drug Act 1952 and Control of Drugs and Cosmetics Regulation 1984. The importer has to possess an import license granted by the Compliance Unit of NCPB.

The importer or distributor shall inform NCPB details of the product, including the product's name, ingredients, the proportion of ingredients, instructions, references, together with submitting a copy of the products' labels and details to complete the registration process before the first import.³ Additionally, the health products and medical foods are also required to be attached with the MeditagTM mark.⁴ This mark is a 3D hologram mark attached to drugs and cosmetics that have been registered with the Ministry of Health of Malaysia. This mark helps ensure that the products have been registered, which is similar to Or.Yor. mark in Thailand. However, the external personal care products are exempted from the MeditagTM Mark requirement.

2) Plants, plant products, and agricultural products

In general, plants, plant products, and agricultural products are prohibited from importing to Malaysia under the Agricultural Pests and Noxious Plants (Import/Export) Regulations 1981, except in the case of permission granted. The law aims to control insects and germs which may contaminate plants, plant products, and agricultural products imported from the country of origin or the transportation process. Anyone who wishes to import these products must apply for a Phytosanitary Certificate prior to importing the products.

In addition to the Import Permit and Phytosanitary Certificate, Malaysia also issue the Federal Agricultural Marketing Authority Grading, Packaging and Labelling of Agricultural Produce Regulations 2008 to control the import of plants including agricultural products. Such measure is related to grading, packaging, labeling of fruit, flowers, and vegetables imported to Malaysia. The regulation has been in effect since April 2009.⁵ The main purposes of this regulation are as follows:

- To secure the right of the consumer;
- To easily trace and record details of the enterprise;
- To inform the set of international standard of WHO and FAO;

³ For more details please visit National Pharmaceutical Control Bureau, Ministry of Health, Malaysia www.bpfk.gov.my

⁴ Mediharta, "Meditag information" Accessed Nov.11,2018, <http://www.medihearta.com.my>. For more details please visit http://www.maqis.gov.my/en/latar_belakang

⁵ Department of International Trade Promotion, Kuala Lumpur, Article 12 " Regulations for Import and export to Malaysia" P. 123-125 Accessed on 23 November 2017, http://cks.ditp.go.th/KM_Document/fe632127-cd2b-4242-a409-e75d83e8e67e

- To comply with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the WTO Agreement on Technical Barrier to Trade (TBT Agreement);
- To protect discrimination among WTO members.

According to the above regulation, imported and exported agricultural products in Malaysia shall be graded and certified under the Malaysia Standard (MS) of the Federal Agricultural Marketing Authority (FAMA) or other government agencies appointed by FAMA. The grading process shall comply with the rules of the country of origin or in the case that the exporting country has no clear standard, they have to follow the standard of FAMA. This regulation also controls the product packaging to be clean, non-contaminated and resistant to damages from the transportation. The product packaging must not contain products weigh more than 30 kilograms per unit. The reusable packaging is allowed but its former label must be repealed before reusing. The size of the label on the products imported to Malaysia must not be over 11x7 centimeters. The labels have to be attached on top or side of the product and contain the following information:

- Name of manufacturer, importer, exporter;
- A general name of product;
- Grade of products;
- Size of products;
- The origin-country of products;
- Net weight of products.

A form of a label can be done in two formats:

- A sticker sold at FAMA at the price of 10 Ringgit per 100 stickers; and
- A pre-printed label approved by FAMA. The fee for an application is in the amount of 100 Ringgit per one application and additional fees of 2 cents per pack.

Therefore, an importer wishing to import fruits, vegetables and flowers must proceed with the following steps in advance.

- Grading their products according to FAMA's standard;

- Using packaging that meets the standard outlined in the regulation;
- Labeling according to the standard outlined in the regulation.

The investigation of the agricultural products by a FAMA officer will be conducted at the entry point, customs houses or ports of shipment. Once the investigation result is pass, the officer will issue the Certificate of Conformity Inspection to the importer. If the inspection fails, the importer has to ship their products back to the country of origin within the period prescribed by the law. If no responsible importer presents, the officer has the right to destroy or conduct any action to manage such products. Any violation must be liable for a fine of not exceeding 1,000 Ringgits or imprisonment not exceeding 6 months or both.⁶

In the case of some types of fruits from Thailand which are imported to Malaysia in high volumes, such as mango, durian, logan, an importer must have an import license from the Food Safety and Quality Control Division, Ministry of Health of Malaysia. The toxic leftovers in the imported fruits will be investigated and shall not be over the standard prescribed in the Malaysian Food Regulation 1985, which relies on the standard of Codex.⁷ Such standard is used as the standard control for food safety, food advertisements, and certify of a food laboratory.

However, the Thai importers may benefit from the Mutual Recognition Arrangement between Thailand and Malaysia, in which the party to this agreement would accept the standard and product inspection of the other country without repeating the inspection. More details can be found on the list of the mutual acceptance of goods at <http://www.acfs.go.th>.

3) Meat

Importing meat to Malaysia must comply with the regulations prescribed by the Department of Livestock of Malaysia. The department is the main government agency to control and ensure that all of the imported meat is safe, consumable and hygiene according to the Control of Slaughter Rules 1975. The law prescribes that the meat and livestock sold in Malaysia must be certified by the Halal standard in all of its slaughtering process and must have to deliver from a slaughterhouse certified by the Islamic Development Foundation of Malaysia (JAKIM). JAKIM established its sub-unit

⁶Export-Import Bank of Thailand, "Malaysia" [the new trade regulations of Malaysia](http://www.exim.go.th/doc/newsCenter/8075.pdf), Accessed on 20 September 2018, <http://www.exim.go.th/doc/newsCenter/8075.pdf>

⁷ Codex is called to mention for the standard of food committee of FAO/WHO (Codex Alimentarius Commission-CAC). They are responsible to set the international standard of food. In addition, Codex is the name to refer to "Codex Alimentarius" which means "Food Code" in Latin.

called the Islamic Center to follow and monitor the Halal status of meat and poultry products sold in Malaysia. This center also has the power to give Halal certification to all the food to be exported from Malaysia to others.

(3) Classification of controlled imported goods

Malaysia prohibits the import of certain products or restricts the import of some goods under a licensing scheme as follows:

(a) Prohibited goods

The list of goods below is strictly prohibited from importation due to the religious, moral, environment and local industry protection reasons.⁸

- Reproduction of any currency note, banknote, or coin which are currently been issued in any country.
- Indecent printings, paintings, photographs, books, cards, lithographic, engravings, films, video tapes, laser discs, color slides, computer disc, and any other media;
- Any device intended to be prejudicial to the interest of Malaysia or unsuited with peace;
- All genera of Piranha fish;
- Turtle eggs;
- Cocoa pods, rambutans, pulasan, longan, and namnam fruits from the Philippines and Indonesia;
- Intoxicating liquors containing more than 3.46 milligrams per liter in any lead or any compound of copper;
- Daggers and flick knives;
- Broadcast receivers capable of receiving radio communication within the ranges (68 - 87) MHz and (108 - 174) MHz;
- Sodium arsenate;

⁸ Royal Malaysia Customs, "Prohibition/Restriction of Imports," Accessed June 25, 2018, http://www.customs.gov.my/en/tp/pages/tp_ie.aspx.

- Cloth bearing the imprint or duplicate of any verses of the Quran;
- Pen, pencil, and other articles resembling syringes;
- Poisonous chemical;
- Lightning arresters containing radioactive material.

(b) Restricted goods

Under the Customs Act 1967 and Customs order 1998 (Prohibition of Import), the Ministry of International Trade and Industry (MITI) restricts certain products to import to Malaysia.⁹ The lists of imported goods specified below are prohibited except under an import license or permit from relevant authorities:¹⁰

- Egg in the shells;
- Any meat, bones, or any part of the animals and poultry;
- Live animals;
- Explosives and Fireworks;
- Imitation arms, toy gun/pistols;
- Imitation hand grenades;
- Arms and ammunition other than personal arms ammunition imported by bona fide traveler;
- Bullet proof vests, steel helmets and other articles of clothing as protection against attack;
- Soil and pests including live insects, rats, snails;
- Safety helmets (except as worn by motorcyclists or motorcycle pillion riders);
- Video machines excluding game watches and video games for use with a television receiver;

⁹ The Office of trading development of Thailand for ASEAN agreement, Department of International Trade Promotion, Kuala Lumpur, Malaysia, regulations for Import and Export to Malaysia, P.3 Accessed on 23 April 2019, https://www.ditp.go.th/contents_attach/92453/92453.pdf.

¹⁰ Royal Malaysia Customs, "Prohibition/Restriction of Imports," Accessed June 25, 2018, http://www.customs.gov.my/en/tp/pages/tp_ie.aspx.

- Motor vehicles;
- Batik sarong;
- Rice and padi including rice products;
- Equipment to be connected to a public telecommunication network;
- Radio communication used for telecommunication in the frequency lower than 3000 GHz;
- Saccharin and its salt;
- Parabola antenna for outdoor use;
- Pests and organisms which are capable of being injurious to plants;
- Live fish;
- Animal oils and fats;
- Plants include parts and plant products;
- Household and agricultural pesticides;
- Electric domestic equipment that use 50 volt or 120 volt Dc or more;
- Toxic and/or hazardous wastes;
- Corals, alive or dead;
- Apparatus/equipment for the brewing of beer in the home; and
- Pharmaceutical products.

(4) Government agencies related to importation and exportation

(a) The Department of Standards Malaysia

This department is under the control of the Ministry of Science, Technology, and Innovation (MOSTI). This Department controls the standard of goods sold in Malaysia both in production and marketing. Therefore, both the Malaysian and foreign manufacturers have to follow the rules prescribed by this Department.

| | |
|-----------------|--|
| Organization | Department of Standards Malaysia |
| Office location | Century Square, Level 1 & 2, Blok 2300 Jalan, Usahawan, 40911 Shah Alam, Selangor |
| Telephone | +603 8318 0002 |
| Fax | +603 8319 3131 |
| Website | http://www.jsm.gov.my |

(b) The Standard and Industrial Research Institute of Malaysia (SIRIM)

SIRIM is a research unit to develop the standard of Malaysia industry of private sectors in Malaysia. This organization operates a test lab of some restricted goods before importing to Malaysia.

| | |
|-----------------|---|
| Organization | SIRIM Berhad (Company No. 367474-V) |
| Office location | 1, Persiaran Dato' Menteri, 63000 Cyberjaya, Selangor |
| Telephone | +603 5544 6000 |
| Fax | +603 55108095 |
| Website | http://www.sirim.my |

(c) The Ministry of International Trade and Industry (MITI)

MITI is the main organization to issue an import license.

| | |
|-----------------|--|
| Organization | The Ministry of International Trade and Industry: MITI |
| Office location | Menara MITI, No 7, Jalan sultan Haji Ahmed Shah, 50480 Kuala Lumpur, Malaysia |
| Telephone | +603 8000 8000 |
| Fax | +603 6206 4693 |
| Websites | http://miti.gov.my |

1.1.2 Consumer Protection Law

Malaysia has developed consumer protection mechanisms in various ways. The main provision is the Consumer Protection Act 1999.

(1) Consumer Protection

Consumer Protection Act 1999 is the main provision protecting consumers from goods, services or process which may affect the well-being and health of consumers. Protections can be described as follows.

(a) Misleading conduct, False or misleading representation

The offense is committed when a person confuses consumers with false or misleading representation¹¹ such as false or misleading information regarding characteristics, quality or quantity of the goods.

Furthermore, the protection covers bait advertising¹² such as advertising for supply at an unreasonably low price to lure consumers, but there is no such supply available, or the supply is highly limited. Bait advertising includes promotions that offer any gift, prize or other free items with the intention of not providing it, as offered.¹³

(b) Compliance with safety standards

Goods and services must comply with safety standards. This includes advertising and instructions regarding usage, keeping, and consumptions.¹⁴ If goods are found unsafe, Minister of Domestic Trade and Consumer Affairs can declare any goods or any class of goods to be prohibited goods, where the sellers may be ordered to recall the prohibited goods, stop supplying the prohibited goods, stop the advertisement of the prohibited goods, repair or replace the prohibited goods, fully or partially refund, or disclose information regarding the characteristics of the prohibited goods which render them unsafe.¹⁵

(c) Guarantees

Guarantees must be implied where goods are supplied to a consumer as follows:

¹¹ Section 9-12. Consumer Protection Act 1999. [find Annex at the end of this chapter.]

¹² Section 13. Consumer Protection Act 1999. [find Annex at the end of this chapter.]

¹³ Section 14. Consumer Protection Act 1999. [find Annex at the end of this chapter.]

¹⁴ Section 19-21. Consumer Protection Act 1999. [find Annex at the end of this chapter.]

¹⁵ Section 23. Consumer Protection Act 1999. [find Annex at the end of this chapter.]

- Implied guarantee that the supplier has a right to sell the goods;
- Implied guarantee that the goods are of acceptable quality;
- Implied guarantee that the goods are reasonably fit for any particular purpose;
- Implied guarantee that goods comply with sample;
- Implied guarantees that the consumer shall not be liable to pay to the supplier more than the reasonable price of the goods; and
- Implied guarantees that the manufacturer and the supplier will take reasonable action to ensure that facilities for the repair of the goods and the supply of spare parts for the goods are reasonably available for a reasonable period after the goods are supplied.

Manufacturers are also required to have an express guarantee to a consumer such as quality guarantee, satisfaction guarantee and the return of money, for example.¹⁶

For services, the guarantee must be implied that the services will be carried out with reasonable care and skill and that any material supplied in connection with such services will be fit for the purpose for which it is supplied. Services must be done within a reasonable time and at a reasonable price. Otherwise, a consumer has a right of redress against a supplier of services.¹⁷

(2) Consumer claims

Consumers can claim their consumer rights to Tribunal for Consumer Claims Malaysia, founded by the Consumer Protection Act 1999.¹⁸ The Tribunal is under the Ministry of Domestic Trade and Consumer Affairs. The claim must not exceed 25,000 Ringgits (approximately 250,000 Bahts).¹⁹

¹⁶ Section 31-38. Consumer Protection Act 1999. [find Annex at the end of this chapter.]

¹⁷ Section 57. Consumer Protection Act 1999. "Consumer's right of redress against suppliers
This Part gives a consumer a right of redress against a supplier of services where the services or product resulting from the services fail to comply with any of the implied guarantees under sections 53 to 55."

¹⁸ Section 85. Consumer Protection Act 1999 "Establishment of the Tribunal for Consumer Claims
There shall be established a tribunal to be known as the "Tribunal for Consumer Claims".

¹⁹ Tribunal for Consumer Claims Malaysia, "Frequently Asked Question," Accessed July 11, 2018, <https://tspm.kpdnkk.gov.my/portal/faq>.

The primary objective of the Tribunal is to provide an alternative channel for consumers so that claims are processed in a simple, inexpensive and speedy manner.²⁰

The Tribunal has to make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences.²¹ Any claim exceeding 25,000 Ringgits, however, is not under the jurisdiction of the Tribunal, which means the consumer must file a civil lawsuit.

The following claims are under the Tribunal.²²

- misleading or deceptive conduct as to the type, manufacturing process, suitability for purpose, quality, and quantity;
- misleading indication as to the price;
- an offer of a gift, prize or other free items with the intention of not providing it or not providing it as offered;
- misleading claims such as while stocks last or goods are limited;
- receiving payment for goods or services without the intention to supply;
- safety of goods and services;
- guarantees, etc

²⁰ Tribunal For Consumer Claims Malaysia, "Objectives," Accessed July 11, 2018, <https://ttpm.kpdnkk.gov.my/portal/ttpm/objectives>.

²¹ Section 112. Consumer Protection Act 1999 "Awards of Tribunal
(1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences."

²² Tribunal for Consumer Claims Malaysia, "Type of Claims," Accessed July 11, 2018, <https://ttpm.kpdnkk.gov.my/portal/claim/type>.

(3) Awards of Tribunal

Awards of the Tribunal can be as follows.²³

- 1) A party to the proceedings pays money to any other party.
- 2) Goods are supplied or resupplied to the consumer.
- 3) Goods supplied or resupplied to the consumer are replaced or repaired.
- 4) The price or other consideration paid or supplied by the consumer or any other person is refunded to the consumer or that person.
- 5) A party complies with the guarantee.
- 6) Money is awarded to compensate for any loss or damage suffered by the claimant.
- 7) The contract is varied or set aside, wholly or in part.
- 8) Costs to or against any party are paid.
- 9) Interest is paid on any sum or monetary award at a rate not exceeding 8% per year unless it has been otherwise agreed between the parties;
- 10) The claim is dismissed.

Decisions of the Tribunal are final and binding on all parties to the proceedings, and also deemed to be an order of a Magistrate's Court.²⁴ Any person who after 14

²³ Section 112. Consumer Protection Act 1999 "Awards of Tribunal

(2) An award of the Tribunal under subsection (1) may require one or more of the following:

- (a) that a party to the proceedings pay money to any other party;
- (b) that goods be supplied or resupplied in accordance with this Act or the contract to which the consumer is a party;
- (c) that goods supplied or resupplied to the consumer be replaced or repaired;
- (d) that the price or other consideration paid or supplied by the consumer or any other person be refunded to the consumer or that person;
- (e) that a party comply with the guarantee;
- (f) that money be awarded to compensate for any loss or damage suffered by the claimant;
- (g) that the contract be varied or set aside, wholly or in part;
- (h) that costs to or against any party be paid;
- (i) that interest be paid on any sum or monetary award at a rate not exceeding eight per centum per annum, unless it has been otherwise agreed between the parties;
- (j) that the claim is dismissed.

²⁴ Section 116. Consumer Protection Act 1999 "Decisions of Tribunal to be final

(1) Every agreed settlement recorded by the Tribunal under subsection 107(3) and every award made by the Tribunal under section 112-

- (a) shall be final and binding on all parties to the proceedings; and

days fails to comply with the award will be liable to a fine not exceeding 5,000 Ringgits (approximately 50,000 Bahts) or to imprisonment for a term not exceeding 2 years or to both, and an additional fine not exceeding 10,000 Ringgits (approximately 100,000 Bahts) for each day during which the offense continues after conviction.²⁵

(4) Application for Judicial Review

Any person who is adversely affected by the decision of the Tribunal is entitled to make an application for judicial review to the High Court.²⁶ The application must be made within 3 months from the date of the decision.²⁷ The appeal is by way of rehearing, and the High Court has the like powers and jurisdiction on the hearing of appeals as the Court of Appeal has on the hearing of appeals from the High Court.²⁸ Therefore, each party may need an attorney to proceed with the case in the High Court.

(b) shall be deemed to be an order of a Magistrate's Court and be enforced accordingly by any party to the proceedings."

²⁵ Section 117. Consumer Protection Act 1999 "Criminal penalty for failure to comply

(1) Any person who after fourteen days fails to comply with an award made by the Tribunal commits an offence and shall on conviction be liable to a fine not exceeding five thousand Ringgits or to imprisonment for a term not exceeding two years or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding one thousand Ringgits for each day or part of a day during which the offence continues after conviction.

²⁶ Order 53 Application for Judicial Review, Rules of Court 2012, Rule 2

"(4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application."

²⁷ Order 53 Application for Judicial Review, Rules of Court 2012, Rule 3

"(6) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant."

²⁸ Section 29, Courts of judicature act 1964. "All civil appeals from a subordinate court shall be by way of re-hearing, and the High Court shall have the like powers and jurisdiction on the hearing of appeals as the Court of Appeal has on the hearing of appeals from the High Court."

1.1.3 Intellectual Property Laws

Malaysia pays high attention to the protection of intellectual property. This country has joined the associates relating to intellectual property protection, including the membership of the World Intellectual Property Organisation (WIPO). Malaysia has been a signatory to several international treaties²⁹ to promote the protection of local intellectual property rights in conformance with international standards.

The Malaysian Intellectual Property Organization (MyIPO),³⁰ constituted under the Ministry of Domestic Trade and Consumer Affairs, is empowered for intellectual property administration. The authority to suppress the intellectual property right infringement and the intellectual property right enforcement lies in the Enforcement Division, which is also established under the Ministry.

(1) Laws relating to Intellectual Properties of Malaysia

The intellectual property laws and regulations can be summarised as follows:

| Types of Intellectual Property | Statutory Instruments |
|---------------------------------------|--|
| Patents | Patents Act 1983 (as amended up to 2006) Patent Regulations 1986 (as amended up to 2011) The Patent Cooperation Treaty (PCT) |
| Trade marks | Trade Marks Act 1976 (as amended up to 2006) Trade Marks Regulations 1997 (as amended up to 2011) |

²⁹ Malaysia has joined the following international treaties:

- WIPO Copyright Treaty;
- WIPO Performances and Phonograms Treaty;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (September 28, 2007)
- Patent Cooperation Treaty;
- Berne Convention for the Protection of Literary and Artistic Works;
- Convention Establishing the World Intellectual Property Organization;
- Paris Convention for the Protection of Industrial Property,
<http://www.wipo.int/wipolex/en/profile.jsp?code=MY#a6> , (accessed 21 November 2016).

³⁰ MyIPO's head office located at Unit 1-7, Aras Bawah, Tower B, Menara UOA Bangsar, No. 5, JalanBangsarUtama 1, 59000 Kuala Lumpur – Malaysia, Tel. +603 2299 8400, <http://www.myipo.gov.my/home>

| | |
|---------------------------------------|---|
| Industrial Designs | Industrial Design Act 1996 (as amended up to 2013) Industrial Design Regulations 1999 (as amended up to 2013) |
| Copyrights | Copyright Act 1987 (as amended up to 2006) Copyright (Copyright Tribunal) Regulation 2012 Copyright (Licensing Body) Regulations 2012 Copyright (Voluntary Notification) Regulations 2012 Copyright (Application to other Countries (Amendment) Regulations 2000 Copyright (Public Libraries and Educational Scientific or Professional Institutions) (Amendment) Order 1996 |
| Layout Designs of Integrated Circuits | Layout Designs of Integrated Circuits Act 2000 |
| Geographical Indications | Geographical Indications Act 2000 Geographical Indications Regulations 2001 (as amended up to 2013) |
| Plant Varieties | Protection of New Plant Varieties Act 2004 |
| Trade Description | Trade Description Act 2011 |
| Intellectual Property Cooperation | Intellectual Property Corporation of Malaysia Act 2002 |

Yet, Malaysia has neither legislation nor formal registration process to protect confidential information. The confidential information means undisclosed information e.g. trade secrets. In the case of unauthorized disclosure of information, the confidential information owners have to file a lawsuit against the disclosing party for breach of confidence on the Common Law basis.

(2) Patents

The Patents Act 1983 grants two types of patents i.e. a Patent and Utility Innovation. The patent protection will be granted only if the registration process is completed.

The Patent is an exclusive right granted for an invention which is a product or process leading to a new way of doing something or offers a new technical solution to a problem.

The Utility Innovation is an exclusive right granted for any innovation which creates a new product or process, or any new improvement of a known product or process, which is capable of industrial application.³¹

(a) Patentable Inventions

An invention is patentable if the three following conditions are fulfilled: novelty, involving an inventive step and industrial applicability.³²

- *Novelty*³³ means an invention is not anticipated by the prior art. An invention lacks novelty if it has been disclosed to the public, anywhere in the world, by written publication, by oral disclosure, by use or in any other way, prior to the filing date of the patent application, or an invention which has been patented by Malaysia or other countries prior to the filing date of the patent application.

³¹ Section 17 of the Patent Act 1983 states that "For the purposes of this Part and any regulations made under this Act in relation to this Part, "utility innovation" means any innovation which creates a new product or process, or any new improvement of a known product or process, which is capable of industrial application, and includes an invention."

³² Section 11 of the Patent Act 1983 states that "An invention is patentable if it is new, involves an inventive step and is industrially applicable."

³³ Section 14 of the Patent Act 1983 states that "(1) An invention is new if it is not anticipated by prior art.

(2) Prior art shall consist of –

(a) everything disclosed to the public, anywhere in the world, by written publication, by oral disclosure, by use or in any other way, prior to the priority date of the patent application claiming the invention;

(b) the contents of a domestic patent application having an earlier priority date than the patent application referred to in paragraph (a) to the extent that such contents are included in the patent granted on the basis of the said domestic patent application.

(3) A disclosure made under paragraph (2)(a) shall be disregarded –

(a) if such disclosure occurred within one year preceding the date of the patent application and if such disclosure was by reason or in consequence of acts committed by the applicant or his predecessor in title;

(b) if such disclosure occurred within one year preceding the date of the patent application and if such disclosure was by reason or in consequence of any abuse of the rights of the applicant or his predecessor in title;

(c) if such disclosure is by way of a pending application to register the patent in the United Kingdom Patent Office as at the date of coming into force of this Act.

(4) The provisions of subsection (2) shall not exclude the patentability of any substance or composition, comprised in the prior art, for use in a method referred to in paragraph 13(1)(d), if its use in any such method is not comprised in the prior art."

- *Inventive steps*³⁴ mean these steps of the invention would not have been obvious to a person skilled in the art.
- *Industrial applicability*³⁵ means an invention can be made or used in any kind of industry.

In the case where an invention is unqualified for the patent, the proprietor may be capable of applying the Utility Innovation if the invention meets the following criteria:

- novelty;
- industrial applicability; and
- involving inventive steps which can be less inventive than those of the Patented invention.

(b) Non-patentable inventions are as follows:³⁶

- 1) discoveries, scientific theories, and mathematical methods;
- 2) plant or animal varieties or essentially biological processes for the production of plants or animals, other than man-made living micro-organisms, micro-biological processes, and the products of such micro-organism processes;
- 3) schemes, rules or methods for doing business, performing purely mental acts or playing games;

³⁴ Section 15 of the Patent Act 1983 states that "An invention shall be considered as involving an inventive step if, having regard to any matter which forms part of the prior art under paragraph 14(2)(a), such inventive step would not have been obvious to a person having ordinary skill in the art."

³⁵ Section 16 of the Patent Act 1983 states that "An invention shall be considered industrially applicable if it can be made or used in any kind of industry."

³⁶ Section 13 of the Patent Act 1983 states that "(1) Notwithstanding the fact that they may be inventions within the meaning of section 12, the following shall not be patentable:

- (a) discoveries, scientific theories and mathematical methods;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals, other than man-made living micro-organisms, micro-biological processes and the products of such micro-organism processes;
- (c) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (d) methods for the treatment of human or animal body by surgery or therapy, and diagnostic methods practised on the human or animal body: Provided that this paragraph shall not apply to products used in any such methods.

(2) For the purpose of subsection (1), in the event of uncertainty as to whether the items specified therein shall be patentable or not, the Registrar may refer the matter to the Examiner for an opinion and the Registrar shall thereafter give a decision as to whether to include or exclude such item as being patentable, as the case may be."

- 4) methods for the treatment of the human or animal body by surgery or therapy, and diagnostic methods practiced on the human or animal body, except products used in any such methods.

(c) Patent Registration Process

The patent registration is a required process to obtain exclusive protection. The patent application shall be manually filed to the Patent Registry of MyIPO or online submitted to www.myipo.gov.my by a person having the right to file the application which is either an inventor, co-inventors, descendants, employees or transferees.

An applicant who is a resident or permanent resident in Malaysia can apply by himself. In case the applicant does not reside in Malaysia, he must appoint an agent in Malaysia to proceed with the patent registration.³⁷

The Patent granted in Malaysia provides the protection within the Federation of Malaysia but nowhere else. Since there is no such thing as a world patent, if patentees need to obtain the patent protection abroad, they have to file another application at target countries within the novelty grace period as specified by the law of the target countries, which is normally 12 - 18 months from the first filing date. The time limit of such grace period and high expenses are the main restraint to gain patent protection abroad. Currently, the invention's proprietor is capable of filing international applications for patents under the Patent Cooperation Treaty (PCT), to which Malaysia has been a signatory. Therefore, an applicant who is a resident or permanent resident in Malaysia is entitled to submit only one international application in English to the Patent Registry of MyIPO. The applicant has to specify which designated countries he wishes to be patented. Then, MyIPO would submit the application to WIPO. WIPO would process preliminary examination and transfer the application to the target countries. Therefore, the applicant does not have to prepare all the papers and appoint a patent agent in each country. This would assist the patent applicant in saving expenses and time.

³⁷ Section 23A of the Patent Act 1983 states that "No person resident in Malaysia shall, without written authority granted by the Registrar, file or cause to be filed outside Malaysia an application for a patent for an invention unless - (a) an application for a patent for the same invention has been filed in the Patent Registration Office not less than two months before the application outside Malaysia; and (b) either no directions have been issued by the Registrar under section 30A in relation to the application or all such directions have been revoked."

(d) Term of Protection

The term of the patent protection is categorized into 2 scenarios upon the filing date.

For an application filed on or after 1 August 2001, the patent granted on it will be valid for up to 20 years from the filing date.

In the case of an application filed before 1 August 2001, the patent granted on it will be valid for up to 15 years from their date of grant, or 20 years from the filing date where the 20-year term expires later.³⁸

The duration of a Utility Innovation shall be 15 years from the date of grant and, after the expiration, it can be renewed for a further 5 years protection.

(3) Trade Marks

The Trade Marks Act 1976 gives protection to marks used with goods and services. The marks generally include a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination of these things.³⁹ The trade marks have to be registered to get protection, which is the same system as used in obtaining patent protection. Only a proprietor is entitled to use the registered trademark, while others can use it only if they get consent from the proprietor.

(a) Registrable Trademarks

Marks are registrable if they contain distinctiveness which means they can help people distinguish goods or services of one manufacturer from another.⁴⁰ The

³⁸ Section 35 of the Patent Act 1983 states that "(1) Subject to subsections (1B) and (1C), the duration of a patent shall be twenty years from the filing date of the application.

(1A) Without prejudice to subsection (1) and subject to the other provisions of this Act, a patent shall be deemed to be granted and shall take effect on the date the certificate of grant of the patent is issued.

(1B) Where a patent application was filed before 1 August 2001, and was pending on that date, the duration of the patent granted on that application shall be twenty years from the date of filing or fifteen years from the date of grant, whichever is the longer.

(1C) The duration of a patent granted before 1 August 2001 and still in force on that date shall be twenty years from the date of filing or fifteen years from the date of grant whichever is the longer."

³⁹ Section 3(1) of the Trade Marks Act 1976 states that "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof."

⁴⁰ Section 10(2A) of the Trade Marks Act 1976. "For the purposes of this section, "distinctive", in relation to the trade mark registered or proposed to be registered in respect of goods or services, means the trade mark must be capable of distinguishing goods or services with which the proprietor of the trade mark is or may be connected in the course of trade from goods or services in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered in respect of goods or services, means the trade mark must be capable of distinguishing goods or services with which the proprietor of the trade mark is or may be connected in the course of trade from goods or services in the case of which no such connection subsists, either generally or, where the trade

distinctiveness may derive from actual usage or characters of such marks. The marks' characters must satisfy at least one of the following particulars:⁴¹

- the name of an individual, company or firm represented in a special or particular manner;
- the signature of the applicant for registration, or of some predecessor in his business;
- an invented word or words;
- a word having no direct reference to the character or quality of the goods or services; or
- any other distinctive marks.

(b) Unregistrable Trademarks

The following marks or parts of them are prohibited to be registered as a trade mark:⁴²

- a mark is likely to deceive or cause confusion to the public or would be contrary to law;

mark is registered or proposed to be registered, subject to conditions, amendments, modifications or limitations, in relation to use within the extent of the registration."

⁴¹Section 10(1) of the Trade Marks Act 1976. "In order for a trade mark (other than a certification trade mark) to be registrable, it shall contain or consist of at least one of the following particulars:

- (a) the name of an individual, company or firm represented in a special or particular manner;
- (b) the signature of the applicant for registration or of some predecessor in his business;
- (c) an invented word or words;
- (d) a word having no direct reference to the character or quality of the goods or services not being, according to its ordinary meaning, a geographical name or surname; or
- (e) any other distinctive mark."

⁴²Section 14(1) of the Trade Marks Act 1976. "A mark or part of a mark shall not be registered as a trade mark—

- (a) if the use of which is likely to deceive or cause confusion to the public or would be contrary to law;
- (b) if it contains or comprises any scandalous or offensive matter or would otherwise not be entitled to protection by any court of law;
- (c) if it contains a matter which in the opinion of the Registrar is or might be prejudicial to the interest or security of the nation;
- (d) if it is identical with or so nearly resembles a mark which is well known in Malaysia for the same goods or services of another proprietor;
- (e) if it is well known and registered in Malaysia for goods or services not the same as to those in respect of which registration is applied for: Provided that the use of the mark in relation to those goods or services would indicate a connection between those goods or services and the proprietor of the well known mark, and the interests of the proprietor of the well known mark are likely to be damaged by such use;
- (f) if it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in Malaysia is of such a nature as to mislead the public as to the true place of origin of the goods; or
- (g) if it is a mark for wines which contains or consists of a geographical indication identifying wines, or is a mark for spirits which contains or consists of a geographical indication identifying spirits, not originating in the place indicated by the geographical indication in question."

- a mark contains or comprises any scandalous or offensive matter or would otherwise not be entitled to protection by any court of law;
- a mark contains a matter which in the opinion of the Registrar is or might be prejudicial to the interest or security of the nation;
- a mark is identical with or resembles other marks which are well-known in Malaysia for the same goods or services of another proprietor;
- a mark contains or consists of a geographical indication concerning goods not originating in the territory indicated, if the use of the indication in the marks for such goods in Malaysia can confuse the public as to the true place of origin of the goods;
- a mark contains or consists of a geographical indication identifying wines or liquors not originating in the place indicated by the geographical indication in question.

(c) Trade Mark Registration Process

The registered trademark shall be protected under the Trade Marks Act 1976. The Trade Mark Registry of MyIPO has the authority to register the trade mark. The application shall be manually filed with the Trade Mark Registry or online submitted to www.myipo.gov.my.

Malaysia applies the First to Use Principle, therefore, any person who first uses that trade mark shall have the right to repeal similar trademarks used by others.

If an applicant is not a resident or does not have a permanent establishment in Malaysia, he must appoint an agent in Malaysia to proceed with the trade mark registration.

(d) Term of Protection

Upon registration, the registered trademark will be valid for 10 years and it is renewable every 10 years.⁴³

⁴³ Section 32 (1) of the Trade Marks Act 1976 states that The registration of a trade mark shall be for a period of ten years but may be renewed from time to time in accordance with this Act.

(4) Industrial Designs

The Industrial designs shall be protected if they are registered under the Industrial Design Act 1996.

The industrial design means features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged by the eye, but does not include -

- 1) a method or principle of construction; or
- 2) features of shape or configuration of an article which are dictated solely by the function which the article has to perform, or are dependent upon the appearance of another article of which the article is intended by the author of the design to form an integral part.⁴⁴

(a) Registrable Industrial Designs

Section 12 of the Industrial Design Act 1996 provides that industrial design can be registered if it is new. The law is, however, silent on the definition of a new design. The Act specifies that an industrial design is not new and unprotectable if it has been disclosed to the public anywhere in Malaysia, or it has been the subject matter of another application for registration of an industrial design filed in Malaysia made by a different applicant, prior to the date of the first filing of an industrial design application.⁴⁵

⁴⁴ Section 3(1) of the Industrial Designs Act 1996 states that “industrial design” means features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged by the eye, but does not include —

- (a) a method or principle of construction; or
- (b) features of shape or configuration of an article which—
 - (i) are dictated solely by the function which the article has to perform; or
 - (ii) are dependent upon the appearance of another article of which the article is intended by the author of the design to form an integral part.

⁴⁵ Section 12 of the Industrial Design Act 1996 states that “(1) Subject to this Act, an industrial design shall not be registered unless it is new.

(2) An industrial design for which an application for registration is made shall not be considered to be new if, before the priority date of that application, it or an industrial design differing from it only in immaterial details or in features commonly used in the relevant trade—

- (a) was disclosed to the public anywhere in Malaysia; or
- (b) was the subject matter of another application for registration of an industrial design filed in Malaysia but having an earlier priority date made by a different applicant in so far as that subject matter was included in a registration granted on the basis of that other application.

(3) For the purposes of paragraph (2)(a), an industrial design shall not be deemed to have been disclosed to the public solely by reason of the fact that, within the period of six months preceding the filing date of an application for registration—

- (a) it appeared in an official or officially recognized exhibition; or
- (b) it has been disclosed by a person other than the applicant or his predecessor in title as a result of an unlawful act committed by that other person or another person.”

(b) Unregistrable industrial designs are as follows:

- 1) an industrial design is not new;
- 2) an industrial design is contrary to public order or morality.⁴⁶

(c) Registration Process of the Industrial Designs

An application shall be manually submitted to the Industrial Designs Registration Office, MyIPO, or online submitted to www.myipo.gov.my. An applicant who has a permanent resident abroad shall appoint an agent in Malaysia to proceed with the registration; otherwise, the Registrar shall have the right to refuse the application.

(d) Term of Protection

A registered industrial design is given an initial protection period of 5 years from the filing date. It is renewable for a further two consecutive terms of 5 years if the extension fee is paid before the expiration of the current term.⁴⁷

(5) Copyright

Copyright means an exclusive right of an owner to benefit from his created works. The governance of copyright in Malaysia is provided for by the Copyright Act 1987. Malaysia has been a member of the Berne Convention since 1990 and thus the Malaysian copyright laws have developed to harmoniously align with the Convention.

There is no system of registration for copyright in Malaysia. Eligible work is automatically protected. Although the registration process is not mandatory to secure copyright protection, the proprietor is entitled to voluntarily apply to acquire a Certificate of the Notification of Copyrights.

(a) Works Eligible for Copyright

Types of works eligible for copyright consist of literary works, musical works, artistic works, films, sound recordings, broadcasts, and derivative works.⁴⁸ The

⁴⁶ Section 13 of the Industrial Design Act 1996

⁴⁷ Section 25 of the Industrial Design Act 1996

⁴⁸ Section 7(1) of the Copyright Act 1987 states that "(1) Subject to this section, the following works shall be eligible for copyright:

- (a) literary works;
- (b) musical works;

derivative works include a translation version of the copyright works and computer programs.⁴⁹ Furthermore, live performance is protected according to Section 16A which provides an exclusive right to the live performer, such as broadcasting and fixation of an unfixed performance, etc.

(b) Works Ineligible for Copyright

Copyright protection shall not extend to any idea, procedure, method of operation or mathematical concept.⁵⁰

(c) Term of Protection

The term of copyright protection depends on a type of copyrighted work. In the case of copyrights in any literary works, musical works, artistic works, and computer programs, a copyrighted work shall be protected throughout the author's life and continue for 50 years after the author's death.⁵¹

The copyrights of sound recording, broadcast, and filming are valid for 50 years from the beginning of the calendar year following the year in which such works were first broadcasted or published.⁵²

-
- (c) artistic works;
 - (d) films;
 - (e) sound recordings; and
 - (f) broadcasts."

⁴⁹ Section 7(1) of the Copyright Act 1987 states that "(1) The following derivative works are protected as original works:

(a) translations, adaptations, arrangements and other transformations of works eligible for copyright; and (b) collections of works or collections of mere data, whether in machine readable or other form, eligible for copyright which, by reason of the selection and arrangement of their contents, constitute intellectual creation.

(2) Protection of works referred to in subsection (1) shall be without prejudice to any protection of the existing works used."

⁵⁰ Section 7(2A) of the Copyright Act 1987 states that "Copyright protection shall not extend to any idea, procedure, method of operation or mathematical concept as such."

⁵¹ Section 17(1) of the Copyright Act 1987 states that "Except as otherwise provided in this Act, copyright in any literary, musical or artistic work which subsists in such work under this Act shall subsist during the life of the author and shall continue to subsist until the expiry of a period of fifty years after his death."

⁵² Section 19 of the Copyright Act 1987 states that "Copyright which subsists in a sound recording under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the recording was first published or, if the sound recording has not been published, from the beginning of the calendar year following the year of fixation."

Section 20 of the Copyright Act 1987 states that "Copyright which subsists in a broadcast under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the broadcast was first made."

Section 22 of the Copyright Act 1987 states that "Copyright which subsists in a film under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the film was first published."

Copyrights of works of Government, Governmental organizations and international bodies are valid for 50 years from the beginning of the calendar year following the year in which the work was first published.⁵³

(6) Layout Designs of Integrated Circuits

The Layout Designs of Integrated Circuits Act 2000 grants protection to the layout design of integrated circuits in Malaysia upon completion of the work. There is no registration system. Layout design of an integrated circuit which is created originally and freely shall be protected, provided that it fulfills certain conditions specified in this Act.⁵⁴

(a) Works Eligible for Protection

“A layout-design” means the three-dimensional disposition, however expressed, of the elements of an integrated circuit and some or all of the interconnections of the integrated circuit or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

“An integrated circuit” means a product, whether in its final form or in an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and on, or in or on, a piece of material and which is intended to perform an electronic function.⁵⁵

⁵³ Section 23 of the Copyright Act 1987 states that “Copyright which subsists in works of the Government, Government organizations and international bodies under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the work was first published.”

⁵⁴ Section 5 (1) of the Layout Designs of Integrated Circuits Act 2000 states that “A layout-design shall be eligible for protection under this Act if the layout-design is an original layout-design and the right holder of the layout-design was, at the time the layout-design was created, a qualifying person.”

⁵⁵ Section 2 (1) of the Layout Designs of Integrated Circuits Act 2000 states that “In this Act, unless the context otherwise requires—

“layout-design” means the three-dimensional disposition, however expressed, of the elements of an integrated circuit and some or all of the interconnections of the integrated circuit or such a three dimensional disposition prepared for an integrated circuit intended for manufacture;

“integrated circuit” means a product, whether in its final form or in an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and on, or in or on, a piece of material and which is intended to perform an electronic function”

(b) Term of Protection

A layout design is protected for a period of 10 years from the date of its first commercial exploitation anywhere in the world. In the case of non-commercial layout design, it will be protected for up to 15 years from the date of creation.⁵⁶

(7) Geographical Indications

A geographical indication (GI) protection is governed by the Geographical Indications Act 2000. The GI is a name or indication used on goods that identify the country or area from which goods originate and where a given quality, reputation, or other characteristics of the goods is essentially attributable to their geographical origin.

The Act creates a system for the registration of GIs, but it does not make registration mandatory as a precondition for entitlement to the protections afforded by it. Therefore, both registered and unregistered GIs are protected under this act.⁵⁷

Remark: Although Section 3 (1) (a) provides that GI registration is not a prerequisite for protection, there are benefits a registered GI's owner enjoys that are not available in the case of unregistered GIs. Firstly, according to section 20 (1), a registered GI shall, in any proceedings, raise a presumption that the indication is a GI within the meaning of the Act. Secondly, section 20 (2) provides that a certificate of registration shall be *prima facie* evidence of the facts stated in the certificate and of the validity of the registration.⁵⁸ Lastly, according to section 21 (1), only producers carrying

⁵⁶ Section 8 of the Layout Designs of Integrated Circuits Act 2000 states that "(1) A layout-design shall be protected under this Act for a period of ten years from the date the layout-design is first commercially exploited in Malaysia or elsewhere;

(2) Notwithstanding subsection (1), the protection granted to a layout-design under this Act shall lapse fifteen years after the date the layout-design is created."

⁵⁷ Section 3(a) of the Geographical Indications Act 2000 states that "Protection under this Act shall be given to a geographical indication-

(a) regardless whether or not the geographical indication is registered under this Act; and

(b) as against another geographical indication which, although literally true as to the country, territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another country, territory, region or locality."

⁵⁸ Section 20 of the Geographical Indications Act 2000 states that "(1) A geographical indication registered under this Act shall, in any proceedings, raise a presumption that such indication is a geographical indication within the meaning of section 2.

(2) A certificate of registration issued under this Act shall be *prima facie* evidence of the facts stated in the certificate and of the validity of the registration.

on their activity in the geographical area specified in the registration shall have the right to use a registered GI in the course of trade.⁵⁹

(a) Protected GI

GIs are protected if they identify any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristics of the goods is essentially attributable to their geographical origin (Section 2).⁶⁰

(b) GIs Ineligible for Protection, as follows:

- 1) GIs that do not correspond to the meaning of “geographical indication” as defined in Section 2;
- 2) GIs which are contrary to public order or morality;
- 3) GIs which are not or have ceased to be protected in their country or territory of origin; or
- 4) GIs which have fallen into disuse in their country or territory of origin.

(c) GIs Registration Process

The following persons are entitled to apply for registration of a GI:

- 1) a producer in the geographical area specified in the application who uses a GI;
- 2) a competent authority; or
- 3) a trade organization or association.

In the case of the applicant’s ordinary residence or principal place of business is outside Malaysia, he has to appoint an agent to proceed with the GI registration.

⁵⁹ Section 21 of the Geographical Indications Act 2000 states that “ (1) In the case of registered geographical indications, only producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication in the course of trade.

(2) The right of use shall be in respect of the products specified in the Register in accordance to the quality, reputation or characteristic specified in the Register.

⁶⁰ Section 2 of the Geographical Indications Act 2000 states that “geographical indication” means an indication which identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin.

A person or group of persons who are qualified for acting as an agent for the GI registration shall meet one of the following criteria:

- 1) he is domiciled or resident in Malaysia; or
- 2) a firm or company is constituted under the laws of Malaysia; and
- 3) such person, firm or company carries on business or practice principally in Malaysia.⁶¹

The applicant can apply for registration of a GI manually to the Geographical Indications Registry, MyIPO, or submit online at www.myipo.gov.my.

(d) Term of Protection

A registered GI is given 10 years of protection from the date of filing and is renewable for every 10 years.⁶² Although a proprietor has not renewed the GI, the legal protection of such GI does still exist as an unregistered GI is also protected under the Act. Such unregistered GI would not enjoy certain benefits specified in Section 3, which is available only to a registered GI.

The Act does not govern the expiry of protection of an unregistered GI.

(8) Trade Description

Trade description protection in Malaysia is governed by the Trade Description Act 2011. This Act aims to protect the interests of consumers and promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct, and practices about goods which have been trademarked in Malaysia. The Ministry of Domestic Trade, Co-operatives and Consumerism is empowered to take criminal action against an infringer, including the seizure of infringing goods bearing the

⁶¹ Section 11A of the Geographical Indications Act 2000 states that “ (1) Any person, firm or company may apply to act as an agent for the purposes of this Act if —

- (a) that person is domiciled or resident in Malaysia; or
- (b) the firm or company is constituted under the laws of Malaysia; and
- (c) such person, firm or company carries on business or practice principally in Malaysia.

(2) The qualifications and the mode of registration of an agent shall be as prescribed.

⁶² Section 19 of the Geographical Indications Act 2000 states that “(1) Where the Registrar is satisfied that the application for registration of a geographical indication complies with the requirement of sections 14 and 15 and that the geographical indication sought to be registered is not contrary to public order or morality and-

- (a) no opposition has been filed under section 14; or

- (b) the Registrar has made a decision under paragraph 16(4) (b) or (c) and no appeal has been filed against that decision, the Registrar shall register the geographical indication and issue to the applicant a certificate of registration in the prescribed form.

(2) The period of registration of a geographical indication shall be ten years and the registration is renewable upon an application made under section 19A.”

false trade description. The Act also imposes criminal punishment on the offender. However, this Act is reserved for owners of registered trademarks to take criminal action against others who infringe the owners' trade marks.

Section 6 defines a "trade description" that it is an indication, whether direct or indirect and by any means given, for any goods or parts of goods relating to any rights in respect of a trademark registered under the Trade Marks Act 1976.

A false trade description means a trade description which is false to a material degree. Any person who applies or trades in any goods bearing a trademark that is identical to a registered trademark without the consent of the registered owner is deemed to apply or trade in goods bearing a false trade description.

Pursuant to Section 8 (3), any person who applies, supplies or offers to supply, expose for supply or has in his possession, custody or control for supply any goods bearing an identical mark with the registered trademark without the consent of the registered owner of the trade mark is deemed to apply, supply or offer to supply goods bearing false trade description unless the contrary is proved. An offender shall be liable to imprisonment and fine. If an offer is a body corporate, he shall be subject to a fine not exceeding 15,000 Ringgit for each goods bearing the false trade description. If that person is not a body corporate, he shall be subject to a fine not exceeding 10,000 Ringgit for each goods bearing the false trade description or to imprisonment for a term not exceeding 3 years or to both. In both cases, the second or subsequent offense, the imprisonment term and fine amount shall be doubled.⁶³

⁶³ Section 8 of the Trade Description Act 2011 states that "(1) Notwithstanding sections 5 and 6, a trade description shall include an indication, whether direct or indirect, and by any means given, in respect of any goods or parts of goods relating to any rights in respect of trade mark registered under the Trade Marks Act 1976.

(2) Any person who—

(a) applies a false trade description to any goods as if the goods were subject to any rights relating to registered trade mark;

(b) supplies or offers to supply any goods to which a false trade description is applied as if the goods were subject to any rights relating to registered trade mark; or

(c) exposes for supply or has in his possession, custody or control for supply any goods to which a false trade description is applied, commits an offence and shall, on conviction, be liable—

(A) if that person is a body corporate, to a fine not exceeding fifteen thousand Ringgit for each goods bearing the false trade description, and for a second or subsequent offence, to a fine not exceeding thirty thousand Ringgit for each goods bearing the false trade description; or

(B) if that person is not a body corporate, to a fine not exceeding ten thousand Ringgit for each goods bearing the false trade description or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding twenty thousand Ringgit for each goods bearing the false trade description, or to imprisonment for a term not exceeding five years or to both.

(3) Any person who applies, supplies or offers to supply, exposes for supply or has in his possession, custody or control for supply any goods bearing an identical mark with the registered trade mark without the consent of the registered owner of the trade mark is deemed to apply, supply or offer to supply goods bearing false trade description unless the contrary is proved.

1.1.4 Competition and Anti-Dumping Law

Many countries are under monopolistic competition and oligopoly where big enterprises may dominate the market and limit small business opportunities to enter into the market. Malaysia has enacted the Competition Act 2010 and the Competition Commission Act 2010 to govern the competition and anti-dumping in Malaysia, regulated by the Competition Commission.

(1) The scope of protection

This Act applies to any commercial activity, both within and outside Malaysia which has an effect to competition any market in Malaysia. Commercial activity means any activity a commercial nature. However, the Act does not cover any activity, directly or indirectly in the exercise of governmental authority, any activity conducted based on the principle of solidarity, and any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity.⁶⁴

(2) Violation of the competition law

To promote fair competition in the market, the law prohibits any activity significantly preventing, restricting or distorting competition. The following examples are prohibited activities.⁶⁵

- The agreement between enterprises to fix a purchase or selling price.
- Using the standardized agreement to keep newcomers from the market.
- Resale price maintenance to prevent a small entrepreneur from selling at a lower price.

⁶⁴ Competition Act 2010, Section 3. "(1) This Act applies to any commercial activity, both within and subject to subsection (2), outside Malaysia.

(2) In relation to the application of this Act outside Malaysia, this Act applies to any commercial activity transacted outside Malaysia which has an effect to competition any market in Malaysia.

(3) This Act shall not apply to any commercial activity regulated under the legislation specified in the First Schedule and the Minister may, by order published in the Gazette, amend the First Schedule.

(4) For the purposes of this Act, "commercial activity" means any activity a commercial nature but does not include—
 (a) any activity, directly or indirectly in the exercise of governmental authority;
 (b) any activity conducted based on the principle of solidarity; and
 (c) any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity."

⁶⁵ Malaysia Competition Commission, "Prohibited Horizontal and Vertical Agreements, "Chapter 1 Guidelines on Prohibition Anticompetitive Agreements, p.915, Accessed April 22,2019. https://www.mycc.gov.my/sites/default/files/handbook/MYCC-4-Guidelines-Booklet-BOOK1-10-FA-copy_chapter-1-prohibition.pdf.

- A horizontal agreement between enterprises that aims to limit or control a price, production or perform an act of bid-rigging.⁶⁶

Moreover, an abuse of a dominant position can be deemed the prohibited activity under the law. The following examples are also prohibited activities.⁶⁷

- Using their dominant position to directly or indirectly create any price-fixing or unfair condition to customers or suppliers.
- Using their dominant position to limit or control production, market or marketing access of the other entrepreneur to mislead their customers.
- Using their dominant position to deny supplying materials for any group of business or activity.
- Using the different conditions to the same type of entrepreneur as a level that can be an obstacle to access to the market of each entrepreneur or competitor by railroad them to out of the market share or making any damage to the competitiveness of their competitors.
- Using the special agreement which is not directly concerned with the main contract such as tying agreement.
- Having predatory behavior towards competitors or,
- Making a rush purchase for the raw material of the competitor as the dominant buyer with unreasonable purpose.

⁶⁶ Competition Act 2010, Section 4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;
- (b) share market or sources of supply;
- (c) limit or control—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or perform an act of bid rigging,

(d) is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.”

⁶⁷ Malaysia Competition Commission, “Introduction, ”Chapter 2 Guidelines on Prohibition Abuse of Dominant Position, p.3, Accessed April 22, 2019. https://www.myc.gov.my/sites/default/files/handbook/MYCC-4-Guidelines-Booklet-BOOK1-10-FA-copy_chapter-1-prohibition.pdf.

If the prohibited activity is found, the Malaysia Competition Commission may investigate the suspected activity,⁶⁸ or upon a complaint by a person, investigate the activity or contract has infringed or is infringing any prohibitions under the law.⁶⁹

Therefore, if any entrepreneur finds the suspected activity, it can file a complaint with the details on the alleged person or enterprise that has infringed the prohibition under this Act to the Commission. If the Commission finds that the complaint is not grounded, the Commission shall respond to the petitioner within 15 days. If the Commission has investigated and found that the alleged person has committed any infringement under this Act, the Commission has the power to impose guidelines to the offender individually, which includes a fine, seizure or withdrawal from the business registration.

⁶⁸ Competition Act 2010, Section 14. “(1) The Commission may conduct any investigation as the Commission thinks expedient where the Commission has reason to suspect that any enterprise has infringed or is infringing any prohibition under this Act or any person has committed or is committing any offence under this Act.

(2) The Commission shall, on the direction of the Minister, investigate any suspected infringement of any of the prohibition or commission of an offence under this Act.”

⁶⁹ Competition Act 2010, Section 15. “(1) The Commission may, upon a complaint by a person, conduct an investigation on any enterprise, agreement or conduct that has infringed or is infringing any prohibition under this Act or against any person who has committed or is committing any offence under this Act.

1.2 Investment Law

1.2.1 Malaysian business entities

Malaysian laws determine types of business entities as follows.

- (1) Sole proprietorship
- (2) Partnership
- (3) Company

Generally, foreigners are not allowed to do business in Malaysia in the form of sole proprietorship or partnership unless they are permanent residents.⁷⁰ A sole proprietorship is not available for foreigners.⁷¹ However, foreigners may register a business as a partnership in Labuan. Foreigners are permitted to do business in the form of a Limited Company by Shares, which they can hold 100% shares of the company. Some foreign involvement (such as the acquisition of interest, the opening of new branches, takeovers by foreign participation) needs to obtain approval from the Ministry of Domestic Trade and Consumer Affairs.⁷²

This part will give an overview of Malaysian business entities in detail.

(1) Sole proprietorship

A sole proprietorship is a business owned by an individual using his or her real name or trade name.

Business means every form of any activity carried on for gain.⁷³ Any business in Malaysia is required to apply to the Registrar of Businesses for the registration of the business not later than 30 days from the date of the commencement of the business. The registration of businesses requires name, address of the place of business, the

⁷⁰ Companies Commission of Malaysia. Section 8(ii), Companies Commission of Malaysia Act 2001: Circular No. 1/2017, Accessed July 11, 2018, https://www.ssm.com.my/sites/default/files/companies_act_2016/circular_1_2017_ccma_power_of_registrar_to_strike_off_biz_entity_of_foreigner_amended200717.pdf.

⁷¹ Companies Commission of Malaysia, "What are the requirements to register a sole proprietorship or partnership?," Accessed July 11, 2018, <http://www.ssm.com.my/en/node/139>.

⁷² Ministry of Domestic Trade, Co-operatives and Consumerism Malaysia, "Guidelines on Foreign Participation in the Distributive Trade Services," p.2, Accessed July 11, 2018, https://www.kpdnkk.gov.my/kpdnkk/wp-content/uploads/2017/04/WRT_Guideline.pdf.

⁷³ Section 2. Registration of Business Act 1956. Interpretation. "business" includes every form of trade, commerce, craftsmanship, calling, profession, or other activity carried on for the purposes of gain, but does not include any office or employment or any charitable undertaking or any occupation specified in the Schedule;

date of the commencement of the business and nature of the business.⁷⁴ The registration can be done at the Companies Commission of Malaysia or online at ezbiz.ssm.com.my.⁷⁵ The Registrar of Businesses is the Chief Executive Office of Companies Commission of Malaysia.

(2) Partnership

A partnership is also required to apply to the Registrar of Businesses for the registration of the business.⁷⁶ This process must be done not later than 30 days from the date of the commencement of the business. The registration of businesses requires name, address of the place of business, the date of the commencement of the business and nature of the business, including partnership agreement (if any).⁷⁷ The registration

⁷⁴ Section 5. Registration of Business Act 1956. Registration
(1) The person responsible for a business shall, not later than thirty days from the date of the commencement of the business, apply to the Registrar for the registration of the business.
(2) An application under subsection (1) shall be made in the prescribed form and shall state—
(a) the name of the business;
(b) the nature of the business;
(c) the date of the commencement of the business;
(d) the address of the place of business, and in the case of a business having more than one place of business, the addresses of the branches;
(e) in the case of a partnership, the particulars of the partnership agreement, if any;
(f) in respect of the associates of the business, their full names, positions held, and dates of entry into the business; and
(g) such other information as the Registrar may require.

⁷⁵ Companies Commission of Malaysia, "Starting a Sole Proprietorship/Partnership," Accessed July 11, 2018, <http://www.ssm.com.my/en/sole/starting-a-sole-proprietorship-partnership>.

⁷⁶ Registration of Businesses Act 1956, Section 5
“(1) The person responsible for a business shall, not later than thirty days from the date of the commencement of the business, apply to the Registrar for the registration of the business.
(2) An application under subsection (1) shall be made in the prescribed form and shall state—
(a) the name of the business;
(b) the nature of the business;
(c) the date of the commencement of the business;
(d) the address of the place of business, and in the case of a business having more than one place of business, the addresses of the branches;
(e) in the case of a partnership, the particulars of the partnership agreement, if any;
(f) in respect of the associates of the business, their full names, positions held, and dates of entry into the business; and
(g) such other information as the Registrar may require.”

⁷⁷ Section 5. Registration of Business Act 1956. Registration
(1) The person responsible for a business shall, not later than thirty days from the date of the commencement of the business, apply to the Registrar for the registration of the business.
(2) An application under subsection (1) shall be made in the prescribed form and shall state—
(a) the name of the business;
(b) the nature of the business;
(c) the date of the commencement of the business;
(d) the address of the place of business, and in the case of a business having more than one place of business, the addresses of the branches;
(e) in the case of a partnership, the particulars of the partnership agreement, if any;
(f) in respect of the associates of the business, their full names, positions held, and dates of entry into the business; and
(g) such other information as the Registrar may require.

can be done at the Companies Commission of Malaysia or online at ezbiz.ssm.com.my.⁷⁸

Only Malaysian citizen and Malaysian permanent residents are eligible to register their businesses as a partnership in Malaysia.⁷⁹ On the other hand, a partnership is not available for foreigners.⁸⁰ In Labuan, however, foreigners may be eligible to operate businesses as a partnership, which will be continued in the next part.

Partnership in Malaysia can be classified into 4 types: partnership, limited liability partnership, Labuan partnership, and Labuan limited liability partnership.

(a) Ordinary Partnership

Ordinary partnership is the relation which subsists between persons carrying on business in common with a view of profit.⁸¹ Those persons are called partners and limit to no more than 20 persons.⁸²

Roles of partners

In general, every partner is an agent of the firm and his other partners for the business of the partnership.⁸³ No majority of the partners can expel any partner if no express agreement among the partners regarding this issue.⁸⁴ However, an assignment by any partner of his share in the partnership does not entitle the assignee to interfere in the management or administration of the partnership business or affairs. The assignment entitles the assignee only to receive the share of the profits to which the

⁷⁸ Companies Commission of Malaysia, "Starting a Sole Proprietorship/Partnership," Accessed July 11, 2018, <http://www.ssm.com.my/en/sole/starting-a-sole-proprietorship-partnership>.

⁷⁹ Companies Commission of Malaysia, Section 8(ii), Companies Commission of Malaysia Act 2001: Circular No. 1/2017, Accessed July 11, 2018, https://www.ssm.com.my/sites/default/files/companies_act_2016/circular_1_2017_ccma_power_of_registrar_to_strike_off_biz_entity_of_foreigner_amended200717.pdf.

⁸⁰ Companies Commission of Malaysia, "What are the requirements to register a sole proprietorship or partnership?," Accessed July 11, 2018, <http://www.ssm.com.my/en/node/139>.

⁸¹ Partnership Act 1961, Section 3(1). "Partnership is the relation which subsists between persons carrying on business in common with a view of profit."

⁸² Partnership Act 1961, Section 47(2). "Nothing in this Act shall be read to permit any association of more than twenty persons to be formed or to carry on any business in partnership contrary to paragraph 14(3)(b) of the Companies Act 1965."

⁸³ Partnership Act 1961, Section 7 "Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner."

⁸⁴ Partnership Act 1961, Section 27 "No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners"

assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.⁸⁵

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.⁸⁶

Every partner is also liable jointly with the other partners for all debts and obligations of the partnership incurred while he is a partner.⁸⁷ A partner who retires from the partnership is still liable for partnership debts or obligations incurred before his retirement.⁸⁸ On the other hand, a new partner is not liable to the creditors of the partnership for anything done before he became a partner.⁸⁹

Partnership under Malaysian law is comparable to Thai law in the sense that at least 2 persons are required to form a partnership and every partner is liable jointly to any debt of the partnership. However, a major difference is that the Malaysian law limits the number of partners to be no more than 20 persons while Thai partnership does not. And a new partner is not liable to the debts incurred before his entry into the partnership, whereas under the Thai Civil and Commercial Code, the new partner is also liable thereto.

(b) Limited Liability Partnership

Limited Liability Partnership means any two or more persons, consisting of, wholly or partly, individuals or bodies corporate, associated for carrying on any lawful business with a view to profit may form a limited liability partnership under the terms of

⁸⁵ Partnership Act 1961, Section 33(1) "An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of the profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners."

⁸⁶ Partnership Act 1961, Section 32 "If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business."

⁸⁷ Partnership Act 1961, Section 11 "Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied but subject to the prior payment of his separate debts."

⁸⁸ Partnership Act 1961, Section 19(2) "A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement."

⁸⁹ Partnership Act 1961, Section 19(1) "A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner."

the limited liability partnership agreement.⁹⁰ A limited liability partnership is a body corporate and shall have a legal personality separate from that of its partners.⁹¹ A limited liability partnership must be registered with the Registrar of Businesses.⁹²

Limited liability partnership is suitable for professional practice, such as lawyers or accountants, so partners are not concerned about personal liability.⁹³

Roles of partners

In general, every partner of a limited liability partnership is an agent of the limited liability partnership.⁹⁴ When provided in the limited liability partnership agreement, a partner may assign a whole or a part of his or her interests of the share to the extent that the partner would have been entitled to receive to the third person. The assignment does neither cause the partner to cease being a partner of the limited liability partnership nor entitle the assignee to interfere in the management of the limited liability partnership.⁹⁵

A partner of the limited liability partnership is not personally liable for an obligation of the partnership.⁹⁶

(c) Labuan Limited Partnership

Malaysia offers an offshore financial center with special benefits, especially tax benefits, for foreigners in Labuan, part of Borneo Island.

⁹⁰ Limited Liability Partnership Act 2012, Section 6 "subject to sections 7 and 8, any two or more persons, consisting of, wholly or partly, individuals or bodies corporate, associated for carrying on any lawful business with a view to profit may form a limited liability partnership in accordance with the terms of the limited liability partnership agreement."

⁹¹ Limited Liability Partnership Act 2012, Section 3(1) "A limited liability partnership is a body corporate and shall have legal personality separate from that of its partners."

⁹² Limited Liability Partnership Act 2012, Section 10(1) "A person may apply for registration of a limited liability partnership to the Registrar and the application shall be accompanied by the prescribed fee and such documents as may be specified by the Registrar."

⁹³ Companies Commission of Malaysia, "Starting a Limited Liability Partnership (LLP)," Accessed July 11, 2018, <http://www.ssm.com.my/en/LLP-AboutLLP>.

⁹⁴ Limited Liability Partnership Act 2012, Section 23(1) "Every partner of a limited liability partnership is the agent of the limited liability partnership."

⁹⁵ Limited Liability Partnership Act 2012, Section 26 "(1) Unless otherwise provided in the limited liability partnership agreement, a partner may assign the whole or any part of that partner's interest in the distribution from the limited liability partnership but only to the extent that the partner would have been entitled to receive.

(2) An assignment under subsection (1) shall not by itself-

(a) cause the partner to cease being a partner of the limited liability partnership; and

(b) entitle the assignee to interfere in the management of the limited liability partnership."

⁹⁶ Limited Liability Partnership Act 2012, Section 21 "(1) Any obligation of a limited liability partnership whether arising in contract, tort or otherwise, is solely the obligation of the limited liability partnership.

(2) A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for an obligation referred to in subsection (1) solely by reason of being a partner of the limited liability partnership."



Location of Labuan (source: Google Maps)

Labuan Island is a special economic zone offering incentives to attract foreign investors to Labuan. Malaysia enacted special legal provisions to support foreign investors in Labuan, such as Labuan Financial Services Authority Act 1996, Labuan Business Activity Tax Act 1990, Labuan Company Act 1990, Labuan Trusts Act 1996, Labuan Limited Partnerships & Limited Liability Partnerships Act 2010, Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010.

Foreign investors will enjoy the incentives such as tax exemption on import duties for raw materials and parts, sales tax exemption for machines and equipment, etc.⁹⁷ Businesses registered in Labuan can choose to pay a flat tax rate at 3% of

⁹⁷ Labuan Corporation, Ministry of Federal Territory, "Incentives," Accessed July 31, 2018, <https://www.pl.gov.my/en/insentif>.

chargeable profits⁹⁸ or a lump sum of 20,000 ringgit (approximately 200,000 baht).⁹⁹ This taxation privilege is not available for the typical Malaysian partnerships or companies.

Labuan Limited Partnership is a form of a partnership formed by 2 or more persons who agree to do business and share profits from that business. This form of partnership requires at least one limited partner and at least one general partner.¹⁰⁰ Generally, the general partner will have all the rights and powers in the management of the Labuan limited partnership.¹⁰¹ This includes signing and executing a document on behalf of the Labuan limited partnership.¹⁰² A Labuan limited partnership is a legal entity separate from the partners in that partnership.¹⁰³

⁹⁸ Labuan Business Activity Tax Act 1990, Section 4(1) "Tax shall be charged at the rate of three per cent for a year of assessment upon the chargeable profits of a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity for the basis period for that year of assessment."

⁹⁹ Labuan Business Activity Tax Act 1990, Section 7(1) "Notwithstanding section 4, a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity may, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of a year of assessment, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand Ringgits."

¹⁰⁰ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 4(2) "A Labuan limited partnership shall consist of not less than two partners and not more than fifty partners who may be any person and of whom—

(a) one at least shall be a general partner; and
(b) one at least shall be a limited partner."

¹⁰¹ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 11 "(1) A general partner in a Labuan limited partnership shall have all the rights and powers and shall be subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent or ratification by all the limited partners, a general partner has no authority to—

(a) do an act which makes it impossible to carry on the activities of the Labuan limited partnership;
(b) possess any Labuan limited partnership property, or dispose of any rights in any Labuan limited partnership property, for other than a partnership purpose; or
(c) admit a person as a general partner or a limited partner, unless the right to do so is given in the partnership agreement.

(2) A general partner shall, unless otherwise provided for in the partnership agreement or under this Act, carry out all the functions necessary and connected with the conduct of activities of the Labuan limited partnership, and shall discharge all obligations imposed on the general partner or on the Labuan limited partnership.

(3) A property of a Labuan limited partnership which is transferred to or vested in or held on behalf of any one or more of the general partners or which is transferred to or vested in the name of the Labuan limited partnership shall be held or deemed to be held by the general partner, or, if more than one, by the general partners jointly, as an asset of the Labuan limited partnership in accordance with the terms of the partnership agreement.

(4) A debt or an obligation incurred by a general partner in the conduct of the activities of a Labuan limited partnership shall be a debt or an obligation of the Labuan limited partnership.

(5) A general partner shall at all times act in good faith in the interests of the Labuan limited partnership."

¹⁰² Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 23 "Where a general partner executes a document on behalf of the Labuan limited partnership, it shall be presumed in favour of any person who is not a partner that—

(a) the general partner has the authority under which he purports to act; and
(b) the executed document has been validly executed."

¹⁰³ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 55(1) "A Labuan limited liability partnership formed by being registered under this Act is a body corporate and has legal personality separate from that of its partners."

A Labuan limited partnership must be registered with Labuan Financial Services Authority, an authority founded by Labuan Financial Services Authority Act 1996 under the Ministry of Finance.

The registration must be submitted through a Labuan Trust Company, which is a licensed private company taking care of foreign investors in Labuan. The Labuan Trust Company provides advice and professional services to foreign investors, such as business registration, accounting, and compliance.

A Labuan limited partnership must have a registered office in Labuan, generally the registered office of a Labuan trust company, which may be changed the address of its registered office from time to time by filing a notice of change with the Authority.¹⁰⁴ However, the law does not require that a Labuan limited partnership must have a Malaysian citizen partner or permanent resident partner, or Malaysian employment.

Roles of partners

1) Limited Partners

A limited partner can make a contribution to a Labuan limited partnership in the form of money in any currency, any other property, or labor.¹⁰⁵ A new limited partner is permissible only if done under the partnership agreement or by consent of all existing partners and registered as a limited partner in a partnership register.¹⁰⁶

A limited partner has the right to a share of the profits of the partnership¹⁰⁷ but he or she cannot assign his or her interest in the Labuan limited partnership unless all the limited partners and general partners consent thereto or the partnership agreement

¹⁰⁴ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 9

"(1) A Labuan limited partnership shall have a registered office in Labuan which shall be the registered office of a Labuan trust company.

(2) A Labuan limited liability partnership may change the address of its registered office from time to time by filing a notice of change with the Authority."

¹⁰⁵ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 10(1) "Any contribution to be made by a limited partner to a Labuan limited partnership may be in the form of money in any currency, any other property, or services"

¹⁰⁶ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 20 "An additional limited partner or general partner shall not be admitted to a Labuan limited partnership except—

(a) in accordance with the partnership agreement or by consent of all existing partners; and

(b) by entry in the register under subsection 9(5)."

¹⁰⁷ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 14(1) "A limited partner has, subject to this Act and the partnership agreement, the right to a share of the profits of the Labuan limited partnership."

permits the assignment.¹⁰⁸ Once assigned, the Labuan limited partnership must register the assignment with the Labuan Financial Services Authority.¹⁰⁹

However, the assignee will become a limited partner only if registered in the partnership register.¹¹⁰ In this case, the assignee will acquire the rights and powers and be subject to all the restrictions and liabilities as the assignor had before the assignment.¹¹¹ But the assignee will not be liable for some certain liability which remains the liability of the assignor.¹¹²

Generally, a limited partner is not jointly liable for the partnership debts and obligations and not liable as a general partner unless the limited partner gets involved in the management of the Labuan limited partnership.¹¹³

2) General Partner

A general partner must operate in good faith in the interests of the Labuan limited partnership.¹¹⁴ Any debt or obligation incurred by a general partner in the conduct of a Labuan limited partnership's business will bind the partnership, too.¹¹⁵ The same as becoming a new limited partner, a new general partner is permissible only if done under

¹⁰⁸ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 21(1) "A limited partner shall not assign his or its interest, in whole or in part, in the Labuan limited partnership unless—

(a) all the limited partners and all the general partners consent or the partnership agreement permits it; and
(b) the assignment is made in accordance with the terms of the consent or the partnership agreement, as the case may be."

¹⁰⁹ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 21(5) "An assignment made under this section shall be registered with the Authority by the Labuan limited partnership."

¹¹⁰ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 21(2) "An assignee of the interest, in whole or in part, of a limited partner shall not become a limited partner in the Labuan limited partnership until his ownership of the assigned interest is entered in the register under subsection 9(5), and until so entered the assignee has none of the rights of a limited partner exercisable against the partnership or against any of the partners other than the assignor."

¹¹¹ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 21(3) "Subject to subsection (4), on becoming a limited partner, an assignee shall acquire the rights and powers and be subject to all the restrictions and liabilities that his assignor had in respect of the assigned interest immediately before the assignment."

¹¹² Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 21(4) "On becoming a limited partner an assignee shall not assume any liability of the assignor arising under subsection 14(3), 17(2) or 19(3) and, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability under those subsections."

¹¹³ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 19(2) "A limited partner shall not be liable as a general partner unless the limited partner participates in the management of the Labuan limited partnership."

¹¹⁴ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 11(5) "A general partner shall at all times act in good faith in the interests of the Labuan limited partnership."

¹¹⁵ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 11(4) "A debt or an obligation incurred by a general partner in the conduct of the activities of a Labuan limited partnership shall be a debt or an obligation of the Labuan limited partnership."

the partnership agreement or by consent of all existing partners, with registration as a general partner in a partnership register.¹¹⁶

However, a general partner is personally liable for the debts and obligations of the partnership.¹¹⁷

(d) Labuan Limited Liability Partnership

Labuan Limited Liability Partnership is a form of a partnership formed by 2 or more persons (can be individuals or corporate bodies) who agree to do business and share profits from that business.¹¹⁸ A Labuan limited liability partnership is a legal entity separate from the partners in that partnership.¹¹⁹

A Labuan limited liability partnership must have a registered office in Labuan, which is the registered office of a Labuan trust company, which may be changed the address of its registered office from time to time by filing a notice of change with the Authority.¹²⁰

¹¹⁶ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 20 “An additional limited partner or general partner shall not be admitted to a Labuan limited partnership except—

(a) in accordance with the partnership agreement or by consent of all existing partners; and
(b) by entry in the register under subsection 9(5).”

¹¹⁷ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 11(1) “A general partner in a Labuan limited partnership shall have all the rights and powers and shall be subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent or ratification by all the limited partners, a general partner has no authority to—

(a) do an act which makes it impossible to carry on the activities of the Labuan limited partnership;
(b) possess any Labuan limited partnership property, or dispose of any rights in any Labuan limited partnership property, for other than a partnership purpose; or
(c) admit a person as a general partner or a limited partner, unless the right to do so is given in the partnership agreement.”

¹¹⁸ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 29 “(1) Subject to the provisions of this Act, any two or more persons may form a Labuan limited liability partnership for any lawful purpose.

(2) An individual or a corporation may be a partner in a Labuan limited liability partnership.”

¹¹⁹ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 55(1) “A Labuan limited liability partnership formed by being registered under this Act is a body corporate and has legal personality separate from that of its partners.”

¹²⁰ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 63

“(1) A Labuan limited liability partnership shall have a registered office in Labuan which shall be the registered office of a Labuan trust company.

(2) A Labuan limited liability partnership may change the address of its registered office from time to time by filing a notice of change with the Authority.”

Roles of Partners

Generally, any conduct by a partner of a Labuan limited liability partnership will bind the partnership.¹²¹ However, a partner can assign his or her interest in the Labuan limited partnership to anyone if there is no conflict to the partnership agreement. In this case, the assignor still holds the partner status in the partnership, while the assignee will not be able to intervene in the partnership business.¹²² Furthermore, a person may become a partner of a Labuan limited liability partnership under an agreement with the existing partners.¹²³

By the way, all partners in the Labuan limited liability partnership is not personally liable for the debts or obligations of the partnership.¹²⁴ But there must be at least a designated partner in a Labuan limited liability partnership to manage on behalf of the Labuan limited liability partnership. Generally, the partnership agreement is a written agreement of the partners on the affairs of a Labuan limited liability partnership, as the case may be, and the rights and obligations of the partners among themselves.¹²⁵ The partnership agreement is required for the registration of a Labuan limited liability partnership.¹²⁶

One of the major differences between a Labuan limited partnership and a Labuan limited liability partnership is the partner's liability. That is, all partners in the Labuan limited liability partnership is not personally liable for the debts or obligations of the

¹²¹ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 57(1) "Every partner of a Labuan limited liability partnership is the agent of the Labuan limited liability partnership and accordingly, the acts of a partner in the partner's capacity as a partner shall bind the Labuan limited liability partnership."

¹²² Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 60 "(1) Unless otherwise provided in the partnership agreement, a partner may assign the whole or any part of that partner's interest in the distribution from the Labuan limited liability partnership but only to the extent that the partner would have been entitled to receive.

(2) An assignment under subsection (1) shall not by itself—

- (a) cause the partner to cease being a partner of the Labuan limited liability partnership; and
- (b) entitle the assignee to interfere in the management of the Labuan limited liability partnership."

¹²³ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 61 "(1) In addition to those persons named as partners in the partnership agreement, a person may become a partner of a Labuan limited liability partnership in accordance with an agreement with the existing partners."

¹²⁴ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 56(2) "A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for an obligation referred to in subsection (1) solely by reason of being a partner of the Labuan limited liability partnership."

¹²⁵ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 2(1) "“partnership agreement” means an agreement in writing of the partners as to the affairs of a Labuan limited partnership or a Labuan limited liability partnership, as the case may be, and the rights and obligations of the partners among themselves;"

¹²⁶ Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Section 5(2) "The Authority shall not register a Labuan limited partnership unless there has been filed with the Authority a certified copy of a partnership agreement executed by each person who is, on the formation of the Labuan limited partnership, to be a partner"

partnership, but the Labuan limited partnership requires at least a general partner to be personally liable for the debts or obligations of the partnership.

(3) Company

A company is a type of business entity in Malaysia. Generally, there are 2 types of companies: Limited Company and Unlimited Company. A Company can be formed by 2 or more persons who agree to do business under the terms set out in the Memorandum.¹²⁷ The formation of a company requires registration with the Article of Association.¹²⁸ Also, a company must have at least 2 directors¹²⁹ and at least 1 secretary.¹³⁰

There are 2 types of a limited company:

- Limited Company by Guarantee is a limited company that its shareholders will limit their liability by the memorandum to the amount as they may undertake to contribute to the assets of the company in the event of its being wound up.¹³¹
- Limited Company by Shares is a limited company that its shareholders will limit their liability by the memorandum to the amount, if any, unpaid on their shares.¹³²

A major difference between an unlimited company and a limited liability partnership is that the shareholder's liability in the unlimited company is unlimited, while the partner's liability in the limited liability partnership is limited

¹²⁷ Companies Act 1965 (Revised - 1973), Section 14(1) "Subject to this Act any two or more persons associated for any lawful purpose may by subscribing their names to a memorandum and complying with the requirements as to registration form an incorporated company."

¹²⁸ Companies Act 1965 (Revised - 1973), Section 29(1) "There may in the case of a company limited by shares and there shall in the case of a company limited by guarantee or limited both by shares and guarantee or an unlimited company be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company."

¹²⁹ Companies Act 1965 (Revised - 1973), Section 122(1) "Every company shall have at least two directors, who each has his principal or only place of residence within Malaysia."

¹³⁰ Companies Act 1965 (Revised - 1973), Section 139(1) "Every company shall have one or more secretaries each of whom shall be a natural person of full age who has his principal or only place of residence in Malaysia."

¹³¹ Companies Act 1965 (Revised - 1973), Section 4(1) "'company limited by guarantee' means a company formed on the principle of having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;"

¹³² Companies Act 1965 (Revised - 1973), Section 4(1) "'company limited by shares' means a company formed on the principle of having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;"

Shareholder's liability

Shareholder's liability depends upon the types of company as follows.

Shareholders in a limited company - the liability is limited, either by guarantee or by shares, as stated in the Memorandum.¹³³

Shareholders in an unlimited company - the liability is unlimited, as stated in the Memorandum.¹³⁴

(4) Labuan Company

Malaysia also has special provisions regarding the company found in Labuan. A Labuan company must have a registered office in Labuan¹³⁵ and do business only in, from or through Labuan.¹³⁶

The tax incentive is a key benefit of a Labuan company because the company can choose to pay income tax based on its chargeable profits at 3%¹³⁷ or may elect to pay the lump sum amount at 20,000 Ringgits (about 200,000 Bahts).¹³⁸

Formation of a Labuan company can be a new company or a registration of a foreign company or its branch.¹³⁹

¹³³ Companies Act 1965 (Revised - 1973), Section 18(1) "The memorandum of every company shall be printed and divided into numbered paragraphs and dated and shall state, in addition to other requirements—

(d) if the company is a company limited by shares, that the liability of the members is limited;

(e) if the company is a company limited by guarantee, that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount in addition to the amount, if any, unpaid on any shares held by him;"

¹³⁴ Companies Act 1965 (Revised - 1973), Section 18(1)(f)"if the company is an unlimited company, that the liability of the members is unlimited;"

¹³⁵ Labuan Companies Act 1990, Section 85(1)"Every Labuan company shall at all times have a registered office in Labuan, which office shall be the principal office of a Labuan trust company."

¹³⁶ Labuan Companies Act 1990, Section 7(1) "A Labuan company may be incorporated for any lawful purpose and, subject to any other written laws on financial services applicable to Labuan, shall carry out business only in, from or through Labuan."

¹³⁷ Labuan Business Activity Tax Act 1990, Section 4(1) "Tax shall be charged at the rate of three per cent for a year of assessment upon the chargeable profits of a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity for the basis period for that year of assessment."

¹³⁸ Labuan Business Activity Tax Act 1990, Section 7(1) "Notwithstanding section 4, a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity may, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of a year of assessment, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand Ringgits."

Generally, there are 2 types of Labuan companies: Labuan limited company and Labuan unlimited company. Also, there are 2 kinds of Labuan limited company: Labuan limited company by guarantee and Labuan limited company by shares.¹⁴⁰

Shareholder's liability

Shareholders in a Labuan limited company - the liability is limited, either by guarantee or by shares, as stated in the Memorandum.¹⁴¹

Shareholders in a Labuan unlimited company - the liability is unlimited.¹⁴²

¹³⁹ Labuan Companies Act 1990, Section 14“(1) Subject to this Act, a Labuan trust company or any other person may, by subscribing its or his name to a memorandum and complying with the requirements as to registration, form a Labuan company for any lawful purpose.

(2) If a subscriber to a memorandum is a corporation or a Labuan trust company, the memorandum may be subscribed by the corporation or the Labuan trust company, as the case may be, under its seal or by some person duly authorized on its behalf.”

¹⁴⁰ Labuan Companies Act 1990, Section 14(3) “A Labuan company may be—

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company.”

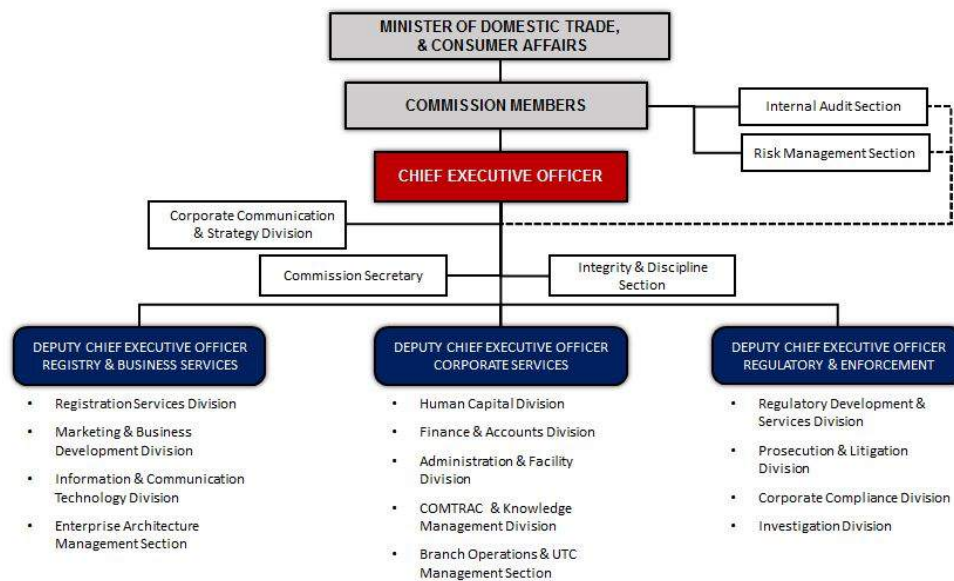
¹⁴¹ Labuan Companies Act 1990, Section 2(1) ““company limited by guarantee” means a company formed on the principle of having the liability of its members limited by its memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of it being wound up; “company limited by shares” means a company formed on the principle of having the liability of its members limited by its memorandum to the amount, if any, unpaid on the shares respectively held by them;”

¹⁴² Labuan Companies Act 1990, Section 2(1)““unlimited company” means a company formed on the principle of having no limit placed on the liability of its members;”

(5) Agencies related to business entities

Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia: SSM)¹⁴³ is the agency responsible for the registration of partnership and company.¹⁴⁴

Organization Structure of Companies Commission of Malaysia under the Ministry of Domestic Trade and Consumer Affairs¹⁴⁵



¹⁴³ Location: The Mall, 2.37, Jalan Putra, 50300 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur
Tel. +60 3-4043 0811, website: www.ssm.com.my

¹⁴⁴ Registration of Businesses Act 1956, Section 5 (1), "The person responsible for a business shall, not later than thirty days from the date of the commencement of the business, apply to the Registrar for the registration of the business."

¹⁴⁵ Companies Commission of Malaysia, "Companies Commission of Malaysia Organisation Structure," Accessed July 11, 2018, http://www.ssm.com.my/Pages/About_SSM/Corporate_Profile/Organisation-Structure.aspx.

1.2.2. Laws governing Foreign Business

The Malaysian government has restricted, liberalized and protected foreign business with the following measures.

(1) Restriction for foreigner business

Foreigners are not permitted to do many businesses in Malaysia without local Malaysians' participation. Some activities with foreign involvement may also require approval. For example, distributive trade needs the approval of the Ministry of Domestic Trade and Consumer Affairs for the following proposal for foreign involvement:¹⁴⁶

- Acquisition of interest;
- Mergers and/or takeover by foreign participation;
- Opening of new branches/outlets/chain stores;
- Relocation of branches/outlets/chain stores;
- Expansion of existing branches/outlets/chain stores;
- Buying over/taking over of outlets of other operators; and
- Purchase and sale of properties to operate distributive trade activities before obtaining the approval/license from local authorities and other agencies to operate distributive trade activities.

Distributive traders include wholesalers, retailers, franchise practitioners, direct sellers, suppliers who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies.¹⁴⁷

All distributive trade companies with foreign equity shall comply with the following requirements:¹⁴⁸

- Appoint Bumiputera director/directors;

¹⁴⁶ Malaysian Investment Development Authority (MIDA), "Distributive Trade," Accessed August 22, 2019, https://www.mida.gov.my/home/administrator/system_files/modules/photo/uploads/20190204103617_BOOKLET%208-DISTRIBUTIVE%20TRADE%20SERVICES%20FINAL%204%20FEB%202019.pdf

¹⁴⁷ Malaysian Investment Development Authority (MIDA), "Distributive Trade," Accessed August 22, 2019, https://www.mida.gov.my/home/administrator/system_files/modules/photo/uploads/20190204103617_BOOKLET%208-DISTRIBUTIVE%20TRADE%20SERVICES%20FINAL%204%20FEB%202019.pdf

¹⁴⁸ Malaysian Investment Development Authority (MIDA), "Distributive Trade," Accessed August 22, 2019, https://www.mida.gov.my/home/administrator/system_files/modules/photo/uploads/20190204103617_BOOKLET%208-DISTRIBUTIVE%20TRADE%20SERVICES%20FINAL%204%20FEB%202019.pdf

- Hire personnel at all levels including management to reflect the racial composition of the Malaysian population;
- Formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector;
- Hire at least 1 percent of the total hypermarket workforce from persons with disabilities;
- To increase the utilization of local airports and ports in the export and import of goods;
- To utilize local companies for legal and other professional services which are available in Malaysia;
- Submit annual financial reports to the Ministry of Domestic Trade and Consumer Affairs; and
- Comply with all by-laws and regulations of Local Authorities.

(2) Liberalization for foreign investors

The Malaysian government encourages joint ventures between Malaysians and foreign investors to increase local participation in business. Specific equity conditions may be imposed for specific approvals, operating licenses, permits or registrations by the regulating Ministries and agencies, depending on the undertaken activities. The liberalization, however, aims to attract foreign investment, encourage the transfer of specialized expertise and technology, find opportunities for joint ventures, inject competitiveness, create high-value jobs, and provide a wider choice to consumers.¹⁴⁹ The Malaysian government liberalizes the following services without equity conditions imposed for foreigners.¹⁵⁰

¹⁴⁹ Ministry of International Trade and Industry (MITI), "Autonomous Liberalisation," Accessed August 22, 2019, <https://www.miti.gov.my/index.php/pages/view/4236>.

¹⁵⁰ Ministry of International Trade and Industry (MITI), "Autonomous Liberalisation," Accessed August 22, 2019, <https://www.miti.gov.my/index.php/pages/view/4236>.

(a) Computer and Related Services

- Consultancy services related to the installation of computer hardware;
- Software implementation services - systems and software consulting services; systems analysis services; systems design services; programming services, and systems maintenance services;
- Data processing services - input preparation services; data processing and tabulation services; time-sharing services, and other data processing services;
- Database services;
- Maintenance and Repair Services of Computers;
- Other services - data preparation services; training services; data recovery services; and development of creative content;

(b) Health and Social Services

- All veterinary services;
- Welfare services delivered through residential institutions to aged and the handicapped;
- Welfare services delivered through residential institutions to children;
- Child day-care services including day-care services for the handicapped;
- Vocational rehabilitation services for handicapped;

(c) Tourism Services

- Theme Park;
- Convention and Exhibition Centre (seating capacity of above 5,000);

- Travel Agencies and Tour Operators Services (For inbound travel only);
- Hotel and Restaurant services (for 4 and 5-star hotels only);
- Food Serving Services (for services provided in 4 and 5-star hotels only);
- Beverage Serving Services for consumption on the premises (for services provided in 4 and 5-star hotels only);

(d) Transport Services

- Class C Freight Transportation (Private Carrier License – to transport own goods);

(e) Sporting and other recreational services

- Sporting Services (Sports event promotion and organization services);

(f) Business Services

- Regional Distribution Centres;
- International Procurement Centres;
- Technical Testing and Analysis Services - composition and purity testing and analysis services, testing and analysis services of physical properties, testing and analysis services of integrated mechanical and electrical systems, and technical inspection services;
- Management Consulting Services - general, financial (excluding business tax), marketing, human resources, production, and public relations services;

(g) Rental/Leasing Services without Operators

- Rental/Leasing services of ships that excludes cabotage and offshore trades;
- Rental of cargo vessels without crew (Bareboat Charter) for international shipping;

(h) Supporting and Auxiliary Transport Services

- Maritime Agency services; and
- Vessel salvage and refloating services.

(i) Other services

- Telecommunications for Application Service Provider – ASP license;
- Technical and Vocational Schools;
- Technical and Vocational Schools for students with special needs;
- Private Hospitals;
- Departmental and Specialty stores;
- Incineration services;
- Accounting (including audit) and Taxation;
- Skills Training Centres;
- Courier services.
- International Schools;
- Telecommunications for Network Service Provider - NSP and Network Facilities Provider - NFP licenses;
- Private Universities;
- Medical Specialist Clinics;

- Dental Specialist Clinics;
- Legal services;
- Architectural services;
- Engineering services; and
- Quantity Surveying services.

(3) Protection of foreign business

Malaysia welcomes high-quality foreign investments, particularly in the manufacturing and services sector, without discriminating against investors from any country. Malaysia has entered the Investment Guarantee Agreements (IGAs) to promote an attractive environment for foreign investments. The main purpose of IGAs is to increase foreign investor confidence in Malaysia by ensuring the following matters:¹⁵¹

- Protect against nationalization and expropriation
- Ensure prompt and adequate compensation in the event of nationalization or expropriation
- Provide free transfer of profits, capital and other fees
- Ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

Malaysia has already concluded Investment Guarantee Agreements (IGAs) with ASEAN.¹⁵²

1.2.3 Laws regarding Investment Promotion

The Malaysian government has promoted foreign investment by offering privileges or benefits on investment and taxation to businesses, according to Investment Promotion Act 1986, Customs Act 1967, Free Zone Act 1990, and Income Tax Act 1967. The promotion covers the 3 following areas:

¹⁵¹ Malaysian Investment Development Authority (MIDA), "Starting Up Business." Accessed August 22, 2019, <https://www.mida.gov.my/home/starting-up-business/posts>

¹⁵² Malaysian Investment Development Authority (MIDA), "Starting Up Business." Accessed August 22, 2019, <https://www.mida.gov.my/home/starting-up-business/posts>

(1) Investment Incentives

The investment incentives are non-discriminating between Malaysian or foreign investors. Investors can select Pioneer Status or Investment Tax Allowance (ITA), whichever deems the best interest to the investors.¹⁵³

(a) Pioneer Status

The investors in manufacturing sectors can apply for this Pioneer Status incentive¹⁵⁴ or tax exemption on capital goods e.g. products from Natural or synthetic fabrics, woven or knitted fabric.¹⁵⁵ These products can be tax-exempted for 5 years since the first day of manufacturing. 30% of the earnings or income after deductions and other allowances is the tax base for tax calculation at a regular tax rate.

(b) Investment Tax Allowance

Investors are allowed to use expenses on qualified and approved capital goods e.g. factories, machinery, and other equipment by the National Committee on Investments (NCI)¹⁵⁶ for a 60% deduction before calculation at regular rates. This rate will not be over 70% of that annual income for a period of 5 years from the date on which the expenses incurred. The rest will be calculated at the regular rate. If the expenses have not been deducted in that year, it can be deductible in the following year until the amount is used up.

However, if no regulation prohibiting foreign workers as specified in the Investment Promotion Act, the foreign workers are entitled to be 100% shareholder provided with some additional tax exemption e.g. business on manufacturing, construction and Co-trade business with Malaysian.¹⁵⁷

¹⁵³ Department of Trade Negotiations, Ministry of Commerce, "Malaysia", page 9, Accessed April 24, 2019, www.dtn.go.th/fles/60/ASIA/Malaysia_cpf_0316.pdf

¹⁵⁴ The Board of Investment of Thailand, investment Incentives in Malaysia, Accessed July 11, 2018, http://www.boi.go.th/thai/asean/Malaysia/capt5_p1n.html

¹⁵⁵ Department of International Trade Promotional, Ministry of Commerce, "3.5 Woven fabric and cloth products in Malaysia", Trade and Investment guidance in Malaysia, Accessed July 11, 2018, http://www.aecthaibiz.com/aecadmin/uploads/20150506_102633.pdf

¹⁵⁶ NCI is a special unit under MIDA and oversees approving manufacturing licenses, tax benefits and Customs exemption by having an immediate decision line, the duration of approval depends on type of products and location of business (please see <http://services.eumcci.com/component/content/article/81-partners-logistics/188-mida>)

¹⁵⁷ Department of Business Development, Ministry of Commerce, "Details on business operations for foreigners in Malaysia", page 31, Accessed 11 July 2018, http://www.dbd.go.th/download/foreign_fle/pdf/e_Book_creat_company.pdf.

(2) Free Zones

The free zones are significantly created to promote trades of industrial products in the manufacturing sector as well as the assembled of exported products. With Free Zones Act 1990, the goods and services are exempted duties, excises and purchase tax,¹⁵⁸ unless there are special free zones in some areas, namely Sarawak, Sabah, Kelantan, Terengganu, Pahang, and Iskandar at Southern Johor, Penang Kedah. Each area enjoys different rates of duties exemption which depends on local district laws, for instance, all of the aforementioned areas are entitled to enjoy 5-years duty exemption by submitting an investment promotion application before 31 December 2010.¹⁵⁹

(a) An exemption of income tax in other business sectors

The business or industrial sectors are entitled to enjoy income tax exemption, for instance, agriculture, particularly, food production and processing on new projects and additional investment, Halal production project, modernized poultry farming, rubber wood planning, the export of food, fruit, and flowers. For tourism, hotels or tourism project in special promotion zones will receive a discount on advertising foreign tourism promotion expenses.¹⁶⁰

(b) Other detailed benefits

Apart from the mentioned incentives, the Malaysian government also gives incentives on Research and Development (R&D), investment in Multimedia Super Corridor (MSC), Information and Communication Technologies (ICT) projects, investment in shipping and transportation.¹⁶¹

The Excise Act 1976 has set forth on excise tax at different rates depending on the type of goods. The type of products list which lays down under the Excise Duties Order 2004¹⁶² e.g. tobacco products (charged 0.22 Malaysian Ringgit per 1 cigarette + 20%), alcohol (charged 10.10 Malaysian Ringgit per 1 liter +15% per liter – 42.50

¹⁵⁸ Free Zone Act 1990, Section 4. "Subject to this Act goods and services of any description, except those specifically and absolutely prohibited by law, may be brought into, produced, manufactured or provided in a free zone without payment of any customs duty, excise duty, sales tax or service tax."

¹⁵⁹ Department of Trade Negotiations, Ministry of Commerce, "Malaysia", page 9, Accessed April 24, 2019, www.dtn.go.th/files/60/ASIA/Malaysia_cpf_0316.pdf.

¹⁶⁰ Department of Trade Negotiations, Ministry of Commerce, "Malaysia", page 9, Accessed April 24, 2019, www.dtn.go.th/files/60/ASIA/Malaysia_cpf_0316.pdf.

¹⁶¹ Department of Trade Negotiations, Ministry of Commerce, "Malaysia", page 10, Accessed April 24, 2019, www.dtn.go.th/files/60/ASIA/Malaysia_cpf_0316.pdf.

¹⁶² Department of International Trade Promotion, Ministry of Commerce, "Excise Duty", A guideline for opportunities and directions for Trade and Investment in Malaysia, page 68, Accessed 11 July 2018, http://www.ditp.go.th/contents_attach/92691/92691.pdf

Malaysian Ringgit per 1 liter +15%) or automotive (such as a 4 wheeled car is charged between 60 – 105%) which is higher than other goods.

(3) Special Economic Zones

The Special Economic Zones in Malaysia was established under authorizing laws, such as:

- (a) Northern Corridor Economic Region under the Northern Corridor Implementation Authority Act 2008¹⁶³ which consisted of several northern states in Malaysia, namely, Perlis, Kedah, Pulau Penang, and northern Perak. This zone focuses on electronics, tourism, agriculture, etc.¹⁶⁴
- (b) East Coast Economic Region (ECER) under an establishment of the East Coast Economic Region Development Council,¹⁶⁵ which comprised of states of Kuantan, Terengganu, Pahang, and Mersing in Johor. This zone focuses mainly on oil, gas and petrochemical production, tourism, agriculture, and human capital development. The ECER has jointly coordinated with the Government Transformation Program or GTP as well as the Economic Transformation Program.¹⁶⁶
- (c) Sarawak Corridor of Renewable Energy (SCORE) was established under the government of Sarawak state including other related authorities since 2006 within the Sarawak area.¹⁶⁷ It aims to improve and develop economic growth in Sarawak and people's life quality which focuses on coal industries and natural energy resources.¹⁶⁸
- (d) Sabah Development Corridor (SDC) under the establishment of the Federal Government of Malaysia and the State Government of Sabah¹⁶⁹ covers

¹⁶³ Northern Corridor Implementation Authority, "Introduction," Accessed July 11, 2018, http://www.koridorutara.com.my/?page_id=2177.

¹⁶⁴ Northern Corridor Implementation Authority, "Introduction," Accessed July 11, 2018, http://www.koridorutara.com.my/?page_id=2177.

¹⁶⁵ East Coast Economic Region Development Council, "Introduction of ECER," Accessed July 11, 2018, <http://www.ecerdc.com.my/en/about-ecer/introduction>.

¹⁶⁶ East Coast Economic Region Development Council, "Introduction of ECER," Accessed July 11, 2018, <http://www.ecerdc.com.my/en/about-ecer/introduction>

¹⁶⁷ Regional Corridor Development Authority, "What is RECODA?," Accessed July 11, 2018, <http://www.recoda.com.my/whatis-recoda>

¹⁶⁸ Regional Corridor Development Authority, "What is RECODA?," Accessed July 11, 2018, <http://www.recoda.com.my/whatis-recoda>

¹⁶⁹ Sabah Economic Development and Investment Authority, "Chapter 8 Plan and Implement Sabah's Growth through Good Corporate Practices," p. 195, Accessed July 11, 2018,

Sabah state and Kota Kinabalu. It focuses on industrial resources e.g. wood, biotechnology, oil, and gas, etc.¹⁷⁰

- (e) Iskandar Development Authority (IRDA) under the Malaysian Federal Government statutory body¹⁷¹ in Johor area. It aims to live Well-being¹⁷² including as an authorized representative to oversee approval entrepreneurs and investors who conduct business within this area. The IRDA focuses the related business on a port that can be accessed by air, road, train or sea.¹⁷³

Double Taxation Agreement

Malaysia has double taxation agreements with over 70 counterparty countries.¹⁷⁴ A double taxation agreement is an exemption of income tax derived from profits, dividends, interest and other incomes from non-residencies in Malaysia unless there are business operations run through the permanent residencies in Malaysia.

In this regard, the international Double taxation agreement between Malaysia and Thailand will be explained in more detail at Topic 5 *taxation laws*.

1.2.4 Law regarding Government Procurement

There are some levels in terms of government procurement in Malaysia. It can be in the level of Federal Government, State Government, Local Authority, or other Statutory Bodies.¹⁷⁵

The government procurement in Malaysia focuses on social responsibility, transparency, value for money, fair and open competition, and fair dealing.¹⁷⁶

http://www.sedia.com.my/SDC_Blueprint/Blueprint_Eng/8.PlanandImplementSabah'sGrowththroughGoodCorporatePractices.pdf

¹⁷⁰ Sabah Economic Development and Investment Authority, "Chapter 8 Plan and Implement Sabah's Growth through Good Corporate Practices," p. 195, Accessed July 11, 2018, http://www.sedia.com.my/SDC_Blueprint/Blueprint_Eng/8.PlanandImplementSabah'sGrowththroughGoodCorporatePractices.pdf

¹⁷¹ Iskandar Region Development Authority, "About IRDA, Introduction," Accessed July 11, 2018, <http://www.irda.com.my/about-us>

¹⁷² Iskandar Region Development Authority, "About IRDA, Introduction," Accessed July 11, 2018, <http://www.irda.com.my/about-us>.

¹⁷³ Iskandar Region Development Authority, "About IRDA, Introduction," Accessed July 11, 2018, <http://www.irda.com.my/about-us>

¹⁷⁴ Inland Revenue Board of Malaysia, "Double Taxation Agreement," Accessed April 24, 2019, http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=4&bt_unit=1&bt_sequ=1&bt_lgv=2

¹⁷⁵ Ministry of Finance Malaysia, "Malaysia's Government Procurement Regime," p.2-3, Accessed July 14, 2015, http://www.treasury.gov.my/pdf/lain-lain/msia_regime.pdf (accessed July 14, 2015).

(1) Related Laws

There are also some regulations on government procurement in Malaysia as follows.¹⁷⁷

- 1) Financial Procedure Act 1957 (Revised 1972)
- 2) Government Contracts Act 1949 (Act 120)
- 3) Treasury Instructions
- 4) Treasury Circular Letters
- 5) Treasury Contract Circulars
- 6) Treasury Instruction Letters

The procurement purposes can be categorized as works (such as roads, buildings), supplies (such as cars, uniforms) or services (such as research, surveys).¹⁷⁸ Generally, suppliers registered with the Ministry of Finance are eligible to participate in the procurement.¹⁷⁹

(2) Procurement Types

Normally, there are 3 types for government procurement in Malaysia

- (a) Direct Purchase
- (b) Quotation
- (c) Tenders
- (a) Direct Purchase

Direct purchase is allowed when the value of supplies or services are not over 50,000 Ringgits (about 500,000 Bahts). The government can contact directly to

¹⁷⁶ Ministry of Finance Malaysia, "Malaysia's Government Procurement Regime," p.1-2 Accessed July 14, 2015, http://www.treasury.gov.my/pdf/lain-lain/msia_regime.pdf (accessed July 14, 2015).

¹⁷⁷ Ministry of Finance Malaysia, "Government Procurement Division," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=602:umum&catid=148:bahagian-perolehan-kerajaan&lang=en.

¹⁷⁸ Ministry of Finance Malaysia, "Malaysia's Government Procurement Regime," p.4, Accessed July 14, 2015, http://www.treasury.gov.my/pdf/lain-lain/msia_regime.pdf.

¹⁷⁹ Ministry of Finance Malaysia, "Suppliers Registration," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=2076:suppliers-registration&catid=500&Itemid=2487&lang=en.

suppliers for direct purchase at a fair price and decent quality. This can be done by any supplier, either with or without registration with the Ministry of Finance.¹⁸⁰

However, if it is about work, direct purchase must not be over 20,000 Ringgits (200,000 Bahts). Direct purchase can be done to any contractor registered with the Contractors Services Centre (PKK) and Construction Industry Development Board (CIDB) Malaysia.¹⁸¹

(b) Quotation

A quotation is necessary when the value of goods or supplies exceeds 50,000 Ringgits but not 500,000 Ringgits (about 500,000-5,000,000 Bahts). In this case, the government must invite at least 5 registered suppliers to quote.¹⁸²

However, if it is about work, a quotation is required when the value of the work exceeds 20,000 Ringgits but not 500,000 Ringgits (About 200,000-5,000,000 Bahts). The quotation requires the government to invite at least 5 contractors who registered with the Contractors Services Centre (PKK) and Construction Industry Development Board (CIDB) Malaysia to quote.¹⁸³

(c) Tenders

Tenders are required when the value of goods, supplies or works exceeds 500,000 Ringgits (about 5,000,000 Bahts). Only registered suppliers and contractors are allowed to participate.¹⁸⁴ All the tenders are publicly shown online via <http://myprocurement.treasury.gov.my> and www.malaysia.gov.my.

¹⁸⁰ Ministry of Finance Malaysia, "Direct Purchase," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=603:direct-purchase&catid=500&Itemid=2487&lang=en.

¹⁸¹ Ministry of Finance Malaysia, "Direct Purchase," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=603:direct-purchase&catid=500&Itemid=2487&lang=en.

¹⁸² Ministry of Finance Malaysia, "Quotation," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=604:quotation&catid=500&Itemid=2487&lang=en.

¹⁸³ Ministry of Finance Malaysia, "Quotation," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=604:quotation&catid=500&Itemid=2487&lang=en.

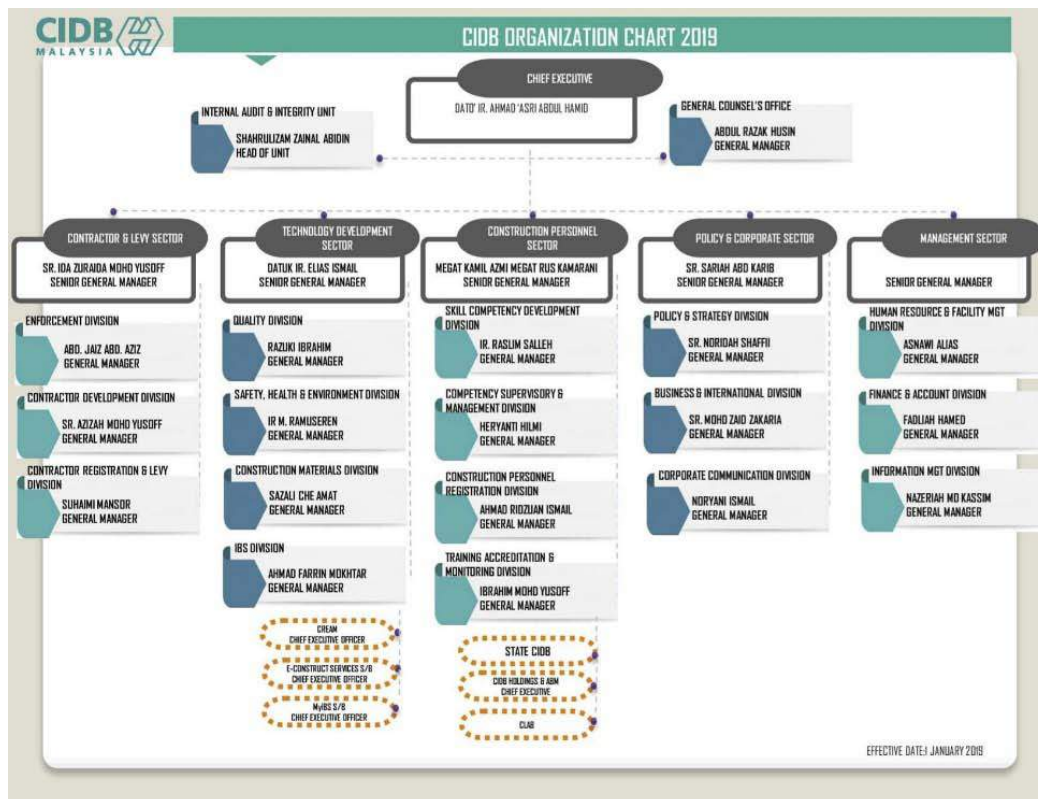
¹⁸⁴ Ministry of Finance Malaysia, "Tender," Accessed July 14, 2015, http://www.treasury.gov.my/index.php?option=com_content&view=article&id=605:faq-tender&catid=500&Itemid=2487&lang=en.

Malaysia has an electronic procurement system so-called “e-Perolehan” which is the online system for the government tenders.¹⁸⁵

(3) Agencies related to government procurement

(a) Construction Industry Development Board Malaysia: CIDB

CIDB¹⁸⁶ is responsible for the eligible contractor's contact information when direct purchase or quotation is necessary. The organization structure of CIDB is as follows.



The organization structure of CIDB¹⁸⁷

(b) Contractor Service Center

¹⁸⁵ ePerolehan, <http://home.eperolehan.com.my/v2/index.php/en/about-ep/eperolehan1>

¹⁸⁶ Location: Tingkat 10, No 45, Menara Dato' Onn, Pusat Dagangan Dunia Putra, Jalan Tun Ismail, 50480 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur
Tel. +60 3-4047 7000
website: www.cidb.gov.my

¹⁸⁷ Construction Industry Development Board Malaysia, “Organization Chart,” Accessed July 11, 2018, <http://cidb.gov.my/index.php/en/corporate-info/organisation/organisational-structure>.

Contractor Service Center or Pusat Khidmat Kontraktor: PKK¹⁸⁸ is also responsible for the eligible contractor's contact information when direct purchase or quotation is necessary. The organization structure of PKK is as follows.

The organization structure of PKK¹⁸⁹



1.2.5 Joint Venture

(1) Public-Private Partnership: PPP

Public-private partnership (PPP) is a form of cooperation that the government allows the private side to operate the government activities as the government sees necessary. PPP involves the transfer to the private sector the responsibility to finance and manage a package of capital investment and services of the public sector, which creates a standalone business.¹⁹⁰

¹⁸⁸ Location: Kementerian Kerja Raya Malaysia, Aras 5, Blok Menara, Menara Usahawan, No. 18, Persiaran Perdana, Presint 2, 62652 Putrajaya Tel. +60 3-88805200 website: <http://pkk.kkr.gov.my>

¹⁸⁹ Contractor Service Center, http://www.kkr.gov.my/public/carta_organisasi_pkk_terkini_22.04.2013%20-%20HQ_0.pdf

¹⁹⁰ Prime Minister Department, "2.0 Conceptual Framework," Public-Private Partnership (PPP) Guideline, p.4, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

(2) PPP Considerations

Generally, the government will consider PPP as a necessary tool if it can perform a better result in¹⁹¹

- socio-economic impacts;
- value for money and cost savings to the government;
- quick delivery of the project and service enhancement; and
- increased level of accountability, efficiency, and effectiveness.

(3) PPP Characteristics

PPP focuses on optimization through efficient allocation of risks, whole life service approach, private sector innovation and management skills as well as synergies from inter-linking the design, finance, construction, and operations. Some of the key features/characteristics of PPP projects are as follows.¹⁹²

- 1) Relationship between public and private sectors is based on partnership;
- 2) Public sector procures specified outputs or outcomes of service for a concession period;
- 3) Private sector determines the required inputs to achieve the specified output and the private sector is given latitude to introduce innovation into their designs and development to reduce overall costs;
- 4) Payment for services is based on pre-determined standards and performance;
- 5) Promotes 'maintenance culture' where the concessionaires will be responsible for the long term maintenance of the assets throughout the operational tenure agreed upon;
- 6) Integration of design, construction, finance, maintenance, and operation – total package;

¹⁹¹ Prime Minister Department, "2.1 Principles in Adopting PPP Approach," Public-Private Partnership (PPP) Guideline, p.5, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

¹⁹² Prime Minister Department, "2.2 Key Features/Characteristics," Public-Private Partnership (PPP) Guideline, p.5, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

- 7) Transfer of assets at the end of the concession period becomes an option to the Government;
- 8) Optimal sharing of risks whereby risk is allocated to the party who is best able to manage it; and
- 9) Whole Life Cycle Costing ('WLCC') whereby PPP projects are usually awarded based on the lowest total cost over the concession period compared to lowest construction costs under the traditional procurement method.

(4) Differences between Conventional, PPP and Privatisation Approaches

There are some key differences among conventional, PPP and privatisation approaches as follows.¹⁹³

| Conventional | PPP | Privatisation |
|---|---|---|
| Procurements are funded directly via the public budget. | Funding via private financial resources without the public sector's explicit guarantee. | Funding via private financial resources without implicit or explicit public sector guarantee. |
| Immediate impact on public sector financial position. | Impact on public budget spreads over the duration of the concession. | No impact on the level of public sector expenditure. |
| Risks are entirely borne by the public sector. | Risks are allocated to parties which can manage them most efficiently | Risks are entirely borne by the private sector. |

¹⁹³ Prime Minister Department, "2.3 Differences Between PPP and Other Procurement Methods, "Public-Private Partnership (PPP) Guideline, p.7, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

| Conventional | PPP | Privatisation |
|---|--|---|
| Extensive public sector involvement at all stages of project life. | The public sector's involvement is through enforcement of pre-agreed KPIs. | The government acts as a regulator. |
| Relationship with the private contractor is short term. | Long duration of the relationship with private contractors. | Long duration of the relationship with private contractors. |
| Applicable for projects with high socio-economic returns and those justified on strategic considerations. | Applicable for projects with commercial viability. | Applicable for projects with commercial viability. |

(5) PPP Criteria

The selection for PPP projects involves a 'filtering process' whereby certain general criteria should be met as follows:¹⁹⁴

- 1) Output specifications can be identified and quantified.
- 2) The economic life of the asset or service should be at least 20 years.
- 3) Projects with technological obsolescence risk (technology used will be superseded in the short term) will not be considered.
- 4) The project sponsor must be financially strong with a paid-up capital of the special purpose vehicle (SPV) to be at least 10% of the project value.

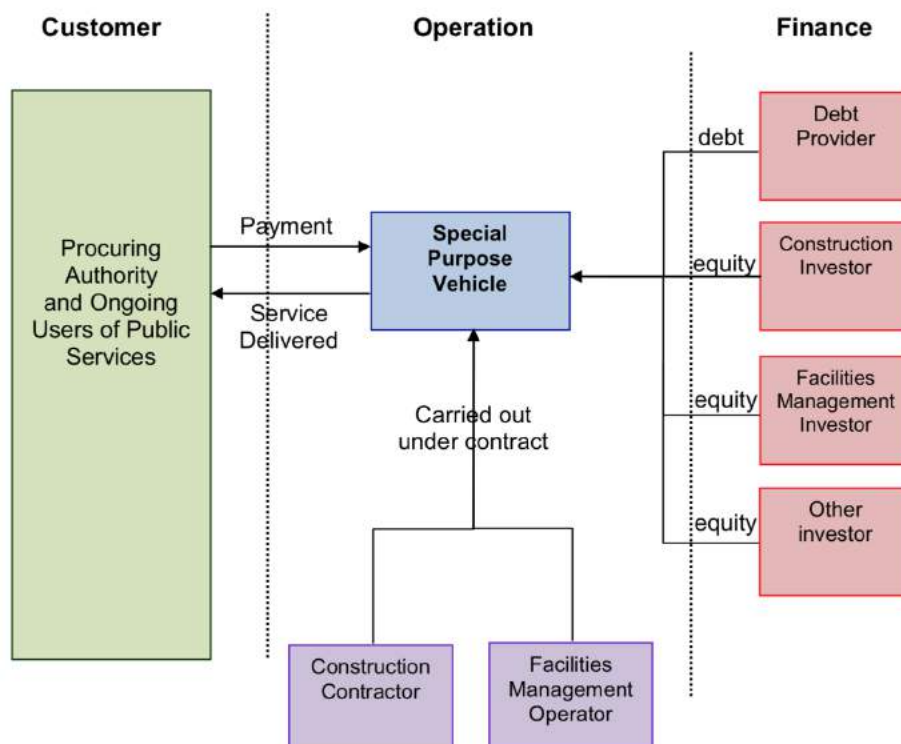
¹⁹⁴ Prime Minister Department, "3.2 General Criteria," Public-Private Partnership (PPP) Guideline, p.8, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

(6) PPP Proposals

The private side can submit PPP proposals to a government agent related to the project. Generally, the required information includes justification for the proposal, business and financial plans, evidence of financial stability and capability, proposed payment mechanism, risk matrix and other information requested by the government.¹⁹⁵ Inquiries on specific information about PPP can be submitted to Public-Private Partnership Unit, Prime Minister's Department.

(7) PPP Structure

The structure of the *PPP* is determined as follows.¹⁹⁶



¹⁹⁵ Prime Minister Department, "3.1 Submission of PPP Project," Public-Private Partnership (PPP) Guideline, p.5, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

¹⁹⁶ Prime Minister Department, "3.3 Structure of PPP Project," Public-Private Partnership (PPP) Guideline, p.9, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

(8) Roles and Responsibilities of the Private and Public Sectors in PPP

The roles of the involved parties in a PPP contract are as follows:¹⁹⁷

(a) SPV

- raising the funds to develop and maintain the assets
- making payments to the subcontractors, financiers and other creditors
- delivering the agreed services to the public sector according to the levels, quality and
- timeliness of the service provided throughout the contract period
- ensuring the assets are well maintained and available for use throughout the concession period
- ensuring that revertible assets/facilities are transferred in the specified conditions (good working order) to the public sector at the end of the concession period

(b) Financiers

- the financing of the project is provided by a combination of equity investors and debt providers

(c) Construction Contractors

- to carry out construction works according to the contract with the SPV

(d) Facilities Management Operator

- to carry out comprehensive facilities management of the assets according to the contract with the SPV

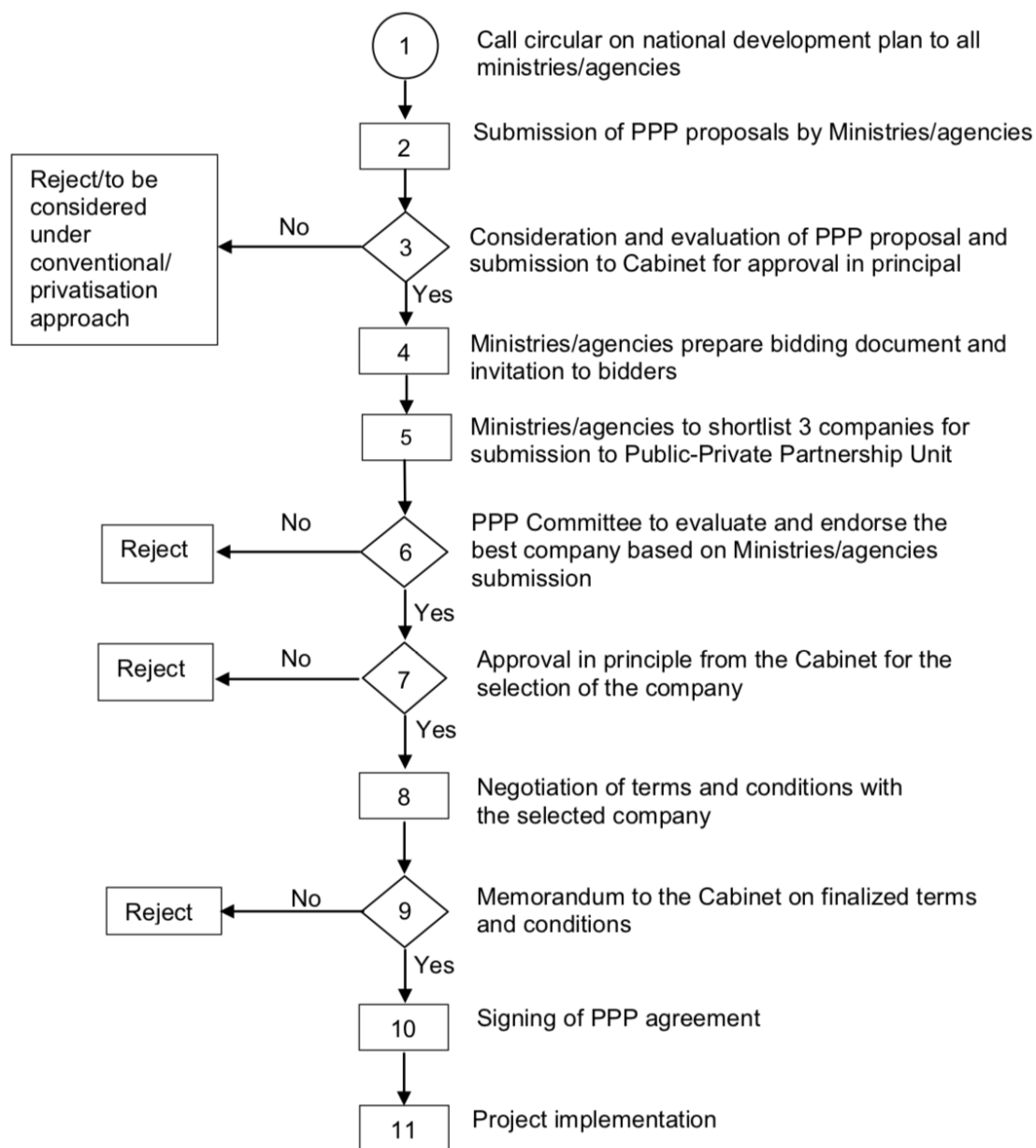
¹⁹⁷ Prime Minister Department, "3.4 Roles and Responsibilities of the Private and Public Sectors in PPP," Public-Private Partnership (PPP) Guideline, p.10, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

(e) The Public Sector

- identifying, assessing and prioritizing projects for implementation via PPP
- preparing and managing the projects for the competitive bidding process
- providing clear objectives and scoping of the projects, output specifications, payment mechanism, and KPIs
- ensuring equitable and optimal allocation of risks
- contract management and performance monitoring
- safeguarding public interests

(9) PPP Process Flow

The process flow of PPP can be described as follows.¹⁹⁸

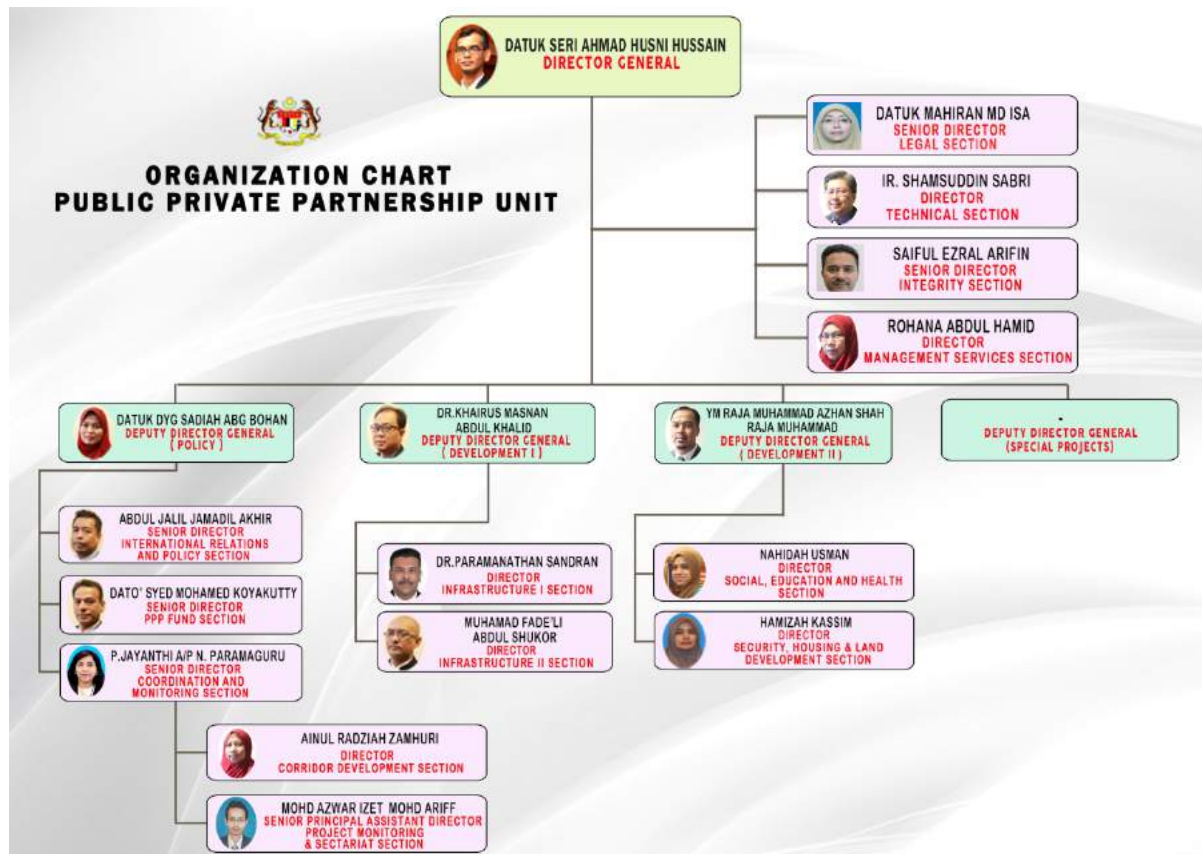


Public-Private Partnership Unit

¹⁹⁸ Prime Minister Department, "4.0 Process Flow," Public-Private Partnership (PPP) Guideline, p.11, Accessed June 23, 2018, http://www.ukas.gov.my/c/document_library/get_file?uuid=02f1ea81-8075-4387-8b69-ebb2120292f1&groupId=15223.

(10) Agencies relating to Public-Private Partnership

Public-Private Partnership Unit or Unit Kerjasama Awam Swasta: UKAS¹⁹⁹ is responsible for public-private partnership, under the Ministry of Finance. The organization structure of the PPP unit is as follows.



The organization structure of PPP unit, Ministry of Finance²⁰⁰

¹⁹⁹ Location: Jabatan Perdana Menteri, Aras 2-4, 6, 8-10 & 14, Menara Usahawan, Persiaran Perdana, Presint 2, 62652 Putrajaya Tel. +60 3-8880 5800 website: www.ukas.gov.my

²⁰⁰ Prime Minister Department, "Organization Chart," Accessed July 11, 2018, http://www.ukas.gov.my/en/carta_organisasi.

1.2.6 Capital Investment

(1) Law regarding capital investment in Malaysia

- 1) Capital Markets and Services Act 2007 - a combination of Securities Industry Act 1983 and Futures Industry Act 1993, which governs capital market activities
- 2) Security Commission Act 1993 - appointing the Security Commission of Malaysia to oversee and develop Malaysian capital markets. The Security Commission is responsible for governing financial institutes and licensed persons under the Capital Markets and Services Act 2007. In other words, the Capital Markets and Services Act 2007 determines framework of capital markets and appoints the Security Commission to take charge.

(2) Definitions of capital market products

Capital Market Products means²⁰¹

- (a) Securities
- (b) Derivatives
- (c) A Private Retirement Scheme
- (d) A Unit Trust Scheme
- (e) Any product or arrangement which is based on securities or derivatives, or any combination thereof; and
- (f) Any other product which the Minister may prescribe as a capital market product

²⁰¹ Capital Markets and Services Act 2007, Section 2

“(1) In this Act, unless the context otherwise requires–

“capital market products” means–;

- (a) securities;
- (b) derivatives;
- (c) a private retirement scheme;
- (d) a unit trust scheme;
- (e) any product or arrangement which is based on securities or derivatives, or any combination thereof; and
- (f) any other product which the Minister may prescribe as a capital market product;”

(3) Investment criteria

Financial instruments in the capital market are governed by rules and regulations of Securities Commission Malaysia.²⁰² Generally, those will be relevant to investors, especially penalties on security regulations and investor protection. Therefore, Malaysia prohibits activities as follows.

(a) A violation under the security regulations

In general, the security regulations empower the Securities Commission Malaysia to bring both civil and criminal litigation if someone commits false trading and market rigging transaction,²⁰³ stock market manipulations,²⁰⁴ false or misleading statements,²⁰⁵ fraudulently inducing persons to deal in securities,²⁰⁶ use of manipulative and deceptive devices,²⁰⁷ or dissemination of information about illegal transactions²⁰⁸

²⁰² Securities Commission Act 1993, Section 16 “The Commission shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws.”

²⁰³ Capital Markets and Services Act 2007, Section 175(1) “Subject to section 180, no person shall create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market within Malaysia or a false or misleading appearance with respect to the market for, or the price of, any such securities.”

²⁰⁴ Capital Markets and Services Act 2007, Section 176(1) “Subject to section 180, no person shall effect, take part in, engage in, be concerned in, or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of— (a) raising; (b) lowering; or (c) pegging, fixing, maintaining or stabilising, the price of securities of the corporation on a stock market in Malaysia, for the purpose which may include the purpose of inducing other persons, whether or not another person is induced, to acquire or dispose of the securities of the corporation or of a related corporation.”

²⁰⁵ Capital Markets and Services Act 2007, Section 177(1) “A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information— (a) he does not care whether the statement or information is true or false; or (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.”

²⁰⁶ Capital Markets and Services Act 2007, Section 178(1) “A person shall not—

(a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;

(b) by any dishonest concealment of material facts;

(c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular, induce or attempt to induce another person to deal in securities.”

²⁰⁷ Capital Markets and Services Act 2007, Section 179 “It shall be unlawful for any person, directly or indirectly in connection with the subscription, purchase or sale of any securities—

(a) to use any device, scheme or artifice to defraud;

(b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements, made in the light of the circumstances under which they were made, not misleading.”

²⁰⁸ Capital Markets and Services Act 2007, Section 181 “A person shall not circulate or disseminate, or authorize or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will or is likely to rise or fall or be maintained by reason of any transaction entered into or

such as lying to investors that a listed company looks highly profitable because of window dressing.

The Commission may institute civil proceedings in court against that person to recover an amount not exceeding three times the gross amount of pecuniary gain made or loss avoided by such person with a civil claim in the amount as the court considers appropriate but not exceeding one million Ringgits (ten million Bahts).²⁰⁹

(b) Investor Protection

The civil proceedings from the litigation will be first allocated to reimburse the Commission for all costs of the investigation and proceedings about the contravention.²¹⁰ Then, if there is any proceeding left, it may be paid to compensate persons who have suffered loss or damage as a result of the contravention.²¹¹ However, the Commission can choose not to distribute to the persons if not practical.²¹²

A person suffering loss or damage by the conduct of the insider who takes advantage of the inside information may recover the amount of loss or damages by bringing civil proceedings against the insider.²¹³

other act or thing done in relation to securities of that body corporate, or of a corporation that is related to that corporation, in contravention of section 175, 176, 177, 178 or 179 if–

(a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or

(b) the person has received, or expects to receive directly or indirectly, any consideration or benefit for circulating or disseminating, or authorizing or being concerned in the circulation or dissemination, the statement or information.”

²⁰⁹ Capital Markets and Services Act 2007, Section 200“(2) For a proceeding instituted by the Commission under subsection (1) against any person who has contravened section 175, 176, 177, 178, 179 or 181, the Commission may if it considers that it is in the public interest to do so, by civil action against such person in contravention–

(a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person;

(b) claim civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, being an amount not exceeding one million Ringgits.”

²¹⁰ Capital Markets and Services Act 2007, Section 200“(3) An amount recovered by the Commission in an action under subsection (2) shall be applied–

(a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention;”

²¹¹ Capital Markets and Services Act 2007, Section 200“(3) An amount recovered by the Commission in an action under subsection (2) shall be applied–

(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.”

²¹² Capital Markets and Services Act 2007, Section 200(4)“If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)(b), in view of the amount of any potential distribution to each 185 person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (3)(b).”

²¹³ Capital Markets and Services Act 2007, Section 201(1)“A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who has contravened section 188 may recover the amount of loss or damages by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.”

(c) Capital market investment

Malaysia has implemented the ASEAN Trading Link to trade between stock exchanges in Southeast Asia since September 18, 2012. Thailand has implemented to the Link since October 15, 2012. The Link will facilitate both Thai and Malaysian investors to trade between the markets with more convenience.²¹⁴

(4) Laws regarding financial and banking institutions

Financial institutions are as follows.

(a) Securities Commission Malaysia

Securities Commission Malaysia (Suruhanjaya Sekuriti)²¹⁵ is an agency governing regulations on financial instruments in the capital markets,²¹⁶ which generally affect investors, especially violations under the security regulations and investor protection.

(b) Bank Negara Malaya

Bank Negara Malaya (Central Bank of Malaysia) has the authority to govern financial services under the Financial Services Act 2013),²¹⁷ which cover the following activities.²¹⁸

- Banking
- Insurance

²¹⁴ Stock Exchange of Thailand, "Asean Exchanges," accessed July 12 2018, https://www.set.or.th/th/asean_exchanges/asean_link.html.

²¹⁵ Location: No 3 Persiaran Bukit Kiara Bukit Kiara 50490 Kuala Lumpur Tel. +60 3-6204 8999 website: www.sc.com.my

²¹⁶ Securities Commission Act 1993, Section 16 "The Commission shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws."

²¹⁷ Financial Services Act 2013, Section 7(1) "The Bank shall exercise the powers and perform the functions under this Act in a way which it considers most appropriate for the purpose of meeting the regulatory objectives of this Act and the Governor shall exercise such powers and perform such functions of the Bank on its behalf."

²¹⁸ Financial Services Act 2013, Schedule 1, Division 1 "Businesses which require approval

1. Operation of a payment system which—

(a) enables the transfer of funds from one banking account to another, which includes any debit transfer, credit transfer or standing instructions but does not include the operation of a remittance system approved under section 40 of the Money Services Business Act 2011; or

(b) provides payment instrument network operation which enables payments to be made through the use of a payment instrument.

2. Issuance of a designated payment instrument.

3. Insurance broking business.

4. Money-broking business.

5. Financial advisory business."

- Investment Banking
- Insurance broking
- Money-broking
- Financial advisory

Islamic Banking is also included.²¹⁹

(a) Financial Institution Setup

Generally, if a financial institution plans to start its business in banking, insurance, or investment banking, it must obtain a license from the Minister of Finance.²²⁰ The financial institution must maintain a minimum capital fund at all times as required by the Minister.²²¹

Furthermore, using the name "bank", "insurance", "financial advisor" or similar words requires permission by Bank Negara Malaya.²²²

²¹⁹ Islamic Financial Services Act 2013, Section 7(1) "The Bank shall exercise the powers and perform the functions under this Act in a way which it considers most appropriate for the purpose of meeting the regulatory objectives of this Act and the Governor shall exercise such powers and perform such functions of the Bank on its behalf"

²²⁰ Financial Services Act 2013, Section 8"(1) No person shall carry on any authorized business unless it is—

(a) licensed by the Minister, on the recommendation of the Bank, under section 10 to carry on banking business, insurance business or investment banking business;"

²²¹ Financial Services Act 2013, Section 12"(1) No person shall be granted a license under section 10 or an approval under section 11 if—

(a) in the case of a company, its capital funds; or

(b) in the case of a branch established in Malaysia by a foreign institution, its surplus of assets over liabilities, is less than the minimum amount as may be prescribed by the Minister in the case of a licensed person, or the Bank in the case of an approved person."

²²² Financial Services Act 2013, Section 139"(1) Except with the prior written approval of the Bank, no person shall—

(a) in its name, description or title under which such person carries on business or in the conduct of its business, use—

(i) the word "bank" unless such person is licensed under this Act to carry on banking business or investment banking business;

(ii) the word "insurance" or "assurance" unless such person is authorized or registered under this Act to carry on insurance business, insurance broking business, financial advisory business or adjusting business;

(iii) the words "financial adviser" unless such person is approved under this Act to carry on financial advisory business;

(iv) any derivative of the words in subparagraph (i), (ii) or (iii) in any language; or

(v) any other words in any language, capable of being construed as indicating the carrying on of any of the authorized or registered businesses;"

(b) Shareholding Limitation

Generally, individuals cannot own shares in a financial institution over 10% of the outstanding shares, either directly or indirectly.²²³ However, Bank Negara Malaya may allow institutional investors to hold maximum shares of a bank at 30%²²⁴ and may hold up to 70% in the case of an Islamic bank.²²⁵

(5) Money Laundering Law

Generally, money laundering is a transaction involving proceeds of any unlawful activity, or concealing the establishment of the true origin of proceeds of any unlawful activity, that the person knows or has reason to believe the property proceeds from any unlawful activity.²²⁶ The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 plays an important role in combating money laundering.

(a) Reported Transactions

Some transactions are required to report to the competent authority for monitoring links to money laundering. This is one of the main obligations of a reporting institution, such as banks or financial institutions.²²⁷

The reporting institution must promptly report the transactions with the amount exceeding a threshold to the Financial Intelligence Unit, Bank Negara Malaysia.²²⁸ This

²²³ Financial Services Act 2013, Section 92 “No individual shall hold more than ten per cent of interest in shares of a licensed person.”

²²⁴ Malaysia Business Law Handbook 2012: Strategic Information and Basic Laws, p 71.

²²⁵ 2013 Investment Climate Statement - Malaysia, US Department of State, <http://www.state.gov/e/eb/rls/othr/ics/2013/204686.htm> (accessed July 14, 2015).

²²⁶ Anti-Money Laundering and Anti-Terrorism Financing Act 2001, Section 3(1) ““money laundering” means the act of a person who—

(a) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or
 (c) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity, where—
 (aa) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
 (bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;”

²²⁷ “Reporting institution” means “Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989.” (Anti-Money Laundering and Anti-Terrorism Financing Act 2001, First Schedule, Paragraph 1.)

²²⁸ Financial Intelligence Unit, Bank Negara Malaysia, “Section 8, Suspicious Transaction Reporting,” Standard Guidelines on Anti-money Laundering and Counter Financing of Terrorism (aml/cft), p.12, Accessed June 23, 2018, http://www.bnm.gov.my/guidelines/03_dfi/02_anti_money/02_standard_guidelines_aml.pdf.

also includes some suspicious transactions that may involve the proceeds of unlawful activity.²²⁹

Transactions that the reporting institution is required to report are as follows.²³⁰

- establishing business relations;
- providing money changing and wholesale currency business for transactions involving an amount equivalent to 3,000 Ringgits or more (about 30,000 Bahts);
- providing wire transfer services;
- carrying out occasional transactions involving an amount equivalent to 50,000 Ringgits or more (about 500,000 Bahts), including in situations that the transaction is carried out in a single transaction or several transactions in a day that appear to be linked;
- carrying out cash transactions involving an amount equivalent to 50,000 Ringgits or more (about 500,000 Bahts)
- it has any suspicion of money laundering or terrorist financing, regardless of amount;
- it has any doubt about the veracity or adequacy of previously obtained information.

Carrying out cash transactions involving an amount equivalent to 500,000 Bahts or more is a higher standard compared to the Thai standard of 2,000,000 Bahts or more. Suspicious transactions, however, set a similar standard compared to the Thai standard, such as nature or circumstances surrounding the transaction and business

²²⁹ Anti-Money Laundering and Anti-Terrorism Financing Act 2001, Section 14 "A reporting institution shall promptly report to the competent authority any transaction—

(a) exceeding such amount as the competent authority may specify; and

(b) where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity."

²³⁰ Financial Intelligence Unit, Bank Negara Malaysia, "Part B. Section 13. Customer Due Diligence (CDD)," Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Banking and Deposit-Taking Institutions (Sector 1), p.21, Accessed June 23, 2018, http://www.bnm.gov.my/guidelines/01_banking/03_anti_money/04_gl_amlcft_deposit.pdf.

background of the person conducting the transaction that is connected to the unlawful activity.²³¹

(b) Penalty

Penalty on money laundering is imprisonment for a term not exceeding 15 years or a fine not exceeding 5,000,000 Ringgits (about 50,000,000 Bahts), or both.²³²

(6) Law regarding Financial Support to Other Financial Institutions

Malaysia does not have a specific law regarding financial support to other financial institutions, compared to Emergency Decree on Improving the Management of Loan Made by the Ministry of Finance for Assisting Financial Institutions Development Fund B.E. 2555 in Thailand.

(7) Law regarding Deposit Protection

Malaysia protects deposits under Malaysia Deposit Insurance Corporation Act 2011 to ensure a depositor that they will not lose their deposits although the financial institution is financially struggling. Malaysia Deposit Insurance Corporation or MDIC is the main authority of the deposit insurance.²³³ MDIC was established by the Malaysia Deposit Insurance Corporation Act 2005, where the Board of Directors is drawn from

²³¹ Financial Intelligence Unit, Bank Negara Malaysia, "Part B. Section 29. Suspicious Transaction Report," Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Banking and Deposit-Taking Institutions (Sector 1), p.21, Accessed June 23, 2018, http://www.bnm.gov.my/guidelines/01_banking/03_anti_money/04_gl_amlcft_deposit.pdf.

²³² Anti-Money Laundering and Anti-Terrorism Financing Act 2001, Section 4(1)

"Any person who—

(a) engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence;

(b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses proceeds of an unlawful activity or instrumentalities of an offence;

(c) removes from or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence;

or

(d) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity or instrumentalities of an offence,

commits a money laundering offence and shall on conviction be liable to imprisonment for a term not exceeding fifteen years and shall also be liable to a fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million Ringgits, whichever is the higher."

²³³ Malaysia Deposit Insurance Corporation Act 2011, Section 4(1) "The objects of the Corporation are to—

(a) administer a deposit insurance system and a takaful and insurance benefits protection system under this Act;

(b) provide insurance against the loss of part or all of deposits for which a deposit-taking member is liable and provide protection against the loss of part or all of takaful or insurance benefits for which an insurer member is liable;

(c) provide incentives for sound risk management in the financial system; and

(d) promote or contribute to the stability of the financial system."

the public and private sectors who are appointed by the Minister of Finance. A non-executive Chairman heads the Board. Under the PIDM Act, the Chairman must have relevant private sector experience. There are two ex officio Directors, namely, the Governor of Bank Negara Malaysia and the Secretary-General of the Treasury, Ministry of Finance, four directors from private sectors (at least three directors must have banking and finance experience).²³⁴ MDIC runs its operation as a private company.²³⁵

(a) Coverage for Deposits

The coverage will begin automatically for the deposits in Malaysia. These two deposits are separately insured.²³⁶

1) Islamic deposits

2) Conventional deposits

The coverage is for each financial institution. Thus, if a depositor owns more than 1 deposit with a financial institution, Malaysia Deposit Insurance Corporation will ensure the aggregate of those deposits.²³⁷

The maximum coverage for each depositor of a financial institution is 250,000 Ringgits (2,500,000 Bahts).²³⁸

²³⁴ Malaysia Deposit Insurance Corporation, "About PIDM (FAQ)," Accessed July 11, 2018, [http://www.pidm.gov.my/en/for-public/frequently-asked-questions-\(faqs\)/about-pidm-\(faqs\)](http://www.pidm.gov.my/en/for-public/frequently-asked-questions-(faqs)/about-pidm-(faqs)).

²³⁵ Malaysia Deposit Insurance Corporation Act 2011, Section 2(1)
"Corporation" means the Malaysia Deposit Insurance Corporation;
"corporation" has the same meaning as defined under section 4 of the Companies Act 1965;

²³⁶ Malaysia Deposit Insurance Corporation Act 2011, Section 42(1) "The Corporation shall separately insure the following categories of deposits placed with a deposit-taking member:

(a) Islamic deposits; and
(b) conventional deposits."

²³⁷ Malaysia Deposit Insurance Corporation Act 2011, Section 42(2) "For the purpose of subsection (1)—
(a) where a depositor owns only one deposit with a deposit-taking member, that deposit shall be insured—
(i) in respect of the principal and return on an Islamic deposit, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
(ii) in respect of the principal and interest on a conventional deposit, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
(b) where a depositor owns more than one deposit with a deposit-taking member, the aggregate of those deposits shall be insured—
(i) in respect of the principal and return on Islamic deposits, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
(ii) in respect of the principal and interest on conventional deposits, up to such amount as prescribed by the Minister on the recommendation of the Corporation."

²³⁸ Malaysia Deposit Insurance Corporation (Deposit Insurance Limit) Order 2011, Section 2 "Where only one Islamic deposit is held with a deposit-taking member in respect of a depositor or, in the case where more than one Islamic deposit are held with the deposit-taking member, that deposit or, in the latter case, the aggregate of those deposits, shall be insured up to a maximum amount of two hundred and fifty thousand Ringgits."

(b) Financial Institutions under Deposit Insurance

Malaysia Deposit Insurance Corporation lists its members, including commercial banks and Islamic banks, at <http://www.pidm.gov.my/For-Public/About-Deposit-Insurance/Member-Banks>.

(c) Examination of the operations of a member institution

MDIC may examine the operations of a member institution, and the scope of examinations may include the following matters.²³⁹

- 1) whether proper and adequate records of its deposit or takaful or insurance benefit liabilities are maintained by a member institution;
- 2) whether reports made by a member institution on its premiums or takaful or insurance liabilities are substantially correct;
- 3) compliance with the terms and conditions or any other requirements of the membership; or
- 4) any other areas that the Corporation thinks appropriate, after consultation with Bank Negara Malaysia.

Section 3 "Where only one conventional deposit is held with a deposit-taking member in respect of a depositor or, in the case where more than one conventional deposit are held with the deposit-taking member, that deposit or, in the latter case, the aggregate of those deposits, shall be insured up to a maximum amount of two hundred and fifty thousand Ringgits."

²³⁹ Malaysia Deposit Insurance Corporation Act 2011, Section 96

"(1) For the purposes of this Act, the Corporation or Bank Negara Malaysia, upon request by the Corporation, may examine the operations of a member institution.

(2) The scope of examinations under subsection (1) may include the examination of—

- (a) whether proper and adequate records of its deposit or takaful or insurance benefit liabilities are maintained by a member institution;
- (b) whether reports made by a member institution on its premiums or takaful or insurance liabilities are substantially correct;
- (c) compliance with terms and conditions or any other requirements of the membership; or
- (d) any other areas that the Corporation thinks appropriate, after consultation with Bank Negara Malaysia."

(8) Agencies related to capital investment

(a) Bank Negara Malaysia

Bank Negara Malaysia²⁴⁰ is in charge of governing financial institutions in Malaysia.²⁴¹

Furthermore, Bank Negara Malaysia is also monitoring and prohibiting money laundering. The Bank also monitors the reported transactions and cooperate with Malaysia's National Coordination Committee to Counter Money Laundering (NCC).

(b) Malaysia Deposit Insurance Corporation

*Malaysia Deposit Insurance Corporation or Perbadanan Insurans Deposit Malaysia*²⁴² is an agency supervising deposit insurance.²⁴³ The coverage is limited to 250,000 Ringgits (2,500,000 Bahts) each financial institution.²⁴⁴

²⁴⁰ Location: Laman Informasi Nasihat dan Khidmat (BNMLINK) (Walk-in Customer Service Centre) Ground Floor, D Block Jalan Dato' Onn 50480 Kuala Lumpur Tel. +60 3-2698 8044 website: www.bnm.gov.my

²⁴¹ Section 7(1), Financial Services Act 2013: "The Bank shall exercise the powers and perform the functions under this Act in a way which it considers most appropriate for the purpose of meeting the regulatory objectives of this Act and the Governor shall exercise such powers and perform such functions of the Bank on its behalf."

²⁴² Location: Level 22, Dataran Kewangan Darul Takaf, No. 4, Jalan Sultan Sulaiman, 50000, Kuala Lumpur, Wilayah Persekutuan, 5000
Tel. +60 3-2260 7436

²⁴³ Section 4(1), Malaysia Deposit Insurance Corporation Act 2011: "The objects of the Corporation are to—

(a) administer a deposit insurance system and a takaful and insurance benefits protection system under this Act;

(b) provide insurance against the loss of part or all of deposits for which a deposit-taking member is liable and provide protection against the loss of part or all of takaful or insurance benefits for which an insurer member is liable;

(c) provide incentives for sound risk management in the financial system; and

(d) promote or contribute to the stability of the financial system."

Section 3(1), Islamic Banking Act 1983: "Islamic banking business shall not be transacted in Malaysia except by a company which is in the possession of a licence in writing from the Minister authorizing it to do so."

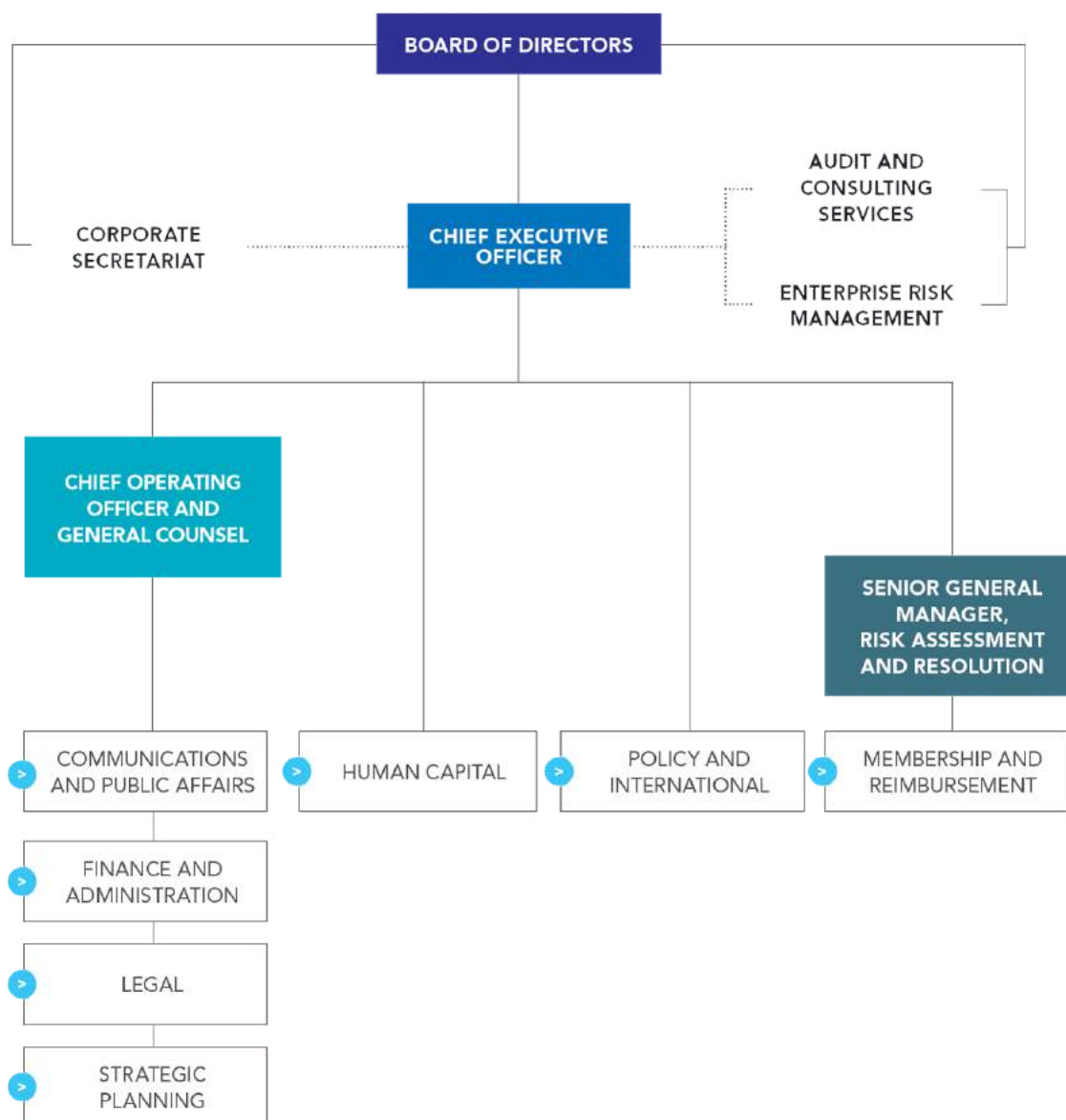
²⁴⁴ Malaysia Deposit Insurance Corporation (Deposit Insurance Limit) Order 2011

"Maximum amount of Islamic deposits insured

Section 2. Where only one Islamic deposit is held with a deposit-taking member in respect of a depositor or, in the case where more than one Islamic deposit are held with the deposit-taking member, that deposit or, in the latter case, the aggregate of those deposits, shall be insured up to a maximum amount of two hundred and fifty thousand Ringgits.

Maximum amount of conventional insured

Section 3. Where only one conventional deposit is held with a deposit-taking member in respect of a depositor or, in the case where more than one conventional deposit are held with the deposit-taking member, that deposit or, in the latter case, the aggregate of those deposits, shall be insured up to a maximum amount of two hundred and fifty thousand Ringgits."



*The Structure of Malaysia Deposit Insurance Corporation*²⁴⁵

²⁴⁵ Malaysia Deposit Insurance Corporation, "Corporate Structure," Accessed July 11, 2018, <http://www.pidm.gov.my/en/pidm/corporate-structure>.

Annex

Consumer Protection Act 1999

Section 9. Misleading conduct

No person shall engage in conduct that-

- (a) in relation to goods, is misleading or deceptive, or is likely to mislead or deceive, the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity, of the goods; or
- (b) in relation to services, is misleading or deceptive, or is likely to mislead or deceive, the public as to the nature, characteristics, suitability for a purpose, or quantity, of the services.

Section 10. False or misleading representation

(1) No person shall make a false or misleading representation that -

- (a) the goods are of a particular kind, standard, quality, grade, quantity, composition, style or model;
- (b) the goods have had a particular history or particular previous use;
- (c) the services are of a particular kind, standard, quality or quantity;
- (d) the services are supplied by any particular person or by any person of a particular trade, qualification or skill;
- (e) a particular person has agreed to acquire the goods or services;
- (f) the goods are new or reconditioned;
- (g) the goods were manufactured, produced, processed or reconditioned at a particular time;
- (h) the goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits;
- (i) the person has any sponsorship, approval, endorsement or affiliation;
- (j) concerns the need for any goods or services;

(k) concerns the existence, exclusion or effect of any condition, guarantee, right or remedy; or

(l) concerns the place of origin of the goods.

(2) In this section, "quantity" includes length, width, height, area, volume, capacity, weight and number.

Section 11. False representation and other misleading conduct in relation to land

(1) No person shall in connection with the sale or grant or possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land -

(a) falsely represent that any person has any sponsorship, approval, endorsement or affiliation; or

(b) make a false or misleading representation concerning any or all of the following:

(i) the nature of the interest in the land;

(ii) the price payable for the land;

(iii) the location of the land;

(iv) the characteristics of the land;

(v) the use to which the land is capable of being put or may lawfully be put;

(vi) the existence or availability of facilities associated with the land.

(2) In this section, "interest", in relation to land, means a registered or registrable interest in the land, and includes -

(a) a right of occupancy of the land or of a building or part of a building erected on the land, arising by virtue of the holding of shares or by virtue of a contract to purchase shares in a company that owns the land or building; or

(b) a right, power or privilege over or in connection with the land.

(3) This section does not apply to housing accommodation as provided under the Housing Developers (Control and Licensing) Act 1966 [Act 118] except as may be prescribed under section 103.

Section 12. Misleading indication as to price

- (1) A person commits an offence -
 - (a) if he gives to a consumer an indication which is misleading as to the price at which any goods or services are available; or
 - (b) if an indication given by him to a consumer as to the price at which any goods or services are available becomes misleading and he fails to take reasonable steps to prevent the consumer from relying on the indication.
- (2) For the purposes of subsection (1), it shall be immaterial -
 - (a) whether the person who gives the indication is acting on his own behalf or on behalf of another;
 - (b) whether or not the person who gives the indication is the person or included among the persons from whom the goods or services are available;
 - (c) whether the indication is or becomes misleading in relation to all the consumers to whom it is given or only in relation to some of them.
- (3) For the purposes of this section, an indication given to a consumer is misleading as to a price or a method of determining a price if what is conveyed by the indication, or what the consumer may reasonably be expected to infer from the indication or any omission from it, includes any of the following:
 - (a) that the price or method is not what in fact it is;
 - (b) that the applicability of the price or method does not depend on facts or circumstances on which it does in fact depend;
 - (c) that the price covers or the method takes into account matters in respect of which an additional charge is in fact made;
 - (d) that a person who in fact has no such expectation, expects -
 - (i) the price to be increased or reduced, whether or not at a particular time or by a particular amount;
 - (ii) the price, or the price as increased or reduced, as the case may be, to be maintained, whether or not for a particular period;

(iii) the method to be altered, whether or not at a particular time or in a particular respect; or

(iv) the method or the method as altered, as the case may be, to remain unaltered, whether or not for a particular period;

(e) that the facts or circumstances by reference to which the consumer may reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what they in fact are.

(4) For the purposes of paragraph (3)(e), a comparison is a relevant comparison in relation to a price or a method of determining a price, as the case may be, if the comparison is made between that price or method or any price which has been or may be determined by that method, and -

(a) any price or value that is stated or implied to be or to have been or to be likely to be attributed or attributable to the goods or services in question, or to any other goods or services; or

(b) any method or other method that is stated or implied to be or to have been or to be likely to be applied or applicable for the determination of the price or value of the goods or services in question, or of the price or value of any other goods or services."

Section 13. Consumer Protection Act 1999 "Bait advertising

(1) No person shall advertise for supply at a specified price goods or services which that person –

(a) does not intend to offer for supply; or

(b) does not have reasonable grounds for believing can be supplied, at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) In a prosecution for a failure to offer goods or services to a consumer in accordance with subsection (1), it shall be a defence if the person charged proves that –

(a) he offered to supply or to procure another person to supply, to the consumer, within a reasonable time, goods or services of the kind advertised, in a reasonable quantity and at the advertised price, and where the offer is accepted

by the consumer, that the person has so supplied or procured another person to supply, the goods or services; or

- (b) he offered to supply to the consumer immediately, or to procure another person to supply to the consumer within a reasonable time, equivalent goods or services, in a reasonable quantity and at the advertised price, and where the offer is accepted by the consumer, that the person has so supplied or procured another person to supply, such equivalent goods or services.”

Section 14. Gifts, prizes, free offers, etc.

(1) No person shall offer any gift, prize or other free item -

- (a) with the intention of not providing it; or
- (b) with the intention of not providing it as offered.

(2) No person shall in offering any gift, prize or other free item with the purchase of any goods or services, whether or not contingent on the purchase of other goods or services

-

- (a) charge more than the regular price for the goods or services to be purchased; or
- (b) reduce the quantity or quality of the goods or services to be purchased.

(3) A person who offers a gift, prize or other free item may impose any reasonable condition on the offer.

(4) Where a person imposes a condition on the offer, he shall -

- (a) describe the condition clearly;
- (b) ensure that the description of the condition is conspicuously placed near the expression "free" or "free offer", as the case may be; and
- (c) ensure that the print of the description of the condition is at least half as large as the print used for the expression "free" or "free offer".

(5) For the purposes of this section -

"free" or "free offer" includes any expression of similar meaning;

"regular price" means the price at which similar goods or services are regularly sold on the market.

Section 15. Claim that goods are limited

(1) No person shall, in supplying or offering to supply goods for sale to consumers, describe the goods as limited unless their edition, printing, minting, crafting or production is restricted to -

- (a) a pre-determined maximum quantity; or
- (b) the actual quantity ordered or subscribed to within a specified and reasonably short period of time.

(2) A claim that goods are limited shall state clearly -

- (a) the maximum quantity of goods which are offered for sale; and
- (b) the specific time period or dates for which the goods are offered for sale.

(3) The statements required under subsection (2) shall be conspicuously placed near the claim.

Section 19. Consumer Protection Act 1999 "Safety standards

(1) The Minister may by regulations prescribe the safety standards in respect of -

- (a) any goods or class of goods; and
- (b) any services or class of services, and may prescribe different safety standards for different goods or services, or classes of goods or services.

(2) The safety standard in relation to goods may relate to any or all of the following matters:

- (a) the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;
- (b) the testing of the goods during or after manufacture or processing;
- (c) the form and content of markings, warnings or instructions to accompany the goods.

(3) For the purposes of subsection (1), the Minister may, on the recommendation of the Controller and with consultation with the competent agency -

- (a) adopt in whole or in part the safety standard used by the competent agency; or

(b) obtain advice from experts in the relevant field.

(4) Where no safety standard has been prescribed under subsection (1), the person supplying or offering to supply the goods or services shall adopt and observe a reasonable standard of safety to be expected by a reasonable consumer, due regard being had to the nature of the goods or services concerned.

(5) In this section, "competent agency" means any person, body or authority that has determined or has the expertise to determine safety standards for any goods or services.

(6) This Part shall not apply to healthcare goods and food.

(7) For the purpose of this Part, "healthcare goods" means any goods used or intended to be used, provided or intended to be provided or prescribed or intended to be prescribed in the provision of healthcare services.

Section 20. Compliance with safety standards

No person shall supply, or offer to or advertise for supply, any goods or services which do not comply with the safety standards determined under section 19.

Section 21. General safety requirement for goods

In addition and without prejudice to section 20, no person shall supply, or offer to or advertise for supply, any goods which are not reasonably safe having regard to all the circumstances, including -

- (a) the manner in which, and the purposes for which, the goods are being or will be marketed;
- (b) the get-up of the goods;
- (c) the use of any mark in relation to the goods; and
- (d) instructions or warnings in respect of the keeping, use or consumption of the goods.

Section 23. "Prohibition against unsafe goods

(1) The Minister may, on the recommendation of the Controller, by order published in the Gazette, declare any goods or any class of goods to be prohibited goods where the

goods or goods of that class have caused or are likely to cause injury to any person or property or is otherwise unsafe.

(2) An order made under subsection (1) may require the supplier, in such manner and within such period as may be specified in the order, and at the supplier's own expense, to do any or all of the following:

- (a) recall the prohibited goods;
- (b) stop the supply of, or the offer to supply, the prohibited goods;
- (c) stop the advertisement of the prohibited goods;
- (d) disclose to the public any information relating to -
 - (i) the characteristics of the prohibited goods which render them unsafe;
 - (ii) the circumstances in which use of the prohibited goods are unsafe;
 - (iii) any other matter relating to the prohibited goods or the use of the prohibited goods as may be specified;
- (e) repair or replace the prohibited goods;
- (f) refund to any person to whom the prohibited goods were supplied the price paid or the value of the consideration given for the prohibited goods or any lesser amount as may be reasonable having regard to the use that that person has had of the prohibited goods.

(3) Where an order is made under subsection (1), the Controller shall, by notice to the supplier, require the supplier to take any or all of the actions referred to in the order.

(4) A notice under subsection (3) need not be provided directly to the supplier and may be provided by general methods, including placing notices in the public news media, as the Controller thinks fit, provided that the notice is clear and reasonable.

(5) The supplier shall comply with all the requirements of any order and notice made under this section.

(6) Further and without prejudice to the foregoing, where an order under subsection (1) is in effect -

- (a) no person shall supply, or offer to or advertise for supply, any prohibited goods;
and

(b) no supplier shall -

(i) where the notice identifies a defect in, or a dangerous characteristic of, the prohibited goods, supply goods of a kind to which the order relates which contain the defect or have the characteristic; or

(ii) in any other case, supply goods of a kind to which the order relates."

Section 31. Implied guarantee as to title

(1) Subject to subsection (5), the following guarantees shall be implied where goods are supplied to a consumer:

(a) that the supplier has a right to sell the goods;

(b) that the goods are free from any undisclosed security; and

(c) that the consumer has a right to quiet possession of the goods, except in so far as that right is varied by:

(i) a term of the agreement for supply where that agreement is a hire-purchase agreement within the meaning of the Hire-Purchase Act 1967 [Act 212];

(ii) a disclosed security; or

(iii) a term of the agreement for supply.

(2) Where subparagraphs (1)(c)(ii) and (iii) apply, the supplier shall first orally advise the consumer as to the way in which his right to quiet possession of the goods may be varied.

(3) The advice given by the supplier under subsection (2) shall be as may be sufficient to enable a reasonable consumer to understand the general nature and effect of the variation.

(4) Where a consumer has received oral advice under subsection (2) -

(a) the supplier shall give to the consumer a written copy of the security or agreement for supply or a written copy of the part thereof which provides for the variation as explained to the consumer under subsection (2); and

(b) the consumer shall acknowledge receipt thereof in writing.

(5) Where the goods are only hired or leased -

(a) paragraphs (1)(a) and (b) shall not apply; and

(b) paragraph (1)(c) shall confer a right to quiet possession of the goods only for the period of the hire or lease.

(6) For the purposes of this section -

"right to sell" means a right to dispose of the ownership of the goods to the consumer at the time when that ownership is to pass;

"undisclosed security" means any security that is -

(a) not disclosed to the consumer in writing before he agrees to the supply; and

(b) not created by or with his express consent.

Section 32. Implied guarantee as to acceptable quality

(1) Where goods are supplied to a consumer there shall be implied a guarantee that the goods are of acceptable quality.

(2) For the purposes of subsection (1), goods shall be deemed to be of acceptable quality -

(a) if they are -

(i) fit for all the purposes for which goods of the type in question are commonly supplied;

(ii) acceptable in appearance and finish;

(iii) free from minor defects;

(iv) safe; and

(v) durable; and

(b) a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard the goods as acceptable having regard to -

(i) the nature of the goods;

- (ii) the price;
- (iii) any statements made about the goods on any packaging or label on the goods;
- (iv) any representation made about the goods by the supplier or the manufacturer; and
- (v) all other relevant circumstances of the supply of the goods.

(3) Where any defects in the goods have been specifically drawn to the consumer's attention before he agrees to the supply, then, the goods shall not be deemed to have failed to comply with the implied guarantee as to acceptable quality by reason only of those defects.

(4) Where goods are displayed for sale or hire, the defects that are to be treated as having been specifically drawn to the consumer's attention for the purposes of subsection (3) shall be defects disclosed on a written notice displayed with the goods.

(5) Goods shall not be deemed to have failed to comply with the implied guarantee as to acceptable quality if -

- (a) the goods have been used in a manner or to an extent which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and
- (b) the goods would have complied with the implied guarantee as to acceptable quality if they had not been used in that manner or to that extent.

(6) A reference in subsections (3) and (4) to a defect is a reference to any failure of the goods to comply with the implied guarantee as to acceptable quality.

Section 33. Implied guarantee as to fitness for particular purpose

(1) Subject to subsection (2), the following guarantees shall be implied where goods are supplied to a consumer:

- (a) that the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and
- (b) that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.

(2) The implied guarantees referred to in subsection (1) shall not apply where the circumstances show that -

- (a) the consumer does not rely on the supplier's skill or judgment; or
- (b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

(3) This section shall apply whether or not the purpose is a purpose as to which the goods are commonly supplied.

Section 34. Implied guarantee that goods comply with description

(1) Where goods are supplied by description to a consumer, there shall be implied a guarantee that the goods correspond with description.

(2) A supply of goods is not prevented from being a supply by description by reason only that, being exposed for sale or hire, they are selected by a consumer.

(3) If the goods are supplied by reference to a sample or demonstration model as well as by description, the implied guarantees in this section and section 35 shall apply.

Section 35. Implied guarantee that goods comply with sample

(1) The following guarantees shall be implied where goods are supplied to a consumer by reference to a sample or demonstration model:

- (a) that the goods correspond with the sample or demonstration model in quality;
and
- (b) that the consumer will have a reasonable opportunity to compare the goods with the sample or demonstration model.

(2) If the goods are supplied by reference to a description as well as by a sample or demonstration model, the implied guarantees in this section and section 34 shall apply.

Section 36. Implied guarantee as to price

(1) Where goods are supplied to a consumer, there shall be implied a guarantee that the consumer shall not be liable to pay to the supplier more than the reasonable price of the goods where the price for the goods is not -

- (a) determined by the contract;
- (b) left to be determined in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the implied guarantee under subsection (1), the consumer's only right of redress shall be to refuse to pay more than the reasonable price.

(3) Nothing in Part VI shall be taken to confer on the consumer any other right of redress.

(4) For the purposes of this section, what is a "reasonable price" shall be a question of fact depending on the circumstances of each particular case, and where the price has been fixed under any written law, the reasonable price shall be as may be specified under that written law.

Section 37. Implied guarantee as to repairs and spare parts

(1) Where imported or locally manufactured goods are supplied to a consumer, there shall be implied a guarantee that the manufacturer and the supplier will take reasonable action to ensure that facilities for the repair of the goods and the supply of spare parts for the goods are reasonably available for a reasonable period after the goods are so supplied.

(2) Subsection (1) shall not apply where reasonable action has been taken to notify the consumer, at or before the time the imported or locally manufactured goods are supplied, that the manufacturer or the supplier or both does not undertake that repair facilities and spare parts will be available for those goods.

(3) Where reasonable action has been taken to notify the consumer, at or before the time the goods are supplied, that the manufacturer or supplier or both does not undertake that repair facilities and spare parts will be available for those goods after the expiration of a specified period, subsection (1) shall not apply in relation to the imported or locally manufactured goods after the expiration of that period.

Section 38. Manufacturer's express guarantee

(1) An express guarantee given by a manufacturer of goods which are supplied to a consumer shall bind the manufacturer to the extent specified in subsections (2), (3) and (4).

(2) An express guarantee in respect of goods given by a manufacturer in a document binds the manufacturer where the document is given to a consumer with the actual or

apparent authority of the manufacturer in connection with the supply by a supplier of those goods to the consumer.

(3) An express guarantee which is included in a document relating to the goods and which appears to have been made by the manufacturer of the goods shall, in the absence of proof to the contrary, be presumed to have been made by the manufacturer.

(4) Proof that a consumer was given a document containing express guarantees by a manufacturer in respect of goods in connection with the supply of those goods to the consumer shall, in the absence of proof to the contrary, constitute proof that the document was given to the consumer with the authority of the manufacturer.

(5) For the purposes of this section, "express guarantee", in relation to any goods, means an undertaking, assertion or representation in relation to -

- (a) the quality, performance or characteristics of the goods;
- (b) the provision of services that are or may at any time be required in respect of the goods;
- (c) the supply of parts that are or may at any time be required for the goods;
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part of; or
- (e) the return of money or other consideration should the goods not meet any undertaking by the guarantor, given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods.

2. Laws governing the landholdings of non-citizens

Malaysia's main provision regarding the landholdings of non-citizens is the National Land Code 1965.

2.1 Landholdings

The National Land Code 1965 defines "Land" as follows:²⁴⁶

- 1) The surface of the earth and substances forming that surface;
- 2) The earth below the surface and all substance therein;
- 3) All vegetation and other natural products, whether or not requiring the periodical application of labor to their production, and whether on or below the surface;
- 4) All things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface; and
- 5) Land covered by water.

There are 3 types of landholdings in Malaysia:²⁴⁷

- 1) "Free hold" allows landlords to self-conduct any transaction on such land with fewer restrictions than other types of land (e.g. no approval from related governmental authorities needed). The Malaysian government shall not claim ownership over this type of land.
- 2) "Lease hold", the government allows landholders to rent in a limited time (e.g. 30, 60, 99 or 999 years).²⁴⁸ However, if the leased term reaches is expired, it could be renewed by submitting a request to the land office for consideration. The payment shall be made if the request gets approved (rental fees depend on the purpose).

²⁴⁶ National Land Code 1965, Section 5. "'land" includes-

- (a) that surface of the earth and all substances forming that surface;
- (b) the earth below the surface and all substances therein;
- (c) all vegetation and other natural products, whether or not requiring the periodical application of labour to their production, and whether on or below the surface;
- (d) all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface; and
- (e) land covered by water;"

²⁴⁷ Carmen Tham, "Land Title Types in Malaysia," Accessed April 20, 2019, <http://blog.bumbung.co/2017/07/18/land-title-types-malaysia>.

²⁴⁸ National House Buyers Association, "What is the difference between leasehold and freehold tenures?," Accessed July 11, 2018, https://www.hba.org.my/faq/lease_freehold.htm.

- 3) "Reserved land for Malaysian and Bumiputera" is only for Malaysian citizens and Bumiputera.²⁴⁹ For Bumiputera, they can only trade land among them.²⁵⁰ Nonetheless, if the transaction wishes to be made with non-Bumiputera, it can be conducted by notifying a consent to transfer such holding rights to the authorities at the Land office on a case-by-case basis.²⁵¹

2.2 Landholdings of non-citizens

The National Land Code 1965 set forth the following restrictions for Non-citizens and foreign.

2.2.1 Definition of non-citizens

Non-citizens mean non-Malaysian-citizens. Foreign companies mean companies established under foreign laws in accordance with the Companies Act 2016.²⁵² Foreign companies include Malaysian companies with at least 50% of foreign shareholders as well as Malaysian companies held by a Malaysian company with at least 50% of foreign shareholders.²⁵³

²⁴⁹ Federal Constitution, Article 160 (2) "In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say - "Malay" means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and -

(a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or

(b) is the issue of such a person;"

²⁵⁰ Bumiputera means a) for Peninsula of Malaysia (Malay individual or Aborigine) under Section 160 (2) of the Federal Constitution; b) for Sarawak (individual) under Section 161 (A) (6) (a) of the Federal Constitution; c) for Sabah (individual) under Section 161(A) (6) (b) of the Federal Constitution

²⁵¹ Carmen Tham, "Land Title Types in Malaysia," Accessed April 20, 2019, <http://blog.bumbung.co/2017/07/18/land-title-types-malaysia>.

²⁵² Companies Act 2016, Section 4 "foreign company" means—

(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 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;"

²⁵³ National Land Code 1965, Section 433A. "For the purposes of this Part- "foreign company" means-

(a) a foreign company as defined in sub-section (1) of section 4 of the Companies Act 1965;

(b) a company incorporated under the Companies Act 1965 with fifty per cent or more of its voting shares being held by a non-citizen, or by a foreign company referred to in paragraph (a) , or by both, at the time of the proposed acquisition of any land or any interest in land or at the time of the execution of the instrument or deed in respect of any alienated land or any interest therein, as the case may be; or

(c) a company incorporated under the Companies Act 1965 with fifty per cent or more of its voting shares being held by a company referred to in paragraph (b) , or by a company referred to in paragraph (b) together with a non-citizen or a foreign company referred to in paragraph (a) , at the time of the proposed acquisition of any land or any interest in land or at the time of the execution of the instrument or deed in respect of any alienated land or any interest therein, as the case may be.

2.2.2 Restriction for non-citizens

(1) General case

Foreign investors or foreign companies must consider types of land holdings due to some restrictive legislation for non-citizens, for example, the prohibition of land ownership. Therefore, the non-citizens are only eligible for the leased rights in a limited time.

Furthermore, land holdings for non-citizens and foreign companies require the prior approval of the State Authority.²⁵⁴ Selling land to non-citizens by Malaysian before obtaining the prior approval of State Authority shall be void.²⁵⁵

(2) Exception

The Land office State Authority's prior approval is not required in the following cases:²⁵⁶

- 1) Any land or any interest in land which is subject to the category of industry or for industrial purposes;
- 2) Any dealing pursuant to a sale and purchase agreement which is already approved to the non-citizens;
- 3) Any dealing or act with regards to alienated land exempted by particular rules.

Although the State Authority grants non-citizens permissions to hold lands, it shall be under some conditions which may differ from Malaysian.²⁵⁷ This may include a different tax rate which might be more or less than the normal rate.²⁵⁸

²⁵⁴ National Land Code 1965, Section 433B.

"(e) the Registrar may endorse any memorial of transmission on the register document of title to any land in favour of a non-citizen or foreign company, but only after the prior approval of the State Authority has been obtained upon an application in writing to the State Authority by such non-citizen or foreign company:..."

²⁵⁵ National Land Code 1965, Section 433C. "Disposal, dealing, etc., in favour of a non-citizen and foreign company in contravention of section 433B to be null and void.

After the commencement of this Part, any disposal of land by the State Authority, or any dealing or other act with regard to alienated land or any interest therein, in contravention of section 433B shall be null and void."

²⁵⁶ National Land Code 1965, Section 433B.

"(e) ... Provided that no such approval shall be required in respect of-

(aa) any land or any interest in land which is subject to the category "industry" or to any condition requiring its use for industrial purposes;

(ab) any dealing effected pursuant to a sale and purchase agreement for which an approval has been granted under section 433E and executed by the same parties in such agreement; and

(ac) any dealing or act with regard to alienated land or any interest in land exempted by rules made under paragraph (aa) of sub-section (1) of section 14."

A government authority related to the landholdings of non-citizens in Malaysia is the Economic Planning Unit (EPU). The EPU is under the supervision of the Prime Minister's Department. The EPU provides a guideline to landholding for non-citizens stating purchasable types of land which may vary, according to the price and location.²⁵⁹

²⁵⁷ National Land Code 1965, Section 433B.

"(1) Notwithstanding anything contained in this Act or in any other written law-

- (a) a non-citizen or a foreign company may acquire land by way of a disposal under Division II
- (b) a dealing under Division IV with respect to alienated land or an interest in alienated land may be effected in favour of a non-citizen or a foreign company;
- (c) alienated land, or any share or interest in such land, may be transferred or transmitted to, or vested in, or created in favour of any person or body as "trustee", or of two or more persons or bodies as "trustees", where the trustee or one of the trustees, or where the beneficiary or one of the beneficiaries, is a non-citizen or a foreign company;
- (d) the Registrar may in respect of any land register any person or body as "representative" or make a memorial in favour of any person or body as "representative" if such person or body is a non-citizen or a foreign company;
- (e) the Registrar may endorse any memorial of transmission on the register document of title to any land in favour of a non-citizen or foreign company, but only after the prior approval of the State Authority has been obtained upon an application in writing to the State Authority by such non-citizen or foreign company: Provided that no such approval shall be required in respect of-
 - (aa) any land or any interest in land which is subject to the category "industry" or to any condition requiring its use for industrial purposes;
 - (ab) any dealing effected pursuant to a sale and purchase agreement for which an approval has been granted under section 433E and executed by the same parties in such agreement; and
 - (ac) any dealing or act with regard to alienated land or any interest in land exempted by rules made under paragraph (aa) of sub-section (1) of section 14. and [Proviso subs. by Act A1104 - Prior text read - "Provided that no such approval shall be required in respect of any land or any interest in any land which is subject to the category "industry" or to any condition requiring its use for industrial purposes, or in respect of State land to be alienated for industrial purposes. And Provided further that no such approval shall be required in respect of any dealing effected pursuant to a sale and purchase agreement for which an approval has been granted under section 433E and executed by the same parties in such agreement."]

"(2) Where the State Authority grants any approval under sub-section (1) it may be made subject to such terms and conditions as may be specified by the State Authority and to the payment of such levy as may be prescribed."

²⁵⁸ National Land Code 1965, Section 433B.

"(2A) The State Authority may, where its approval under sub-section (1) is given subject to the payment of such levy as may be prescribed, remit to any non-citizen or foreign company, or exempt any non-citizen or foreign company from the payment of, any part of such levy:

Provided that the State Authority shall not remit to any non-citizen or foreign company, or exempt any non-citizen or foreign company from the payment of, such levy except in accordance with the directions of the National Land Council..

²⁵⁹ Economic Planning Unit, Prime Minister's Department, GUIDELINE ON THE ACQUISITION OF PROPERTIES, Accessed July 11, 2018, <https://www.jkptg.gov.my/sites/default/files/article/perolehan%20hartanah.pdf>.

(3) Types of land which is not allowed to acquire by non-citizens, namely,²⁶⁰

- 1) Properties valued less than RM 1,000,000 per unit;
- 2) Residential units under the category of low and low-medium cost as determined by the State Authority;
- 3) Properties built on Malay reserved land;
- 4) Properties allocated to Bumiputera interest in any property development project as determined by the State Authority;

(4) Type of land purchasable by non-citizens.

There is some exemption granting non-citizens to have landholding rights in some areas in Malaysia without requiring approval under some conditions, as summarized hereinafter,²⁶¹

²⁶⁰ GUIDELINE ON THE ACQUISITION OF PROPERTIES (Effective 1 March 2014),

VI. RESTRICTIONS

10. Foreign interest is NOT ALLOWED to acquire:

10.1 Properties valued less than RM1,000,000 per unit;

10.2 Residential units under the category of low and low-medium cost as determined by the State Authority;

10.3 Properties built on Malay reserved land; and

10.4 Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

²⁶¹ NoreetaBintiMohd Nor, "Guide to Foreign Investors for Acquisition of Property in Malaysia," Accessed July 11, 2018, http://www.azmilaw.com/images/stories/PDF/newsletter/Issue_44/44-03_Guide_to_Foreign_Investors_for_Acquisition_of_Property_in_Malaysia.pdf.

| Conditions | Wilayah Persekutuan, Kuala Lumpur, Labuan, and Putrajaya | Selangor | Penang | Johor |
|--|---|---|---|---|
| The minimum threshold for non-citizens | 1,000,000 RM (approx. 10 million THB) for all types of land | 1,000,000 RM (approx. 10 million THB) for residential in Hulu (Selangor), Sabak Bernam; 2,000,000 RM (approx. 20 million THB) for residential in Petaling, Gombak, Hulu Langat, Sepang, Klang, Kuala Selangor, Kuala Langat; 3,000,000 RM (approx. 30 million THB) for commercial and industrial purposes in all areas. | 2,000,000 RM (approx. 20 million THB) for all types of land in the Malay Peninsula; 1,000,000 RM (approx. 10 million THB) for all types of land on the mainland. | 1,000,000 RM (approx. 10 million THB) for all types of land – maximum at 10 million RM (approx. 1000 million THB) and permitted only for residential, commercial and agriculture. |

| Conditions | Wilayah Persekutuan, Kuala Lumpur, Labuan, and Putrajaya | Selangor | Penang | Johor |
|-----------------------|--|------------------|---|---|
| Effective date | 1 March 2015 | 1 September 2015 | 1 February 2015 | 1 May 2015 |
| Fees for non-citizens | 150 RM (approx. 1,500 THB) for registration and request fees | | 10,000 RM (approx. 100 million THB) for request fees for individuals; 20,000 RM (approx. 200,000 THB) for companies including 3% of price tax. | Shall select higher fees than 20,000 RM (approx. 200,000 THB) or 2% of trading value. |

If the criteria are not met up to the conditions, e.g. the land prices below the limit the EPU set forth, the non-citizens will not be permitted to hold lands.

For other details regarding laws on land, please see the topic 6 *Law regarding land*.

3. Dispute Settlement Mechanism

The dispute settlement on trade and investment in Malaysia can be performed by the following methods:

3.1 Court-based Dispute Resolution

The court system in Malaysia has a unified judicial system or a system in which the judiciary has the authority to consider all types of legal proceedings. Whether it is a civil case, a criminal case or a ruling case and all courts take cognizance of both federal and state laws. Malaysia's court system can be divided into 2 categories as follows:

3.1.1 Subordinate Courts include Magistrates Court, Court for children and Sessions Court

(1) Magistrates Court can be divided into

(a) First Class Magistrate

A First Class Magistrate may hear a civil case when the amount in dispute does not exceed RM100,000 and the criminal matters where the offense provides for a term of imprisonment not exceeding 10 years. A First Class Magistrate may not, however, impose a term of imprisonment exceeding 5 years, a fine exceeding RM10,000, whipping exceeding twelve strokes or any sentence combining any of the sentences above.

(b) Second Class Magistrate

A Second Class Magistrate may hear civil cases when the amount in dispute does not exceed RM10,000. In the case that the amount claimed does not exceed RM5,000 the plaintiff must be prepared to conduct the case yourself, as legal representation is not permitted. A Second Magistrate may hear criminal matters of the offense provides for a term of imprisonment not exceeding 12 months and may pass a sentence a term of imprisonment not exceeding 6 months, a fine not exceeding RM1,000 or any sentence combining any of the sentences above.

(2) Court for Children

The court for children has the authority to consider the case of persons under the age of 18.

(3) Sessions Court

A Session Court has jurisdiction to hear the matters relating to motor vehicle accidents, landlord-tenant disputes, and distress actions. A Sessions Court has jurisdiction to try all criminal offenses except those punishable by death.

3.1.2 Superior Courts include High Court, Court of Appeal and Federal Court

(1) The High Court is a state court that shall be two High Courts of coordinate jurisdiction. The High Court of Malaysia, which has jurisdiction to decide disputes in Kuala Lumpur. And the High Court of Sabah and Sarawak, which has jurisdiction over the dispute in Sabah and Sarawak. The High Court has jurisdiction to try all civil matters but generally confines itself to matters on which the Magistrates and Sessions Courts have no jurisdiction. These include matters relating to divorce and matrimonial cases, the appointment of guardians of infants, the granting of probate of wills and testaments and letters of administration of the estate of deceased persons, bankruptcy and other civil claims where the amount in dispute exceeds RM1,000,000. The High Court may hear all criminal matters but generally confines itself to offenses on which the Magistrates and Sessions Courts have no jurisdiction, for instance, offenses that carry the death penalty. Besides, the High Court has the power to consider the appeal of both civil and criminal cases. The civil case must be a case with the amount of the disputed exceed RM10,000 unless it is an appeal on legal issues.

(2) The Court of Appeal hears appeals from the High Court relating to both civil and criminal matters. The trial of the Court of Appeal has no new testimony but will open the consideration room to allow the plaintiff or the defendant to declare the case to the court which the court was able to ask for clarity.²⁶²

(3) The Federal Court is Malaysia's apex court. The Federal Court hears appeals from the Court of Appeal and the Subordinate Courts.

Furthermore, Malaysia also has a parallel judicial system, the Syariah Court, which considers cases relating to the Personal Laws of the Muslim, such as family law -

²⁶² The 1st Training Course of "The rule of law for democracy", The Constitutional Court of the Kingdom of Thailand. 2016. In the study observational report at the Federal Court of Malaysia date between 4-6 March 2016, P.6. Bangkok: The Constitutional Court of the Kingdom of Thailand.

marriage, divorce, inheritance, parental power, and religious observances. Also the Industrial Courts, which decide industrial or commercial disputes.²⁶³

3.2 Alternative Dispute Resolution

Alternative dispute resolution is a collective term for the methods that parties can use to settle their disputes without resorting to court proceedings. The most common forms of alternative dispute resolution are arbitration, mediation, and conciliation.

3.2.1 Arbitration

Arbitration is a method of dispute resolution between the parties which may have more than two parties. Any party or both bring the dispute to the arbitrator to make an award that shall be binding on the parties as if it were a decision of the court. The arbitrator will decide following the law on arbitration and procedures, the regulations that the parties have agreed before, as the arbitrator chooses to use if the disputed parties do not agree or more determined by laws or regulations.

The Arbitration Act 2005 is the law governing arbitration in Malaysia. The Act is modeled on the UNCITRAL Model Law on International Commercial Arbitrations 1985 and is similar to the New Zealand Arbitration Act 1969. It applies to both domestic and international arbitrations conducted in Malaysia. In the year 2011, the Act was amended to limit court intervention and discourage the use of inherent powers.

Malaysia is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the New York Convention which allows such foreign awards to be enforced in Malaysia. The foreign awards are effective and binding the State Parties of the New York Convention under the reciprocal principle. Moreover, the disclaimer for commercial purposes, which is Malaysia, shall be governed by the award, which is commercially by the laws of Malaysia only.

(1) Arbitration agreement

An arbitration agreement is defined as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement.

²⁶³ Securities and Exchange Commission, "Arbitration", searched on June 16, 2018, <http://market.sec.or.th/public/ipos/IPOSGetFile.aspx?TransID=85120&TransFileSeq=41>.

An arbitration agreement shall be in writing where it is contained in (a) a document signed by the parties (b) an exchange of letters, telex, facsimile, or other means of communication which provide a record of the agreement or (c) an exchange of statement of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other or (d) A reference in an agreement to a document containing an arbitration clause shall constitute an arbitration agreement, provided that the agreement is in writing and the reference is such as to make that clause part of the agreement,²⁶⁴ e.g. The meeting minutes that have the agreement and acceptance of the appointment of the arbitrator in writing,²⁶⁵ or the customs entry form that has an agreement to settle the dispute by arbitration.²⁶⁶

An arbitration agreement mentions any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy.²⁶⁷

An arbitration agreement is a legal transaction. The parties to the arbitration agreement must, therefore, have the capacity and consent to agree. Moreover, the parties agreed to enter into this agreement with the intent of being legally bound. There is no error in essential of the arbitration agreement. The arbitral tribunal may decide the existence or validity of the arbitration agreement. An arbitration clause which forms part of an agreement shall be treated as an agreement independent of the other terms of the agreement. A decision by the arbitral tribunal that the agreement is null and void shall not *ipso jure* entail the invalidity of the arbitration clause.²⁶⁸

An arbitration agreement does not bind a non-party or strangers to the agreement. Despite so, a party to an arbitration agreement can assign its rights under the agreement to a third party, by which a third party who then becomes the assignee is bound.²⁶⁹

²⁶⁴ Section 9 of Arbitration Act 2005 (See Annex 1)

²⁶⁵ The case of Sebor (Sarawak) Marketing & Services SdnBhd v. SA Shee (Sarawak) SdnBhd [2000] 1LNS 15; [2000] 6 MLJ 1 at 7.

²⁶⁶ HassayaNunchang, "Comparative Studies of International Commercial Arbitration Systems in Malaysia, Singapore, and Thailand", (Master's thesis Faculty of Law Bangkok University, 2009), p.20

²⁶⁷ Section 4 (1) of Arbitration Act 2005 (See Annex 2)

²⁶⁸ Section 18 of Arbitration Act 2005 (See Annex 3)

²⁶⁹ Global Legal Insights, "International Arbitration 2018 | Malaysia", search on August 25, 2561, <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/malaysia#chaptercontent2>.

(2) Arbitrators

An arbitrator must be impartiality and independence. An arbitrator shall, without delay, from the time of appointment and throughout the arbitral proceedings, disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence to the parties unless the parties have already been informed of such circumstances by the arbitrator.²⁷⁰

(a) Appointment of arbitrators²⁷¹

The parties are free to agree on a procedure for appointing the arbitrator or the presiding arbitrator. Where the parties fail to agree on this procedure, and the arbitration consists of three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator as the presiding arbitrator. If the two arbitrators fail to agree on the third arbitrator or if a party fails to appoint an arbitrator within thirty days of receipt of a request in writing to do so from the other party, either party may apply to the Director of the Kuala Lumpur Regional Centre for Arbitration²⁷² for such appointment.

Where in an arbitration with a single arbitrator, if the parties fail to agree on the appointment procedure or the arbitrator, either party may apply to the Director of the Kuala Lumpur Regional Centre for Arbitration for the appointment of an arbitrator.

Where, the parties have agreed on the procedure for appointment of the arbitrator, however, (1) a party fails to act as required under such procedure (2) the parties, or two arbitrators, are unable to reach an agreement under such procedure or (3) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the Director of the Kuala Lumpur Regional Centre for Arbitration to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

Where the Director of the Kuala Lumpur Regional Centre for Arbitration is unable to act or fails to appoint an arbitrator within thirty days from the request, any party may apply to the High Court for the appointment.

In appointing an arbitrator, the Director of the Kuala Lumpur Regional Centre for Arbitration or the High Court, as the case may be, shall have due regard to (1) any

²⁷⁰ Section 14 of Arbitration Act 2005 (See Annex 4)

²⁷¹ Section 13 of Arbitration Act 2005 (See Annex 5)

²⁷² The Kuala Lumpur Regional Center for Arbitration Later changed the name to The International Arbitration Center of Asia (Malaysia): AIAC under the Arbitration Rules 2018. Details are in Section 3.3

qualifications required of the arbitrator by the agreement of the parties (2) other considerations that are likely to secure the appointment of an independent and impartial arbitrator and (3) in the case of an international arbitration, the advisability of appointing an arbitrator of a nationality other than those of the parties.

The decision of the Director of the Kuala Lumpur Regional Centre for Arbitration or the High Court is the final decision. No appeal shall lie against the decision.

(b) Challenge of arbitrators

An arbitrator may be challenged only if the circumstances give rise to justifiable doubts as to that arbitrator's impartiality or independence, or that the arbitrator does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by that party, or in whose appointment that party has participated, only for reasons which that party becomes aware after the appointment has been made.²⁷³

Unless otherwise agreed by the parties, any party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or of any reasons as mentioned in the previous paragraph, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

Where a challenge is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, apply to the High Court to decide on the challenge. The decision of the High Court is the final decision. While such an application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.²⁷⁴

(c) Jurisdiction of arbitrators²⁷⁵

Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy.²⁷⁶ The arbitral tribunal may rule on its jurisdiction, including any objections to the existence or validity of the arbitration agreement. However, the decision by the arbitral tribunal that the agreement is null and void shall not *ipso jure* entail the invalidity of the arbitration clause.

²⁷³ Section 14 of Arbitration Act 2005 (See Annex 4)

²⁷⁴ Section 15 of Arbitration Act 2005 (See Annex 6)

²⁷⁵ Section 18 of Arbitration Act 2005 (See Annex 3)

²⁷⁶ Section 4 (1) of Arbitration Act 2005 (See Annex 2)

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising this plea because that party has appointed or participated in the appointment of the arbitrator. Furthermore, a plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may admit such a plea if it considers the delay justified.

The arbitral tribunal may rule on a plea, either as a preliminary question or in an award on the merits. Where the arbitral tribunal rules on such a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling, appeal to the High Court to decide the matter. The decision of the High Court is the final decision. While an appeal is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

(d) Arbitration procedure

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request in writing for that dispute to be referred to arbitration is received by the respondent.²⁷⁷ The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Where the parties fail to agree, the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate.²⁷⁸

²⁷⁷ Section 23 of Arbitration Act 2005 (See Annex 7)

²⁷⁸ Section 21 of Arbitration Act 2005 (See Annex 8)

1) Evidence, Expert and Hearings

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or oral arguments, or whether the proceedings shall be conducted based on documents and other materials. The parties shall be given reasonable prior notice of any hearing for preparation.²⁷⁹ The parties shall be treated with equality and each party shall be given a fair and reasonable opportunity of presenting the party's case.²⁸⁰ The arbitrators shall be fair, impartial and equal in the proceedings. If the arbitration tribunal holds the hearing for any evidence by any procedures, it shall be conducted in the presence of the parties. All parties shall acknowledge and participate in any proceedings. The arbitrators do not cause any advantage or disadvantage to any party.

If the arbitrators agreed that the evidence of the parties is insufficient or not sufficient to prove the fact, the arbitrators shall appoint one or more experts to report to it on specific issues. The arbitrators shall require a party to give the expert any relevant information or to produce or to provide access to any relevant documents, goods or other property for the expert's inspection.²⁸¹

2) The proceeding of failure to appear²⁸²

If the claimant fails to communicate the statement of claim after the arbitration has commenced, the arbitral tribunal shall terminate the proceedings.

If the respondent fails to communicate the statement of defense meaning that no submission of a challenge to support his claim, it shows that the respondent does not wish to participate in such arbitration. Unless otherwise agreed by the parties, the arbitral tribunal shall continue the proceedings.

Unless otherwise agreed by the parties, if any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

(e) Recognition and enforcement of awards of the arbitrators

1) Law applicable to the substance of the dispute²⁸³

²⁷⁹ Section 26 of Arbitration Act 2005 (See Annex 9)

²⁸⁰ Section 20 of Arbitration Act 2005 (See Annex 10)

²⁸¹ Section 28 of Arbitration Act 2005 (See Annex 11)

²⁸² Section 27 of Arbitration Act 2005 (See Annex 12)

²⁸³ Section 30 of Arbitration Act 2005 (See Annex 13)

Unless otherwise agreed by the parties, In respect of a domestic arbitration where the seat of arbitration is in Malaysia, the arbitral tribunal shall decide the dispute under the substantive law of Malaysia. In respect of international arbitration, the arbitral tribunal shall decide the dispute by the law as agreed upon by the parties as applicable to the substance of the dispute. Any designation by the parties of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. If the parties cannot agree on the applicable law, the arbitral tribunal shall apply the law determined by the conflict of laws rules.

The arbitral tribunal shall, in all cases, decide following the terms of the agreement and shall take into account the usages of the trade applicable to the transaction.

2) Awards

Unless otherwise agreed by the parties, in any arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. Where so authorized by the parties or by all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.²⁸⁴

If during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an award on agreed terms. This award shall have the same status and effect as an award on the merits of the case.²⁸⁵

An award shall be made in writing and shall be signed by the arbitrator. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient provided that the reason for the omitted signature is stated.

An award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award that records the settlement in the form of an award on agreed terms. An award shall state its date and the seat of arbitration and shall be deemed to have been made at that seat. After an award is made, a copy of the award signed by the arbitrator shall be delivered to each party.²⁸⁶

²⁸⁴ Section 31 of Arbitration Act 2005 (See Annex 14)

²⁸⁵ Section 32 of Arbitration Act 2005 (See Annex 15)

²⁸⁶ Section 33 of Arbitration Act 2005 (See Annex 16)

3) Challenge of the award²⁸⁷

The challenge of the award may be made a motion for setting aside to the High court. In the following;

- a) The party making the application provides proof that a party to the arbitration agreement was under any incapacity.
- b) The party making the application provides proof that the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication thereon, under the laws of Malaysia.
- c) The party making the application provides proof that the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case. Furthermore, the award contains decisions on matters beyond the scope of the submission to arbitration.
- d) The party making the application provides proof that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
- e) The party making the application provides proof that the composition of the arbitral tribunal or the arbitral procedure was not under the agreement of the parties.
- f) The High Court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia.
- g) The High Court finds that the award conflicts with the public policy of Malaysia where the making of the award was induced or affected by fraud or corruption and a breach of the rules of natural justice occurred.

²⁸⁷ Section 37 of Arbitration Act 2005 (See Annex 17)

4) Enforcement of the arbitration award²⁸⁸

On an application in writing to the High Court, an award made in respect of arbitration where the seat of arbitration is in Malaysia or an award from a foreign State shall be recognized as binding and be enforced by entry as a judgment in terms of the award or by action. Foreign State means a State which is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration in 1958. The applicant shall produce (a) the duly authenticated original award or a duly certified copy of the award (b) the original arbitration agreement or a duly certified copy of the agreement and (c) the duly certified translation of the award or agreement in the English language where the award or arbitration agreement is in a language other than the national language or the English language.

3.2.2 Mediation

Mediation is an alternative dispute resolution process in which a neutral third party facilitates communication and negotiation between parties with concrete effects. The outcome is the parties reach a mutually satisfactory settlement to their dispute. This is a win-win resolution.

3.2.3 Conciliation

Conciliation is an alternative dispute resolution process in which a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. The conciliator may provide an opinion or a proposal for the parties to consider and follow it. If the parties reach an agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. A third party is a person whom the parties believe neutral.

3.3 Procedures and agencies concerned the dispute settlement

The Asian International Arbitration Centre (Malaysia): AIAC, formerly known as the Kuala Lumpur Regional Centre for Arbitration: KLRCA, will use the Arbitration Rules 2018 as its latest arbitration rules. It adopts the UNCITRAL Arbitration Rules as revised in 2013, with some modifications.

The AIAC was the first of its kind to be established under the Asian African Legal Consultative Organization: AALCO. The AIAC is a not-for-profit and non-governmental

²⁸⁸ Section 38 of Arbitration Act 2005 (See Annex 18)

international arbitral institution as a neutral and independent for the conduct of domestic and international arbitration in Asia.

The AIAC aspires to be a provider of world-class institutional support as a venue for the conduct of domestic and international arbitration, and other ADR proceedings. The Centre has its own set of procedural rules which govern the conduct of the entire arbitration proceedings from its commencement to its termination. Besides, the Centre aims to expand its rules to cater to the growing demands of the global business community with the AIAC i-Arbitration Rules, the AIAC Fast Track Rules and the AIAC Mediation Rules.

The AIAC also promotes and provides information on alternative dispute resolution, the Centre organizes various courses, training programs, and forums on the different avenues of alternative dispute resolution covering niche areas such as sports arbitration, domain name dispute resolution and Islamic finance to mold and shape the future of the alternative dispute resolution arena.

4. Regulations related to alien workers

4.1 The Immigration Act

Malaysia has an immigration legal framework separate from the laws governing the work of aliens. The main legislation governing Malaysia immigration is the Immigration Act 1959/63. There are also other immigration rules and regulations such as the Passport Act 1966 and Immigration Regulations 1963.

According to Section 2 (1) of the Immigration Act 1959/63, “entry” is²⁸⁹

1) In the case of a person arriving by sea, disembarking in Malaysia from the vessel in which he arrives

2) In the case of a person arriving by air at an authorized airport, leaving the precincts of the airport

3) In the case of a person entering by land and proceeding to an immigration control post under section 26, leaving the precincts of the post for any purpose other than that of departing from Malaysia by an approved route and

4) In any other case, any entry into Malaysia by land, sea or air

Provided that it shall not include in any case an entry made to comply with this Act or an entry expressly or impliedly sanctioned by an immigration officer for any inquiry or detention under this Act.

4.1.1 Persons entering into Malaysia

In general, Malaysian citizens are allowed to enter Malaysia. However, persons other than Malaysian citizens are also allowed to enter Malaysia, as follows:²⁹⁰

²⁸⁹ Immigration Act 1959/63, Section 2 (1).
“entry means

(a) in the case of a person arriving by sea, disembarking in Malaysia from the vessel in which he arrives;
(b) in the case of a person arriving by air at an authorized airport, leaving the precincts of the airport;
(c) in the case of a person entering by land and proceeding to an immigration control post in accordance with section 26, leaving the precincts of the post for any purpose other than that of departing from Malaysia by an approved route; and
(d) in any other case, any entry into Malaysia by land, sea or air:

Provided that it shall not include in any case an entry made for the purpose of complying with this Act or an entry expressly or impliedly sanctioned by an immigration officer for the purpose of any enquiry or detention under this Act;”

²⁹⁰ Immigration Act 1959/63, Section 6 (1). “No person other than a citizen shall enter Malaysia unless

(a) he is in possession of a valid Entry Permit lawfully issued to him under section 10;

(1) Any person who has a valid Entry Permit lawfully issued to him.

(2) Any person that his name is endorsed upon a valid Entry Permit, and he is in the company of the holder of the Permit.

(3) Any person who has a valid Pass²⁹¹ lawfully issued to him to enter Malaysia.

(4) Any person or class of persons who are exempt from the order of the Minister of Home Affairs is allowed to enter Malaysia. The Minister may be ordered exempt either absolutely or conditionally. The order which relates to a class of persons shall be published in the Gazette.²⁹²

4.1.2 Prohibited immigrants

The following persons are not allowed to enter into Malaysia.²⁹³

(1) Any person who is unable to show that he has the means of supporting himself and his dependants (if any) or that he has definite employment awaiting him, or who is likely to become a pauper or a charge on the public.²⁹⁴

(2) Any person suffering from a mental disorder or being a mental defective, or suffering from a contagious or infectious disease which makes his presence in Malaysia dangerous to the community.²⁹⁵

(3) Any person who refuses to submit to a medical examination after being required to do so.²⁹⁶

(b) his name is endorsed upon a valid Entry Permit in accordance with section 12, and he is in the company of the holder of the Permit;

(c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or

(d) he is exempted from this section by an order made under section 55."

²⁹¹ Immigration Act 1959/63, Section 2. "Pass" means any Pass issued under any regulations made under this Act entitling the holder thereof to enter and remain temporarily in Malaysia;

²⁹² Immigration Act 1959/63, Section 55

"(1) Notwithstanding anything contained in this Act, the Minister may by order exempt any person or class of persons, either absolutely or conditionally, from all or any of the provisions of this Act and may in any such order provide for any presumptions necessary in order to give effect thereto.

(2) Every order made under this section which relates to a class of person shall be published in the Gazette."

²⁹³ Immigration Act 1959/63, Section 8 (3). "The following persons are members of the prohibited classes:"

²⁹⁴ Immigration Act 1959/63, Section 8 (3) (a). "any person who is unable to show that he has the means of supporting himself and his dependants (if any) or that he has definite employment awaiting him, or who is likely to become a pauper or a charge on the public;"

²⁹⁵ Immigration Act 1959/63, Section 8 (3) (b). "any person suffering from mental disorder or being a mental defective, or suffering from a contagious or infectious disease which makes his presence in Malaysia dangerous to the community;"

²⁹⁶ Immigration Act 1959/63, Section 8 (3) (c). "any person who refuses to submit to a medical examination after being required to do so under section 39 A (1);"

(4) Any person who has been convicted in any country or state of any offense and sentenced to imprisonment for any term, and has not received a free pardon and because of the circumstances connected with the conviction is deemed by the Director-General to be an undesirable immigrant.²⁹⁷

(5) Any prostitute, or any person, who is living on or receiving, or who, before entering Malaysia, lived on or received, the proceeds of prostitution.²⁹⁸

(6) Any person who procures or attempts to bring into Malaysia prostituted or women or girls for prostitution or other immoral purposes.²⁹⁹

(7) Vagrants and habitual beggars.³⁰⁰

(8) Any person whose entry into Malaysia is, or at the time of his entry was, unlawful under this or any other written law for the time being in force.³⁰¹

(9) Any person who believes in or advocates the overthrow by force or violence of any Government in Malaysia or of any established government or constituted law or authority or who disbelieves in or is opposed to an established government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property.³⁰²

(10) Any person who is a member of or affiliated with any organisation entertaining or teaching disbelief in or opposition to established government or advocating or teaching the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals of officers generally, of any

²⁹⁷ Immigration Act 1959/63, Section 8 (3) (d). "any person who
(i) has been convicted in any country or state of any offence and sentenced to imprisonment for any term, and has not received a free pardon; and
(ii) by reason of the circumstances connected with the conviction is deemed by the Director-General to be an undesirable immigrant;"

²⁹⁸ Immigration Act 1959/63, Section 8 (3) (e). "any prostitute, or any person, who is living on or receiving, or who, prior to entering Malaysia, lived on or received, the proceeds of prostitution;"

²⁹⁹ Immigration Act 1959/63, Section 8 (3) (f). "any person who procures or attempts to bring into Malaysia prostituted or women or girls for the purpose of prostitution or other immoral purpose;"

³⁰⁰ Immigration Act 1959/63, Section 8 (3) (g). "vagrants and habitual beggars;"

³⁰¹ Immigration Act 1959/63, Section 8 (3) (h). "any person whose entry into Malaysia is, or at the time of his entry was, unlawful under this or any other written law for the time being in force;"

³⁰² Immigration Act 1959/63, Section 8 (3) (i). "any person who believes in or advocates the overthrow by force or violence of any Government in Malaysia or of any established government or of constituted law or authority or who disbelieves in or is opposed to established government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property;"

Government in Malaysia or of any established government, because of his or their official character, advocating or teaching the unlawful destruction of property.³⁰³

(11) Any person who, in consequence of information received from any source deemed by the Minister to be reliable, or from any government, through official or diplomatic channels, is deemed by the Minister to be an undesirable immigrant.³⁰⁴

(12) Any person who has been removed from any country or state by the government of that country or state on repatriation for any reason whatever and who, because of the circumstances connected therewith, is deemed by the Director-General to be an undesirable immigrant.³⁰⁵

(13) Any person who, being required by any written law for the time being in force to have valid travel documents, does not have those documents or has forged or altered travel documents or travel documents which do not fully comply with any such written law.³⁰⁶

(14) The family and dependants of a prohibited immigrant.³⁰⁷

(15) Any person or any member of a class of persons whom the Director-General of immigration may order, prohibit, either for a stated period or permanently, the entry or re-entry into Malaysia where he deems it expedient to do so in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Malaysia. However, this order shall not apply to any citizen or the holder of any valid Pass or Permit.³⁰⁸

³⁰³ Immigration Act 1959/63, Section 8 (3) (j). "any person who is a member of or affiliated with any organisation entertaining or teaching disbelief in or opposition to established government or advocating or teaching the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals of officers generally, of any Government in Malaysia or of any established government, because of his or their official character, advocating or teaching the unlawful destruction of property."

³⁰⁴ Immigration Act 1959/63, Section 8 (3) (k). "any person who, in consequence of information received from any source deemed by the Minister to be reliable, or from any government, through official or diplomatic channels, is deemed by the Minister to be an undesirable immigrant;"

³⁰⁵ Immigration Act 1959/63, Section 8 (3) (l). "any person who has been removed from any country or state by the government of that country or state on repatriation for any reason whatever and who, by reason of the circumstances connected therewith, is deemed by the Director-General to be an undesirable immigrant;"

³⁰⁶ Immigration Act 1959/63, Section 8 (3) (m). "any person who, being required by any written law for the time being in force to be in possession of valid travel documents, is not in possession of those documents or is in possession of forged or altered travel documents or travel documents which do not fully comply with any such written law;"

³⁰⁷ Immigration Act 1959/63, Section 8 (3) (n). "the family and dependants of a prohibited immigrant;"

³⁰⁸ Immigration Act 1959/63, Section 9 (1). "Notwithstanding anything contained in this act or in any subsidiary legislation made under this Act, the Director-General may

(a) where he deems it expedient to do so in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Malaysia, by order, prohibit, either for a stated period or permanently, the entry or re-entry into Malaysia of any person or class of persons:

Provided that the order made under this paragraph shall not apply to any citizen to the holder of any valid Pass or Permit;"

(16) Any person whom the Director-General of immigration may in his absolute discretion cancel any Pass at any time by writing under his hand.³⁰⁹

(17) Any person whom the Director-General of immigration may cancel any Permit at any time by writing under his hand, if he is satisfied that the presence in, or entry into, Malaysia of the holder of any Permit is, or would be, prejudicial to public order, public security, public health or morality in Malaysia or any part thereof.³¹⁰

(18) Where a Pass or a Permit is canceled as mentioned in (16) and (17), shall apply to any person whose name is endorsed; or any wife; or any dependent child who is not a citizen, in the same manner that they apply to the holder of the Pass or the Permit cancellation. The Director-General shall cause a notice of the cancellation to be sent to the holder of the Pass or Permit.³¹¹

4.1.3 Visa

Visa is a stamp or endorsement on a passport or travel document of an alien by a government officer to show that a passenger is permitted to enter, travel through, and exit the Kingdom. A visa is normally valid for 3 months.³¹² Types of Visa are as follows:³¹³

(1) Single Entry Visa

This is issued to foreign nationals who require a visa to enter Malaysia mainly for a social visit. It is normally valid for a single entry and a period of 3 months from the date of issue. The visa extensions may be provided after reporting to the Immigration Department at the Malaysian High Commission in the country of application. Additional visits will require reapplication at the Malaysian Embassy or Consulate in the applicant's country of residence.

³⁰⁹ Immigration Act 1959/63, Section 9 (1) (b) "in his absolute discretion cancel any Pass at any time by writing under his hand; or"

³¹⁰ Immigration Act 1959/63, Section 9 (1) (c). "cancel any Permit at any time by writing under his hand, if he is satisfied that the presence in, or entry into, Malaysia of the holder of any Permit is, or would be, prejudicial to public order, public security, public health or morality in Malaysia or any part thereof."

³¹¹ Immigration Act 1959/63, Section 9 (6). "Where a Pass is cancelled under subsection (1) (b) or a Permit is cancelled under subsection (1) (c), subsections (4) and (5) shall apply to (a) a person whose name is endorsed on the Pass or the Permit; (b) any wife of the holder of the Pass or the Permit where the wife is a holder of a Pass or Permit issued to her in consequence of the issue of the Pass or the Permit to her husband; and (c) any dependant child of the holder of the Pass or the Permit where such child is not a citizen, in the same manner that they apply to the holder of the Pass or the Permit and the notification to such holder under subsection (3) shall also constitute notification to the persons mentioned in paragraphs (a), (b) and (c)"

³¹² "Visas and Passes," Accessed August 16, 2018, <http://www.lawyerment.com.my/library/doc/imgr/visa/>.

³¹³ Headquarters of the Immigration Department Malaysia (Ministry of Home Affairs), "Types of Visa," Accessed August 16, 2018, <http://www.imi.gov.my/index.php/en/visa/types-of-visa.html>.

(2) Multiple Entry Visa

This is issued to foreign nationals who require a visa to enter Malaysia mainly for business or government-to-government matters. It is normally valid for a period within 3 – 12 months from the date of the issue. Each entry is for 30 days only and the extension of stay is not allowed. The applicant must show proof of sufficient funds for staying in Malaysia and possess a valid and confirmed return ticket.

Citizens of India and the People's Republic of China who wish to enter Malaysia for Social Visit are eligible to apply for this visa. The Multiple Entry Visa costs RM100.00 for Indian Citizens and RM30.00 for citizens of the People's Republic of China. Tour groups, however, are not eligible to apply for this visa.

(3) Transit Visa

This is issued to foreign nationals who require a visa to enter Malaysia on transit to other countries. Transit Visa is a visa for persons traveling in transit through Malaysia to proceed to the country destination. However, foreign nationals on transit without leaving the airport premises and who continue their journey to the next destination with the same flight do not require a transit visa.

(4) Visa Requirement by Country

(a) Nationals of the following countries will obtain visa-free entry within 90 days.³¹⁴

| | | | |
|--------------|----------------------|----------------|------------------------|
| Albania | Algeria | Argentina | Australia |
| Austria | Bahrain | Belgium | Bosnia and Herzegovina |
| Brazil | Canada | Croatia | Cuba |
| Cyprus | Czech Republic | Denmark | Egypt |
| Finland | France | Germany | Greece |
| Hungary | Iceland | Ireland | Italy |
| Japan | Jordan | Kuwait | Kyrgyzstan |
| Lebanon | Liechtenstein | Luxembourg | Malta |
| Morocco | Netherland | New Zealand | Norway |
| Oman | Peru | Poland | Romania |
| Qatar | San Marino | Saudi Arabia | Slovakia |
| Slovenia | South Africa | South Korea | Spain |
| Sweden | Switzerland | Tunisia | Turkey |
| Turkmenistan | United Arab Emirates | United Kingdom | United States |
| Uruguay | Yemen | Maldives | Sudan |
| Syria | Bulgaria | Estonia | Latvia |
| Lithuania | Portugal | | |

³¹⁴ One Stop Malaysia, "Visa Requirement for Tourists and Visitors to Malaysia", Accessed February 2, 2019, <https://www.onestopmalaysia.com/travel/visa/visa-requirement-for-tourists-and-visitors-to-malaysia.html>.

(b) Nationals of the following countries will obtain visa-free entry within 30 days.³¹⁵

| | | | |
|--------------------|---------------------|----------------------------------|------------------|
| Andorra | Antigua and Barbuda | Armenia | Azerbaijan |
| Bahamas | Barbados | Belarus | Belize |
| Benin | Bolivia | Botswana | Brunei |
| Guyana | Cambodia | Cape Verde | Chad |
| Chile | Comoros | Costa Rica | Dominica |
| Dominican Republic | Ecuador | El Salvador | Laos |
| Fiji | Gabon | Gambia | Georgia |
| Grenada | Guatemala | Guinea | Haiti |
| Honduras | Hong Kong | Indonesia | Iraq |
| Jamaica | Kazakhstan | Kenya | Kiribati |
| Macau | Macedonia | Madagascar | Malawi |
| Sierra Leone | Marshall Islands | Saint Vincent and the Grenadines | Mauritius |
| Mexico | Moldova | Monaco | Mongolia |
| Mauritania | Nauru | Nicaragua | Namibia |
| Palau | Palestine | Panama | Papua New Guinea |
| Paraguay | Philippines | Lesotho | Russia |

³¹⁵ One Stop Malaysia, "Visa Requirement for Tourists and Visitors to Malaysia", Accessed February 2, 2019, <https://www.onestopmalaysia.com/travel/visa/visa-requirement-for-tourists-and-visitors-to-malaysia.html>.

| | | | |
|-----------------------|-----------------------|-------------|---------------------|
| Somalia | Saint Kitts and Nevis | Saint Lucia | Samoa |
| Sao Tome and Principe | Senegal | Seychelles | Singapore |
| Solomon Islands | South Sudan | Suriname | Swaziland |
| Taiwan | Tajikistan | Tanzania | Thailand |
| Timor-Leste | Togo | Tonga | Trinidad and Tobago |
| Tuvalu | Uganda | Ukraine | Uzbekistan |
| Vanuatu | Vatican City | Venezuela | Vietnam |
| Zambia | Zimbabwe | | |

(c) Nationals of Iran and Libya will obtain visa-free entry within 14 days.³¹⁶

³¹⁶ One Stop Malaysia, "Visa Requirement for Tourists and Visitors to Malaysia", Accessed February 2, 2019, <https://www.onestopmalaysia.com/travel/visa/visa-requirement-for-tourists-and-visitors-to-malaysia.html>.

(d) Nationals of the following countries are required to have visas at all time to entry into Malaysia.³¹⁷

| | | | |
|------------|--------------------------|-----------------------|-----------------------------|
| Bangladesh | Cameroon | Ghana | Pakistan |
| Nigeria | Mozambique | Afghanistan | Angola |
| Bhutan | Burkina Faso | Burundi | PR China |
| Colombia | Congo Republic | Serbia and Montenegro | Equatorial Guinea |
| Eritrea | Ethiopia | Guinea-Bissau | Hong Kong |
| Djibouti | Central African Republic | India | Cote d'Ivoire (Ivory Coast) |
| Liberia | Mali | Myanmar | Nepal |
| Niger | Rwanda | Sri Lanka | Western Sahara |
| Yugoslavia | Myanmar | | |

Israeli nationals are required visas and approval from the Ministry of Home Affairs.

³¹⁷ One Stop Malaysia, "Visa Requirement for Tourists and Visitors to Malaysia", Accessed February 2, 2019, <https://www.onestopmalaysia.com/travel/visa/visa-requirement-for-tourists-and-visitors-to-malaysia.html>.

4.1.4 Border Pass

A Border Pass is a valid travel document that is used to travel to the border area of the parties. It issued by the authority of each party. Malaysia has entered into a Cross-Border agreement with Indonesia and Thailand. Therefore, it has used border passes with 2 countries, which are detailed below.

(1) The Border Pass between Malaysia and Indonesia

This document is issued to Malaysian Citizens who wish to reside for 6 months and above in the Administrative District of Pensiangan, Tenom, Sipitang and Tawau in the State of Sabah and Lundu, Bau, Kuching, Serian, Simanggang and Lubok Antu in the state of Sarawak. Border Pass holders will be granted to stay for 30 days in Indonesia for each entry. The validity of the Border Pass is 1 year from the date of issue and valid for multiple journeys.

(2) The Border Pass between Malaysia and Thailand

This Border Pass is issued for entering, exiting and traveling in the State of Kedah, Kelantan, Perak, Perlis (Malaysia) and the province of Satun, Songkhla, Narathiwat, Pattani (Thailand) for

- 1) Social visit
- 2) Tourism
- 3) Sports
- 4) Course and short term training for a period of 6 months or less
- 5) Attending seminars, meetings and conference
- 6) Press conference or the related activities and
- 7) Other activities approved by the Parties.

The applicant for a Border Pass must be a Malaysian citizen or Thai citizen who was born and lived on the border area of his country for a period of 1 year or more.

The applicant for a Border Pass can include the children's name in his Border Pass. The children must be a citizen of that country and under 12 years old. Malaysian applicants may submit to the Immigration Department of Malaysia. As for Thai applicant, may submit to the provincial governor and border sheriff.

The Border Pass is valid for 6 months from the date of issue. Border Pass holders are allowed to reside in the border area for 30 days at a time. The Border Pass holder shall present a border pass at the checkpoint. The Border Pass is valid for multiple journeys.

4.2 Residing in Malaysia

There may be categorized as temporary entering the country and the residency in the country.

4.2.1 Temporary entering the country

Foreigners may apply for the “Pass” to enter and remain temporarily within Malaysia. The Minister of Home Affairs may make regulations for prescribing the terms and conditions subject to which any person may be granted a Pass entitling him to enter and remain temporarily within Malaysia, the period for which any such Pass may be granted, the classes of Passes and the authority who may issue the Passes.³¹⁸ There will be categorized according to the purpose of immigration as follows:

(1) Visitor’s Pass (Temporary Employment)

This is issued to foreigners planning to work in the manufacturing, plantation, agriculture, construction, and services in Malaysia. The validity cannot exceed 24 months. Application for quota approval must be made at the Local Centre of Approval, Ministry of Foreign Affairs. Foreign workers should apply for extensions 3 months before expiry at the Immigration department. However, foreign domestic helpers and cooks who are citizens of Thailand or rubber tappers in the Malaysia Northern States and East Coast, Kedah, Kelantan, Perlis, do not require such approval. Employers can request employment at the Foreign Workers Division, Headquarters of Immigration Affairs.

Foreign domestic helpers from Thailand, Indonesia, Cambodia, the Philippines, Sri Lanka, India, Vietnam, and Laos may work in Malaysia with the duration of this Pass. The application for extensions shall be made at the Immigration department in 3 months before expiry.

³¹⁸ Immigration Act 1959/63, Section 54 (1) (C) (iii).

“The Minister may make regulations for all or any of the following purposes:

(c) prescribing the terms and conditions subject to which any person may be granted a Pass entitling him to enter and remain temporarily within Malaysia, the period for which any such Pass may be granted, the classes of Passes and the authority who may issue the Passes;”

(2) Long Term Social Visit Pass

This may be issued to a foreigner for a temporary stay in Malaysia for a period of six months or more. An extension of stay may be given if the eligibility and fulfillment of certain conditions are met. Foreign husbands/wives to Malaysians can be given this Pass for a period of 5 years on condition that they comply with all the requirements.

They are also allowed to engage in any form of paid employment or any business or professional occupation without converting the types of Pass.

(3) Short Term Social Visit Pass

This pass is given to foreign visitors upon arrival for the following purposes:

- 1) Social visit
- 2) Visiting relatives
- 3) Tourism
- 4) Journalism / Reporting
- 5) Meeting / Conference
- 6) Business Discussion
- 7) Factory Inspection
- 8) Auditing Company Accounts
- 9) Signing Agreement
- 10) Surveying on investment opportunities/setting up a factory
- 11) Attending Seminars
- 12) Students on goodwill missions or taking examinations at a university
- 13) Taking part in sports competitions or
- 14) Other activities approved by the Director-General of Immigration.

An extension of stay be given on Special consideration e.g. due to illness, accident, a war in the home country, etc. The visitor must furnish evidence, and also present a confirmed return ticket to their home country or a third country.

(4) Student Pass

All foreigners who wish to pursue their education in any level of education in Malaysia are required to apply for a Student Pass. The application will be categorized by the type of school as follows:

1) Government and Private Schools

Application for foreign students is made at State Immigration Office via schools. Application for students from the People's Republic of China must be submitted by the respective institution directly to the Student Pass Unit of the Department of Immigration Headquarters at Putrajaya. A request for an extension of stay can be made at the respective State Immigration Department.

2) Public higher education institutions

Application for foreign students is made at State Immigration Office via the universities. Applicants from India, Bangladesh, and Pakistan are required to make the Student Pass application directly at the Department of Immigration Headquarters in Putrajaya. A request for an extension of stay can be made at the State Immigration Department.

3) Private higher education institutions and training centers

A new application for Student Pass can be made through Education Malaysia Global Service (EMGS) system via the universities or colleges or training centers. A request for an extension of stay can be made at the State Immigration Department.

4) Language centers

New Application to be made at the Department of Immigration Headquarters in Putrajaya via language centers. A request for an extension of stay can be made at the State Immigration Department.

(5) Visit Pass (Professional)

This Pass is issued to foreign nationals who wish to remain and provide a specific professional visit for a short period in Malaysia. Applications should be submitted by a sponsor in Malaysia before the entry of the applicant into the country. The validity of the pass is subjected to the requirements and conditions of Immigration rules and policies for a period not exceeding 12 months. Application for this Pass to undergo training at a factory or hotel is only applicable for a period not exceeding 6 months.

The groups of foreigners eligible for application include;

1) Other expert and Volunteers such as Jockey, Volunteer, International students under industrial training or mobility program in universities or Colleges or private and public schools or Embassies or Hotel or Company, and the experts who have specialized skills that are considered suitable by the Director-General of Immigration, Malaysia

2) Artist, Film Producer and Promoter

3) Islamic Missionary

4) Other religious workers namely Priest, Religious Musicians, and Sculptors

5) International students undergoing religious course with Malaysia Bible Seminary

6) Foreign nationals who are invited by the Malaysian government

(6) Residence Pass

This Pass is issued to a person with family ties with a Malaysian citizen, for instance,

1) Husband or wife

2) Biological child or step-child or adopted child to a citizen aged 18 and below

3) Divorcee or widow or widower to citizens with a biological child who is a Malaysian citizen

4) Biological mother or father to a Malaysian citizen

5) Mother or father-in-law to a Malaysia citizen who is holding a valid pass in Malaysia

6) A person with family ties with a Permanent Resident of Malaysia e.g. husband or wife to a permanent resident or biological child to a permanent resident

7) Ex-Malaysians e.g. Malaysian citizen who has voluntarily renounced their citizenship or a Malaysian citizen who has been deprived of citizenship

4.2.2 The residency in the country

Any foreign national who is not a citizen of Malaysia, or doesn't have a valid Pass, or has the expiry Pass intending to enter and reside in Malaysia as a permanent resident may apply for an Entry Permit.³¹⁹

The applicant may make an application to the Director-General, or the person appointed by the Director-General. The appointed person may be within or outside Malaysia.

Upon payment of the prescribed fees, the Director-General may issue to the applicant an Entry Permit on suitable terms and conditions.

If the applicant is required by any law to have a passport with a valid visa to enter Malaysia and the applicant has paid the prescribed fees, the Director-General issue a visa to the applicant on applicant's passport or other travel documents. The visa shall remain valid until the expiration or cancellation of the Entry Permit.

The applicant who is refused by the Director-General to be issued an Entry Permit as noted above may appeal by petition in writing to the Minister of Home Affairs within 30 days of the notification of the refusal. The Minister's decision shall be final.

³¹⁹ Immigration Act 1959/63, Section 10.

"(1) Any person seeking to enter Malaysia who is not entitled so to enter as a citizen or by virtue of a valid Pass to enter Malaysia issued to him or seeking to remain in Malaysia after the expiry of such a Pass may make application in that behalf in the manner prescribed to the Director-General or to such other person whether within or outside Malaysia as the Director-General may, from time to time, appoint for the purpose.

(2) Upon application made under subsection (1) and upon payment of the prescribed fees the Director-General may issue to the applicant an Entry Permit on such terms and conditions as the Director-General may think fit in the prescribed form and shall, if the applicant is required by any written law relating to passports for the time being in force in Malaysia to have a visa to enter Malaysia, issue a visa to the applicant on the production by him of his passport or other travel document and on payment of the fee prescribed by the written law and the visa shall remain valid until the expiry or cancellation of the Entry Permit issued to him.

(3) Any person aggrieved by the refusal of the Director-General to issue to him an Entry Permit under subsection (2) may within thirty days of the notification of the refusal to him appeal by petition in writing to the Minister, whose decision thereon shall be final."

Categories for Entry Permit³²⁰

There will be categorized according to the purpose of immigration as follows:

(a) Investors and experts, the application must be submitted at the Headquarter Immigrations office which is required as follows:

The investor must have an individual with a minimum of USD 2 million fixed deposit at any bank in Malaysia and will only be allowed for withdrawal after 5 years. He must also have a Malaysian sponsor. Spouse and children below the age of 18 years will be eligible to be granted Permanent Resident after 5 years of stay in Malaysia.

The expert must be an individual with expertise, talent, and skill recognized as “World Class” by any International organization. He must have the recommendation by Relevant Agency in Malaysia, the Certificate of Good Conduct from Country of Origin and a Malaysian sponsor.

(b) Professional

The professional must have outstanding skills in any field. He must also have a Certificate of Good Conduct from Country of Origin and work in any Government Agency or Private Company in Malaysia for a minimum period of 3 years and certified by the Relevant Agency in Malaysia. He has required a recommendation by the relevant Agency in Malaysia and a Malaysian sponsor.

(c) Spouse of Malaysian citizen

The foreigner who is married to Malaysian citizens and had been issued with Long Term Visit Pass and stay continuously in Malaysia for a period of 5 years must submit the Marriage Declaration Letter (Surat Akuan Perkahwinan). Spouse has to be the sponsor. Also, the parents must be the sponsor for the child of Malaysian citizens below 6 years old.

³²⁰ Headquarters of the Immigration Department Malaysia (Ministry of Home Affairs), “Types of Visa,” Accessed August 16, 2018, <http://www.imi.gov.my/index.php/en/entry-permit.html>.

(d) Point Calculation System for Entry Permit

The foreigner who was assessed through criteria

- 1) Age
- 2) Qualification
- 3) Duration of stay in Malaysia
- 4) Familiarity with the Malaysia Institute (Understanding of the Malaysian Administration)
- 5) The values of investments
- 6) Working experience in Malaysia
- 7) Proficiency in Bahasa Malaysia.

Applicants must pass a minimum of 65 marks of these criteria to be qualified to submit the Entry Permit application. Application in prescribed form must be made in Malaysia and submitted to Immigration Department of Malaysia. A personalized cover letter and recommendation by Relevant Agency in Malaysia must be attached alongside the application. Upon submission of the application, the applicant is required to be interviewed by the Immigration Department and subject to a background check.³²¹

³²¹ Immigration Department of Malaysia, "Entry Permit," Accessed December 5, 2019 <https://www.imi.gov.my/index.php/en/entry-permit.html>.

4.2.3 Cancellation of the Permit³²²

The Director-General may cancel the Permit issued to the holder if any of the following events take place.

(1) The Permit holder seeks to enter Malaysia with a child but the child is not endorsed upon the Permit and not entitled to enter Malaysia under this Act.

(2) The Director-General is satisfied that the Permit or Certificate was issued as a result of any false representation or concealment of a material fact.

(3) The Director-General is satisfied that the holder of the Permit or Certificate is a prohibited immigrant.

(4) The Director-General is satisfied that any material statement made in or in connection with the application for that Permit or Certificate was false or misleading, or that the person is a prohibited immigrant.

The Director-General shall inform that person by sending notification to his or her address and publishing the notification in a manner as the Director-General deems appropriate. The person affected by the cancellation may appeal against the cancellation to the Minister of Home Affairs. The decision by the Minister of Home Affairs shall be final.

³²² Immigration Act 1959/63, Section 14.

“(1) Where the holder of any Permit seeks to enter Malaysia accompanied by any child whose name is not endorsed upon the Permit under section 12 and who is not otherwise entitled to enter Malaysia under this Act, the Director General may cancel the Permit issued to that person.

(2) Where, upon the arrival in Malaysia of any person to whom a Permit or Certificate has been issued, the Director General is satisfied, as a result of inquiries made under section 24 or 26, or from other information, that the Permit or Certificate was issued as a result of any false representation or concealment of a material fact the Director General may cancel the Permit or Certificate.

(3) Where at any time, during the period of validity of any Permit or Certificate, the Director General is satisfied that the holder of the Permit or Certificate is a prohibited immigrant, the Director General shall cancel the Permit or Certificate.

(4) Where any person has entered Malaysia by virtue of a Permit or Certificate, and the Director General is satisfied—

(a) that any material statement made in or in connection with the application for that Permit or Certificate was false or misleading; or

(b) that the person is a prohibited immigrant,
the Director General may declare at any time after the date of the entry, that the presence of that person in Malaysia is unlawful.

(5) On making any cancellation under subsection (2) or (3) or on making any declaration under subsection (4) the Director General shall, by notification, which, if the address of the person is known shall be sent to him at that address and otherwise shall be published in such manner as the Director General deems fit, inform the person affected thereby of the grounds on which the cancellation or declaration has been made and the person may appeal against the cancellation or declaration, as the case may be, within such time and in such manner as may be prescribed, to the Minister, whose decision shall be final.”

4.2.4 Government agencies involved with the immigration

(1) Immigration Department of Malaysia, Ministry of Home Affairs³²³ has the following missions:

(a) Issuing of passports and travel documents to Malaysian citizens and permanent residents.

(b) Issuance of Pass, Permit and Visa for foreigners entering Malaysia.

(c) Controlling enter into or departure from Malaysia at the border checkpoints.

(d) Enforcement of the Immigration Act 1959/63, the Passport Act 1966 and Immigration Regulations 1963

(2) The Embassy of Malaysia in Thailand³²⁴

The Embassy of Malaysia in Thailand renews the passport and the visa for Malaysians or Foreigners.

³²³Immigration Department Malaysia, Ministry of Home Affairs Address: No 15, Level 1-7 (Podium), PersiaranPerdana, Presint 2, 62550 Putrajaya Tel: 03-8000 8000 (1MOCC) Website: www.imi.gov.my.

³²⁴The Embassy of Malaysia in Thailand Address: 33-35 South Sathorn Road, Tungmahamek, Bangkok 10120 Tel: 0-2629-6800, 08-7028-4659 Fax: 0-2679-2208, 0-2679-2270 Email: mwbangkok@kln.gov.my Website: www.kln.gov.my

4.3 Law relating to Working of Foreign Workers

Laws concerning hiring foreign workers and work permit applications in Malaysia are prescribed in the Employment (Restriction) Act 1968. Section 5³²⁵ of the Act states that a non-Malaysian citizen neither be employed in any business nor accept employment in any business in Malaysia unless he or she has obtained a valid employment permit.

The Commissioners have the authority to approve an employment permit and may impose terms, conditions, and restrictions on the permit as deems appropriate. These terms, conditions, and restrictions may be varied or added by the Commissioners. They may refuse to issue or to renew an employment permit or cancel or suspend an employment permit, at any time and without assigning any reason.³²⁶

Any person aggrieved by a decision of the Commissioner would have the right to appeal to the Minister within 21 days from the date of giving a decision. The Minister's decision shall be final and shall not be subject to appeal or review in any court.

Although Malaysia welcomes foreign workers, the country prioritizes the recruitment of local labour. Employers in Malaysia should offer job vacancies to local workers first and they must make every effort to obtain local workers, for example, they have to advertise for recruiting local labour via the Job Clearing System (JCS) or

³²⁵ Section 5 of the Employment (Restriction) Act 1968 states that "(1) (a) No person not being a citizen referred to in the Schedule shall be employed in any business in Malaysia or accept employment in any business in Malaysia unless there has been issued in respect of such person a valid employment permit.

(b) No person shall employ in Malaysia any person not being a citizen referred to in the Schedule unless there has been issued in respect of that latter person a valid employment permit.

(2) Subsection (1) shall have effect notwithstanding any other written law or of any term or condition of any contract or agreement.

(3) For this section, any person found performing any act normally performed by an employee in any place of employment shall be deemed to have been employed under a contract of service by the employer of that place of employment."

³²⁶ Section 7 of Employment (Restriction) Act, 1968 states that "(1) Upon receipt of an application for an employment permit or an application for renewal of an employment permit under section 6, the Commissioner or any authorized person may in his discretion issue an employment permit in such form as may be prescribed or renew such employment permit and may impose such terms, conditions and restrictions as he may think fit.

(2) The Commissioner may at any time vary or add to any terms, conditions or restrictions in an employment permit.

(3) The Commissioner may in his discretion at any time and without assigning any reason refuse to issue or to renew an employment permit or cancel or suspend an employment permit.

(4) Any person aggrieved by a decision of the Commissioner under subsection (1), (2) or (3) may, within twenty-one days from the date of such decision, appeal to the Minister whose decision shall be final and shall not be subject to appeal or review in any court."

newspaper before applying for foreign worker quota. After obtaining such quota, employers would be able to apply for a work permit for their foreign workers.³²⁷

There are two government agencies responsible for labour administration in Malaysia, namely, the Ministry of Human Resources and the Ministry of Home Affairs. The former is in charge of managing all workers in Malaysia regardless of their nationality. The Immigration Department of the Ministry of Home Affairs is empowered to approve the foreign worker quota and issue documents relevant to work permit application. Employers who wish to hire foreign workers must apply for the quota from the Ministry of Home Affairs and apply for a work permit after obtaining such quota. After foreign workers have arrived in Malaysia with a valid work permit, it is the Ministry of Human Resources' duties to protect them and their welfare, including resolving labour disputes.³²⁸

Important steps to obtain a work permit in Malaysia that foreigners need to understand before entry are as follows:

Step 1: Employers who wish to hire foreign workers must apply for and obtain the quota from the Ministry of Home Affairs.

Step 2: After the quota has been granted, the employer must apply for a work permit and a calling visa that allows foreign workers to enter Malaysia.

Step 3: Workers arrive in Malaysia with a valid visa according to the Immigration Act 1959/63 and present themselves at the Immigration Department to apply for a work permit.³²⁹

A work permit is a sticker endorsed onto foreign worker's passport specifying worker's name, employer's name, type of permit, type of work and the period of a permit. There are many types of work permits depending on the type of work and skills, nationalities and period of passes. Malaysia now offers three main types of work permits,³³⁰ namely:

³²⁷ The Office of Labour Affairs in Malaysia, "Manual for Thai Workers in Malaysia," Retrieved June 10, 2018, from <http://malaysia.mol.go.th/node/529>. (in Thai)

³²⁸ Attapong Panrat, "Illegal Work of Thais in Malaysia: Management Policy", (Personal Study Report for the Devawongse Varopakarn Institute of Foreign Affairs, the Ministry of Foreign Affairs, 2560), p. 12.

³²⁹ The Office Portal of the Immigration Department of Malaysia, "Foreign Worker," Retrieved January 12, 2019, from www.imi.gov.my

³³⁰ Suthipon Boonmak, "Policy on Foreign Workers of Malaysia," 3rd Year, No. 2, The Journal of Humanities and Social Sciences, p. 165-166 (2008).

(1) Visit Pass (Temporary Employment): a work permit for semi-skilled and unskilled workers.

(2) Visit Pass (Professional): This is issued to professional foreigners to engage in a short-term contract, not more than 12 months. It is appropriate for foreigners with specific skills or experts in certain fields such as film producers and directors, actors, volunteers, international students under industrial training in schools or universities (more details described in “4.1 Immigration Law”).

(3) Employment Pass: This is a work permit for skilled workers with an employment contract of not less than 2 years but not more than 5 years engaging in key posts (CEOs, directors etc.), professional or managerial posts (marketing or investment managers etc.), and non-executive posts and earning not less than RM 3,000 a month (approximately 30,000 Bahts) (designers, craftsmen, food technologist etc.).

4.3.1 Visit Pass (Temporary Employment)

This type of permit is issued for semi-skilled and unskilled workers (Pekerja Asing). Foreign applicants must be not less than 18 years old and not more than 45 years old from approved source countries i.e. Thailand, Cambodia, Nepal, Myanmar, Laos, Vietnam, Pakistan, Sri Lanka, Turkmenistan, Uzbekistan, Kazakhstan, Philippines, India, Indonesia, and Bangladesh.

(1) Types of Work Allowed for Foreign Workers

Workers holding the Visit Pass (Temporary Employment) are allowed to work in 5 business sectors: manufacturing, plantation, agriculture, construction, and service. However, the nationalities and sex of the workers will determine which sectors they can work since the law restrains workers with some nationalities or sex from working in particular sectors. That is to say, some nationalities can work in specific sectors while some nationals, e.g. Thai workers either female or male can work in all the five sectors.³³¹

³³¹ Immigration Department of Malaysia, “Recruitment Terms and Conditions of Foreign Workers,” Accessed January 12, 2019, <https://www.imi.gov.my/index.php/en/foreign-worker.html>.

| Approved Sectors | Nationals of: | Sex | |
|------------------|---------------|---|--------|
| | | Male | Female |
| All sectors | Thailand | ✓ | ✓ |
| | Cambodia | ✓ | ✓ |
| | Nepal | ✓ | ✓ |
| | Myanmar | ✓ | ✓ |
| | Laos | ✓ | ✓ |
| | Vietnam | ✓ | ✓ |
| | Pakistan | ✓ | ✓ |
| | Sri Lanka | ✓ | ✓ |
| | Turkmenistan | ✓ | ✓ |
| | Uzbekistan | ✓ | ✓ |
| | Kazakhstan | ✓ | ✓ |
| | Philippines | ✓ | X |
| | Indonesia | X allowed to work in all sectors except Manufacturing | ✓ |

| Approved Sectors | Nationals of: | Sex | |
|---|---------------|------|--------|
| | | Male | Female |
| Agriculture; and Plantation Construction (high tension cable only); Services (goldsmith, restaurant-cooks only, wholesale/ retail, barbers, metal/ scrap materials and recycling, textiles) | India | ✓ | ✓ |
| Plantation under G to G agreement | Bangladesh | ✓ | ✓ |

Apart from the above sectors, Thai female workers between the age of 21 years and not more than 45 years are eligible to work as a Foreign Domestic Helper (FDH) or Pembantu Rumah Asing, which means a housemaid.

(2) Procedure on Applying a Visit Pass (Temporary Employment) and entering Malaysia

- 1) Employers have advertised for recruiting local labour via the Job Clearing System (JCS) or newspaper, in Bahasa and English, for at least 1 day and no one applies. Employers must file evidence of the advertisement to the Department of Labour to obtain a letter certified that they cannot recruit any local workers and need to hire foreign workers.³³²
- 2) Employers apply the foreign worker quota with the One Stop Centre, the Ministry of Home Affairs, which is empowered to determine the number of quota depending on types and sizes of businesses. They must pay for a levy. Having obtained the quota, they recruit prospective foreign workers not exceeding the quota by direct recruitment or via recruitment agencies' service.

³³² The Educational Service Center of Chulalongkorn University, "Chapter 7: Regulations and Procedure on Importing workers with nationals of AEC countries," The Final Report: Project on the Readiness of Labour Migration in AEC, 2012, p.7-7.

- 3) After employers get a worker's name list, elected foreign workers undergo the Immigration Security Clearance (ISC)³³³ verification at the center located at a workers' country of residence.³³⁴
- 4) Elected foreign workers undergo a medical check-up at a hospital registered with the Foreign Workers Centralized Management System (FWCMS),³³⁵ located in their countries of residence. Thai workers can take medical check-up³³⁶ at the 3 following hospitals:
 - North Eastern Wattana Hospital³³⁷
 - Ekachai Hospital³³⁸
 - Paolo Memorial Chokchai 4 Hospital³³⁹

More information about qualified hospitals can be found at www.fwcms.com.my.

Please note that foreign workers must have medical checkups at hospitals with the FWCMS system for initial screening before proceeding to medical checks in Malaysia again with the Foreign Workers Medical Examination Monitoring Agency (FOMEMA).

³³³ The ISC means 'IMMIGRATION SECURITY CLEARANCE' which is the first and the mandatory biometric security check that must be carried out by every foreign worker candidate who intends to work in Malaysia since May 4, 2015.

³³⁴ The address and details of the ISC center in each country can be found at <http://www.isc.care/v2/> or email at helpdesk@isc.care or call +603 2052 7111.

The ISC center in Thailand is located at the Trendy Building, 8th Floor, Sukhumvit Soi 13, Klongtoey-Nua, Wattana, Bangkok, 10110 Thailand, no.: + 660 2168 7743. Thai workers themselves must proceed with this security check and they must bring a passport that is valid for not less than 12 months and pay the fee.

³³⁵ From the 15th June 2015 onwards, Malaysia has been using the Foreign Workers Centralized Management System (FWCMS), which is a system to manage foreign workers data centers. The objective is to examine foreign workers who are going to work in Malaysia. FWCMS is an online information system that links all sectors related to the work of foreign workers in Malaysia such as the Malaysian government, Malaysian employers, private recruitment company, Malaysian embassy in the source country, and foreign workers, together with the hospital, to manage the foreign labor system.

³³⁶ The mandatory medical check-up must be carried out in hospitals installing FWCMS system. The medical check-up consists of 1. Blood concentration 2. HIV 3. Virus B 4. Malaria 5. lung X-ray 6. Syphilis 7. Urine examination 8. Blood group examination 9. Micro-malaria disease 10. Blood sugar level 11. Addictive substance.

The medical check-up for female costs 4,550 Bahts, for male 4,500 Bahts. Female workers must be pregnancy tested. This is mandatory to approve migrant workers to work in Malaysia. Any worker with unqualified health would be unable to work in Malaysia.

³³⁷ Located at No. 70/7-8, Suppakijanya Road, Muang District, Udonthani, Thailand 41000. Tel: +66 42 219 888. Fax: +66 42 241 956.

³³⁸ Located at No. 99/9 Moo 4, Ekachai Road, Tambol Khok Kham, Amphur Mueng, Samutsakhon, Thailand 74000. Hotline 1715.

³³⁹ Located at No. 1 Chokchai 4 Road, Ladprao, Bangkok Thailand 10230. Tel: +662 514 4140-9. Fax: +662 514 4413.

- 5) The hospital informs foreign workers of the result and uploads it on the FWCMS system. Thai workers who have qualified health must send a copy of their passport to employers to apply for a Calling Visa from the Immigration Department of Malaysia. Upon approval, employers would deliver a Calling Visa to Thai workers for entering Malaysia. A Calling Visa would not be issued to any workers with unqualified health and they would be unable to work in Malaysia.
- 6) In the case of recruiting Thai workers, employers must deliver an employment contract to the Office of Labour Affairs, located at the Thai Royal Embassy in Malaysia,³⁴⁰ for certification.
- 7) Employers deliver a Calling Visa and certified employment contract to foreign workers. Thai workers must bring a Calling Visa and their original passport to apply a Single Entry Visa (3-month period visa) at the Embassy of Malaysia in Bangkok or Consulate General of Malaysia (Songkhla province). Then, Thai workers must notify their traveling to work abroad to the Provincial Employment Office, in which they domicile, or to the Department of Employment (Bangkok area).
- 8) Foreign workers enter Malaysia and undertake medical examination once again with the Foreign Workers Medical Examination Monitoring Agency (FOMEMA) within 30 days of their entry at any medical center registered with the FOMEMA. Employers would apply for a work permit for qualified employers at the Immigration Department of Malaysia. A work permit will be issued once foreign workers are certified fit. On the contrary, failure to complete the medical examination process or disqualified examination result, foreign workers will not be allowed to stay and work in Malaysia.

³⁴⁰ The Office of Labour Affairs is located at the Thai Royal Embassy in Malaysia, No. 206, Jalan Ampang 50450 Kuala Lumpur, Malaysia. Tel: +603-2145 5868/+603-2145 6004. Fax: +603-2142 7000. E-mail: thai_labour_office@yahoo.com.

(3) Expenses for Applying a Visit Pass (Temporary Employment)

(a) Levy: The levy rate varies from work sectors to sectors. In December 2017, the Malaysia government announced that an employer was obliged to pay the levy. This was effective from 1 January 2018 onwards. The Immigration Department of Malaysia specifies the levy rate as follows:

| Sector | The Levy Rate (Ringgit) | |
|--|-------------------------|-------------------|
| | Peninsular | Sabah and Sarawak |
| Manufacturing | 1,850 | 1,010 |
| Construction | 1,850 | 1,010 |
| Plantation | 640 | 590 |
| Agriculture | 640 | 410 |
| Service | 1,850 | 1,490 |
| The 1 st Foreign Domestic Helper | 410 | 410 |
| The 2 nd to 4 th Foreign Domestic Helper | 590 | 590 |

(b) Operation costs: A Sticker attached to workers' passports, bond (based on workers' nationals) and process fee.

(c) Medical check-up expenses required by the FOMEMA.

(d) The Foreign Worker Compensation Scheme (FWCS). The FWCS is compulsory insurance for foreign workers to cover their death and disability as a result of work. Employers are obliged to pay a yearly insurance premium to an insurance company according to Section 26(2)³⁴¹ of the Workmen's Compensation Act 1952 stating that every employer must insure all their foreign workers.³⁴²

³⁴¹ Workmen's Compensation Act 1952, Section 26(2) "Notwithstanding subsection (1) the Minister may by order approve an insurance scheme, and upon the coming into force of the order, every employer shall insure and keep himself insured under the approved insurance scheme in respect of any liability which he may incur under this Act to every workman employed by him."

³⁴² Rohaida Nordin, Health Insurance for Foreign Workers in Malaysia and Singapore: A Comparative Study, International Journal of Business and Society, Vol. 19 S3, 2018, 400-413.

(e) The Foreign Workers Health Insurance Protection Scheme or Skim Perlindungan Insurans Kesihatan Pekerja Asing (SPIKPA). The SPIKPA is a compulsory health insurance for foreign workers. All foreign workers in Malaysia are required to purchase this health insurance and pay a yearly premium under the country's policy to raise its income and become a developed country under the Economic Transformation Program (ETP). This insurance covers inpatient hospital expenses.³⁴³

(f) Security deposit. Owners of a spa and foot massage shop must place an additional deposit in the amount of 3,000 Ringgit (about 30,000 Bahts) per foreign employee.³⁴⁴ This deposit would be placed once when hiring a foreigner and no more yearly payment. The Immigration Department of Malaysia will return the deposit to employers after the lawful cancellation of a work permit.

4.3.2 Visit Pass (Professional)

This permit is issued to foreign nationals with specific skills or experts in certain fields who wish to work for a short period of not exceeding 12 months. No limitation on the nationalities of foreigners.

Foreigners must possess the following specific experiences and skills to be competent for this Visit Pass:

- (1) Experts/volunteers;
- (2) Filming and performance by foreign artistes;
- (3) Islamic Missionary;
- (4) Practitioners in other religions;
- (5) Students, international college students under religious courses of the Malaysia Bible Seminary;
- (6) Government to Government program or on Government purpose.

Applications should be submitted by a sponsor in Malaysia before the entry of the applicant into the country. The validity of the pass would not exceed 12 months.

³⁴³Rohaida Nordin, Health Insurance for Foreign Workers in Malaysia and Singapore: A Comparative Study, *International Journal of Business and Society*, Vol. 19 S3, 2018, 400-413.

³⁴⁴ The Educational Service Center of Chulalongkorn University, "Chapter 7: Regulations and Procedure on Importing workers with nationals of AEC countries," *The Final Report: Project on the Readiness of Labour Migration in AEC*, 2012, p.7-8.

However, applications for a Visit Pass (Professional) to undergo training at a factory or hotel only applicable for a period not exceeding 6 months.

4.3.3 Employment Pass

This pass will be issued to skilled foreign workers to work as Expatriates and they have been approved by the relevant regulatory agencies. The Pass has no restrictions on workers' nationals or ages.

The government of Malaysia defines Expatriates as foreigners with qualifications to work in the following positions:³⁴⁵

(a) Key Posts: These are the highest-level managerial posts in foreign-owned private companies and firms operating in Malaysia. Key posts are posts essential for companies to safeguard their interests and investments. The expatriates are responsible for determining the company's policies, such as a Chief Executive Officer, Managing Director, General Manager, etc.

(b) Executive Posts: These are intermediate level managerial and professional posts. The posts require academic qualifications, practical experience, skills and expertise related to the respective jobs. The expatriates are responsible for implementing the company's policies and supervision of staff, such as the Marketing Manager, Quality Control Manager. Professional such as Architecture, Lecturer, Doctor, etc.

(c) Non-Executive Posts: These are the posts for the performance of technical jobs that require specific technical or practical skills and experience, such as Welder, Die Maker, Manufacturing Systems Designer, Furniture Designer, etc.

Skilled foreign workers including Thai workers who wish to become an Expatriate in Malaysia should understand a procedure on hiring Expatriates as follows:

Stage 1 - Companies have applied for expatriate posts to relevant agencies and received an approval letter.

Stage 2 – Companies then apply for the Employment Pass to Expatriates and Expatriates are approved to enter Malaysia.

Stage 3 – Expatriates arrive in Malaysia.

³⁴⁵ Malaysia Productivity Corporation, "Employment of Expatriates," Guidelines on Employment of Expatriates, p.3-4, Accessed April 16, 2019, <http://www.mpc.gov.my/pemudah/wp-content/uploads/sites/21/2017/01/Guidebook-on-the-Employment-of-Expatriates-Processes-and-Procedures.pdf>

(1) Procedure on application for the expatriate post

A company applies to expatriate posts.³⁴⁶ Applications will be processed within 7 working days. The Government has appointed the following agencies to evaluate and approve expatriate posts.

(a) Authorized bodies responsible for approving expatriate posts determined by the nature of the business

- Malaysian Industrial Development Authority (MIDA) is empowered to approve expatriate posts for manufacturing or related services sectors, including hospitality, Operational Headquarters (QHGs), Regional Development Corporation (RDCs), International Procurement Centres (IPCs), Regional Establishments (RE) and Regional Office (RO).
- Multimedia Development Corporation (MDeC) has the authority to approve expatriate posts for an information technology sector.
- Central Bank of Malaysia (BNM) is empowered to approve expatriate posts for financial, insurance and banking sectors.
- Securities Commission (SC) is responsible for approving expatriate posts for the securities and futures market.
- Malaysian Biotechnology Corporation (Biotech Corp – BC) oversees the biotechnology industry.
- Expatriate Committee (EC)³⁴⁷ has the authority to approve expatriate posts in sectors other than the above-mentioned sectors.

(b) Criteria on Approval of the Employment Permit

Eligible criteria for hiring expatriates can be divided into 4 groups:

- Companies undertaking manufacturing activities, R&D activities, hotels with a 4-star rating or higher; and tourism projects and other services and applying the tax incentives under the Promotion of

³⁴⁶ A company has to fill out a form “DP10” or “DP11” depending on the types of works of Expatriates.

³⁴⁷ EC holds meetings to approve the expatriate status twice a week. Employers may track the approval status at the Immigration Department of Malaysia’s website (<http://www.imi.gov.my>).

Investment Act of 1986 must have the minimum paid-up capital, determined by their shareholding as follows:

| Shareholding | Company's Minimum Paid-up Capital |
|--|--|
| 100% Malaysian-owned company | 250,000 Ringgits (about 2,500,000 Bahts) |
| Jointly owned by foreign and Malaysian | 350,000 Ringgits (about 3,500,000 Bahts) |
| 100% foreign-owned company | 500,000 Ringgits (about 5,000,000 Bahts) |

- OHQs, RDCs, IPCs can be considered on a minimum paid-up capital of 500,000 Ringgits (about 5,000,000 Bahts).
- RE and RO can be considered on a minimum paid-up capital of 300,000 Ringgits (about 3,000,000 Bahts).
- Other businesses with no tax incentive and no investment promotion privilege

(c) Criteria for foreign individuals

The approval of expatriate posts will be subjected to educational degrees, experiences, and salary of expatriates as follows:

| Business Sectors | Minimum Academic Qualification and Experiences | Minimum Salary |
|--|--|--|
| Manufacturing | <ul style="list-style-type: none"> - Degree with at least 3 years' experience in the relevant field; and/or - Diploma with at least 5 years' experience in the relevant field; and/or - Technical Certification with at least 10 years' experience in the relevant field; or academic qualifications/experience proposed by companies, whichever is higher. | Minimum basic salary of at least 5,000 Ringgits (about 50,000 Bahts) |
| R&D | <ul style="list-style-type: none"> - Degree with at least 3 years' experience in the relevant field; and/or - Diploma with at least 5 years' experience in the relevant field; or academic qualifications/experience proposed by companies, whichever is higher. | Minimum basic salary of at least 5,000 Ringgits (about 50,000 Bahts) |
| hotels with 4-star rating or higher and tourism projects | Minimum academic qualification is Degree with at least 5 years' working experience in the hotel/tourism industry. | Minimum basic salary of at least 5,000 Ringgits (about 50,000 Bahts) |

(2) Procedure on application for endorsement of the employment pass

Upon approval of the expatriate posts by the above-mentioned approving agencies, the company must apply for endorsement of the employment pass to the Expatriate Services Division (ESD), which is an office under the Immigration Department of Malaysia. The ESD is a one-stop service center to facilitate the expatriate application process.

Fees charged for the Key Post are 300 Ringgits per application and for the Term Post (Executive and Non-executive posts) are 200 Ringgits per application. There is no levy nor security deposit for the employment pass and the expatriates are not required to purchase insurance nor to undertake medical check-up in the FWCMS system.

(3) Expatriates entering Malaysia

The company can choose one of the two options to import expatriates into Malaysia.

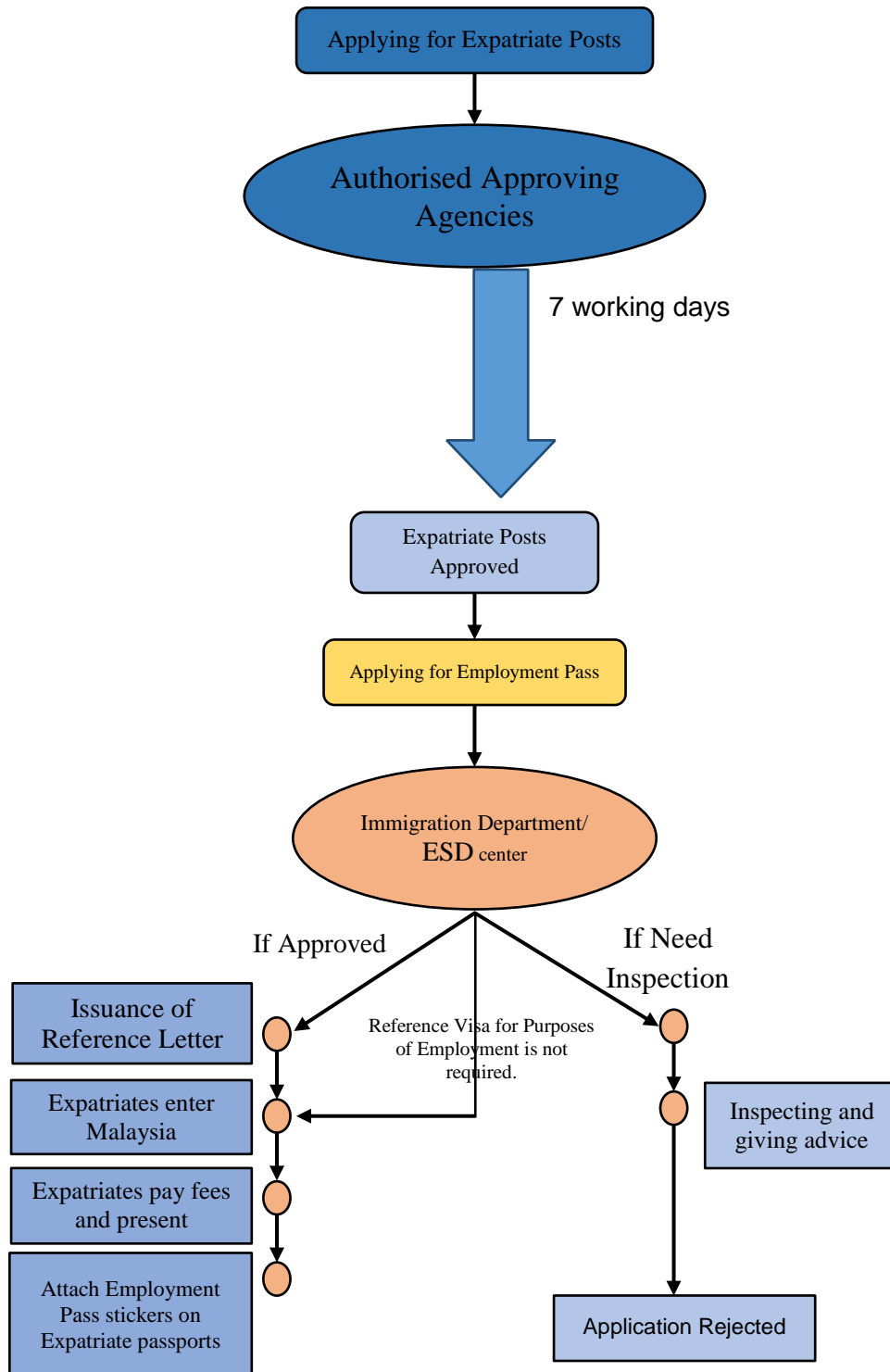
Alternative I : Reference Visa (Calling Visa) for Purposes of Employment

Expatriates with nationalities of certain countries, including Thailand, are required to have a Reference Visa to facilitate their entry into Malaysia for purposes of employment. The employer can apply for the Reference Visa Letter at the Immigration Department of Malaysia. In the meantime, the expatriates have to stay out of Malaysia. When the Reference Visa Letter is issued, the employer then delivers it to the expatriates. They must bring the Letter to the Malaysian Embassy in their country of residence and request for the Single Entry Visa. Upon entry into the country, they must obtain an actual Employment Pass sticker endorsed onto their passport from the Immigration Department of Malaysia.

Alternative II : Journey Performed Visa

If the expatriates are from countries whose nationals do not require the Reference Visa for Purposes of Employment, the employer can apply for the Journey Performed Visa for the expatriates who have entered Malaysia with Travel Visa. The conversion fee from the Travel Visa to the Journey Performed Visa costs 500 Ringgits (about 5,000 Bahts). This converting process has to be done within 7 days of arrival in Malaysia. Then, the employer can apply for an employment pass sticker to be attached to the expatriates' passport.

Process of applying the expatriate posts and employment pass are summarized as follows:



4.3.4 Penalties for illegal migrant workers without work permits in Malaysia

Foreign workers can work in Malaysia only if they have obtained a valid work permit. Failure to do so will be subjected to a fine not exceeding 5,000 Ringgits (about 50,000 Bahts) or imprisonment not exceeding 1 year or both according to Section 17³⁴⁸ of the Employment (Restriction) Act 1968.

Furthermore, any person enters and resides in Malaysia without a valid pass or work permit shall be subject to a fine not exceeding 10,000 Ringgits (about 100,000 Bahts) or to imprisonment for a term not exceeding 5 years or both, and shall also be liable to whipping of not more than 6 strokes according to Section 6 of the Immigration Act 1959/63.³⁴⁹

Any employer or company who employs illegal migrant workers must be liable to a fine of not less than 10,000 Ringgits but not more than 50,000 Ringgits (about 100,000 Bahts but not more than 500,000 Bahts) or imprisonment for a term not exceeding 12 months or both for each illegal migrant employee. If any employer or company employs more than 5 illegal migrant workers at the same time, he shall be liable to imprisonment for a term of not less than 6 months but not more than 5 years and shall also be liable to whipping of not more than 6 strokes according to Section 55B of the Immigration Act 1959/63.³⁵⁰

³⁴⁸ Section 17 of Employment (Restriction) Act 1968 states that “(1) Any person who fails to comply with section 5 or 12 commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand Ringgit or to imprisonment for a term not exceeding one year or to both.”

³⁴⁹ Section 6 of the Immigration Act 1959/63 states that “(1) No person other than a citizen shall enter Malaysia unless—

- (a) he is in possession of a valid Entry Permit lawfully issued to him under section 10;
- (b) his name is endorsed upon a valid Entry Permit in accordance with section 12, and he is in the company of the holder of the Permit;
- (c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or
- (d) he is exempted from this section by an order made under section 55.

(2) (Deleted by Act 27 of 1963).

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.”

³⁵⁰ Section 55B of Immigration Act 1958/63 states that “(1) Any person who employs one or more persons, other than a citizen or a holder of an Entry Permit who is not in possession of a valid Pass shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than ten thousand Ringgit but not more than fifty thousand Ringgit or to imprisonment for a term not exceeding twelve months or to both for each such employee.

(2) A Pass lawfully issued to any person shall cease to be a valid Pass when any of its terms and conditions is contravened.

(3) Where, in the case of an offence under subsection (1), it is proved to the satisfaction of the court that the person has at the same time employed more than five such employees that person shall, on conviction be

5. Tax Laws

The following Malaysian tax laws are significant to the trade and investment in Malaysia.

- (1) Goods and Services Tax Act 2014 (As Amended by Finance Act 2017) – Tax law regarding sales activities;
- (2) Customs Act 1967 (As Amended in 1980)) – Law regarding customs; and
- (3) Income Tax Act 1967 (As Amended by Finance Act 2017) – Tax law regarding income.

5.1 Sales Tax

Sales tax in Malaysia is called Goods and Services Tax (GST) which is similar to Value Added Tax in Thailand. GST is administered by Royal Malaysia Customs.

5.1.1 GST taxpayer

A GST taxable person could be an individual, sole proprietor, partnership, corporation, the Federal Government, the State Government, statutory body, local or any other body whether corporate or unincorporated.³⁵¹

Generally, a taxable person is a person required to be registered under the Goods and Services Act 2014 (GSTA). The taxable person is the person who makes taxable supplies in Malaysia and whose annual turnover exceeds the prescribed threshold of 500,000 Ringgits (5,000,000 Bahts).³⁵²

However, a person not required to be registered for GST may choose to voluntarily register for GST and become a taxable person.

liable to imprisonment for a term of not less than six months but not more than five years and shall also be liable to whipping of not more than six strokes.

(4) For the purposes of this section a person performing any act normally performed by an employee in a place of employment whether or not for payment shall be presumed, unless the contrary is proved, to have been employed.

(5) Where the offence under subsection (1) has been committed by a body corporate, any person who at the time of the commission of the offence was a member of the board of directors, a manager, a secretary or a person holding an office or a position similar to that of a manager or secretary of the body corporate shall be guilty of that offence and shall be liable to the same punishment to which the body corporate is liable under subsection (1) or (3)."

³⁵¹ Royal Malaysia Customs, "Goods and Services Tax," *General Guide*, p.3, Accessed November 27, 2016, <http://gst.customs.gov.my/en/rg/SiteAssets/GENERAL%20GUIDE%2023122015.pdf>.

³⁵² Royal Malaysia Customs, "Goods and Services Tax," *General Guide*, p.3, Accessed November 27, 2016, <http://gst.customs.gov.my/en/rg/SiteAssets/GENERAL%20GUIDE%2023122015.pdf>.

5.1.2 Taxable supply

GST is generally imposed on sales of goods or services and all imported goods in Malaysia at a 6% tax rate, unless subject to any tax exemption or 0% tax rate.³⁵³

The value of imported goods for GST purposes is the sum of the following values.

- Value determined for customs purposes
- Customs duty (if any) and
- Excise duty paid or to be paid (if any)

Exported goods and services are generally subject to a 0% tax rate. Goods are deemed to be exported when they have been cleared by the proper officer of customs at the last customs station on their route out of Malaysia, or loaded onto a vessel or an aircraft which is about to depart from a port or place in Malaysia; or cleared by the proper officer of customs at an inland clearance depot or station on their route out of Malaysia through a customs port or airport.³⁵⁴

5.1.3 Tax rate

There are 3 GST rates on imports.

1) 6% tax rate

The standard GST rate is at 6% on the importation of goods.³⁵⁵

2) 0% tax rate

In some specific cases for some listed goods, the GST rate is 0%, which is specified in the First Schedule of Goods and Services Tax (Zero-Rated Supply) Order

³⁵³ Royal Malaysia Customs, "Goods and Services Tax," General Guide, pp.2-3, Accessed November 27, 2016, <http://gst.customs.gov.my/en/rg/SiteAssets/GENERAL%20GUIDE%2023122015.pdf>.

³⁵⁴ Royal Malaysia Customs, "Goods and Services Tax," General Guide, pp.33-34, Accessed November 27, 2016, <http://gst.customs.gov.my/en/rg/SiteAssets/GENERAL%20GUIDE%2023122015.pdf>.

³⁵⁵ Goods and Services Tax (Zero-Rated Supply) Order 2014. Section 2, "the rate of tax shall be fixed at six per cent on the supply of goods or services or on the importation of goods."

2014.³⁵⁶ Zero-rated goods are relieved from the payment of tax on the importation of such goods³⁵⁷ such as ship equipment, for example.

3) Tax-exempt

Some goods or services are exempted from GST as specified in the First and Second Schedules of Goods and Services Tax (Zero-Rated Supply) Order 2014.³⁵⁸ Therefore, those goods are relieved from the payment of tax on the importation such as valuable metals, for example.

5.1.4 Tax liability

GST on the importation is payable at the time the customs duty, if any, is paid to Customs.³⁵⁹ In some cases, however, such as goods detained in the bonded warehouse, the GST is payable at the time such goods are released from customs control.³⁶⁰

In September 2018, Malaysia uses Sales and Services Tax, which was previously used before changing to Goods and Services Tax (GST) in 2014. GST rate was reduced from 6% to 0% since June 1st, 2018 and later completely removed by the Parliament.³⁶¹

5.2 Customs

Customs is an indirect tax levied on the importation and exportation of goods. Customs are levied under the Customs Act 1967 by the Royal Malaysian Customs Department.³⁶²

³⁵⁶ Goods and Services Tax (Zero-Rated Supply) Order 2014. Section 3(1), "The supply of goods specified in the First Schedule and supply of services specified in the Second Schedule are determined as zero-rated supply."

³⁵⁷ Goods and Services Tax (Relief) Order 2014. Section 3, "Any person importing goods which are determined in the First Schedule to the Goods and Services Tax (Zero-Rated Supply) Order 2014 is relieved from the payment of tax on the importation of such goods."

³⁵⁸ Goods and Services Tax (Exempt Supply) Order 2014, Section 2(1) "The supply of goods as specified in the First Schedule and the supply of services as specified in the Second Schedule are determined as exempt supplies."

³⁵⁹ Royal Malaysia Customs, "Goods and Services Tax," General Guide, p.33, Accessed November 27, 2016, <http://gst.customs.gov.my/en/rg/SiteAssets/GENERAL%20GUIDE%2023122015.pdf>.

³⁶⁰ Royal Malaysia Customs, "Goods and Services Tax," General Guide, p.33, Accessed November 27, 2016, <http://gst.customs.gov.my/en/rg/SiteAssets/GENERAL%20GUIDE%2023122015.pdf>.

³⁶¹ Channel News Asia, "Malaysia to remove GST for consumers on Jun 1," Accessed August 12, 2018, <https://www.channelnewsasia.com/news/asia/gst-malaysia-to-remove-jun-1-10239562>

³⁶² Customs Act 1967, Section 4 "There shall be appointed so many Chief Customs Officers, Senior Customs Officers, and Customs Officers as may be considered necessary for the purposes of this Act."

Customs levied on the importation goods is the so-called import duty, whereas customs levied on the exportation goods is the so-called export duty.

5.2.1 Imports

Imports are goods crossing Malaysian territory either by land, sea or air, which the importer is the taxpayer.³⁶³ Find more information about the law on import and export at topic 1.1.1.

Different tariffs are applied to different goods. Thus, goods that are different in detail will be subject to different rates or no tariff. In Malaysia, tariffs are searchable at <http://tariff.customs.gov.my>.

5.2.2 Prohibition and restriction of importation

The following goods are absolutely prohibited from importation.³⁶⁴

- Reproduction of any currency note, banknote, or coin which are currently been issued in any country.
- Indecent printings, paintings, photographs, books, cards, lithographic, engravings, films, video tapes, laser discs, color slides, computer disc, and any other media.
- Any device which is intended to be prejudicial to the interest of Malaysia or unsuited with peace.
- All species of Piranha fish.
- Turtle eggs.
- Cocoa pods, rambutans, pulasan, longan, and namnam fruits from the Philippines and Indonesia.
- Intoxicating liquors containing more than 3.46 milligrams per liter in any lead or any compound of copper.
- Daggers and flick knives.

³⁶³ Custom Act 1967, Section 11 "(1) The Minister may, from time to time, by order published in the Gazette, fix the customs duties to be levied on any goods imported into or exported from Malaysia and to be paid by the importer or exporter, as the case may be."

³⁶⁴ Royal Malaysia Customs, "Prohibition/Restriction of Imports," Accessed June 25, 2018, http://www.customs.gov.my/en/tp/pages/tp_ie.aspx.

- Broadcast receivers capable of receiving radio communication within the ranges (68 - 87) MHz and (108 - 174) MHz
- Sodium arsenate.
- Cloth bearing the imprint or duplicate of any verses of the Quran.
- Pen, pencil, and other articles resembling syringes.
- Poisonous chemical
- Lightning arresters containing radioactive material.

Meanwhile, imports of goods specified below are prohibited except under an import license or permit from relevant authorities, such as explosives, meat, motor vehicles for example.³⁶⁵ Find more information about the law on import and export at the topic *1.1.1. Law on Import and Export*.

5.2.3 Exports

Export duty generally levies on the exportation of crude oil and palm oil.

5.2.4 Prohibition and restriction of exportation

The following goods are absolutely prohibited from exportation.³⁶⁶

- Turtle eggs
- Rattan from Peninsula of Malaysia

Meanwhile, the exports of goods specified below are prohibited except under an import license or permit from relevant authorities, such as sugar and rice, the meat of bovine animals, military clothing and equipment for example.³⁶⁷ Find more information about the law on import and export at the topic *1.1.1. Laws on Import and Export*.

³⁶⁵ Royal Malaysia Customs, "Prohibition/Restriction of Imports," Accessed June 25, 2018, http://www.customs.gov.my/en/tp/pages/tp_ie.aspx.

³⁶⁶ Royal Malaysia Customs, "Prohibition/Restriction of Imports," Accessed July 14, 2015, <http://www.customs.gov.my/index.php/en/component/content/article/243>.

³⁶⁷ Royal Malaysia Customs, "Prohibition/Restriction of Imports," Accessed July 14, 2015, <http://www.customs.gov.my/index.php/en/component/content/article/243>.

5.3 Personal income tax

Personal income tax is a direct tax on individuals who earn income in a year of assessment (calendar year: January 1 - December 31).³⁶⁸ Personal income tax is levied under the Income Tax Act 1967 by the Inland Revenue Board.³⁶⁹

5.3.1 Taxpayers

Generally, individuals who pay personal income tax are Malaysian Residents. To be a Malaysian Resident under the Malaysian tax law, an individual must stay in Malaysia for at least 182 days in that calendar year.³⁷⁰ However, an individual may become a Malaysian Resident for under the Malaysian tax law although that individual does not stay for 182 days in the current year. If, in the last 4 years, that individual has stayed in Malaysia for at least 90 days a year in any past 3 years, then he or she will become a Malaysian Resident for the purposes of the Malaysian tax law.³⁷¹

5.3.2 Taxable income

Taxable income under the personal income tax is the so-called "Chargeable Income" which is computed from net income after any deductions available to the taxpayer.³⁷² Chargeable income is the tax base for personal income tax. Taxable income is any income derived in the year of assessment either within Malaysia or

³⁶⁸ Income Tax Act 1967, Section 20 "For the purposes of this Act, the calendar year coinciding with a year of assessment shall constitute the basis year for that year of assessment."

³⁶⁹ Income Tax Act 1967, Section 134(1) "There shall be a Director-General of Inland Revenue, who shall have the care and management of the tax."

³⁷⁰ Income Tax Act 1967, Section 7 "(1) For the purposes of this Act, an individual is resident in Malaysia for the basis year for a particular year of assessment if-
(a) he is in Malaysia in that basis year for a period or periods amounting in all to one hundred and eighty-two days or more"

³⁷¹ Income Tax Act 1967, Section 7 "(1) For the purposes of this Act, an individual is resident in Malaysia for the basis year for a particular year of assessment if-
(c) he is in Malaysia in that basis year for a period or periods amounting in all to ninety days or more, having been with respect to each of any three of the basis years for the four years of assessment immediately preceding that particular year of assessment either-
(i) resident in Malaysia within the meaning of this Act for the basis year in question; or
(ii) in Malaysia for a period or periods amounting in all to ninety days or more in the basis year in question;"

³⁷² Income Tax Act 1967, Section 45(1) "Subject to this section, the chargeable income of a person for a year of assessment shall be his total income for that year less any deductions allowed by this Chapter for that year"

without Malaysia but received in Malaysia.³⁷³ Taxable income can be broadly categorized as follows.³⁷⁴

- Business income
- Employment income
- Dividends, Interest or Discounts
- Rents, Royalties or Insurance Premiums
- Pensions, annuities or other periodical payments
- Other gains or profits

However, some types of income earned by non-Malaysian residents are also subject to the income tax. For example:³⁷⁵

- amounts paid from Malaysia to non-residents for services about the use of property, installation or operation of any plant, machinery or other apparatus purchased from non-residents.
- amounts paid from Malaysia to non-residents for technical advice, assistance or services about technical management or administration of any scientific, industrial or commercial scheme.

³⁷³ Income Tax Act 1967, Section 3 "Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of assessment upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia."

³⁷⁴ Income Tax Act 1967, Section 4 "Subject to this Act, the income upon which tax is chargeable under this Act is income in respect of-

- (a) gains or profits from a business, for whatever period of time carried on;
- (b) gains or profits from an employment;
- (c) dividends, interest or discounts;
- (d) rents, royalties or premiums;
- (e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;
- (f) gains or profits not falling under any of the foregoing paragraphs."

³⁷⁵ Income Tax Act 1967, Section 4A "Notwithstanding the provisions of section 4 and subject to this Act, the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of-

(i) amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;

(ii) amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or

(iii) rent or other payments made under any agreement or arrangement for the use of any moveable property,"

- rent or other payments from Malaysia to non-residents for the use of any moveable property

If non-residents work in Malaysia less than 60 days³⁷⁶ or merely work on a Malaysian ship,³⁷⁷ income from that work will be exempt from the Malaysian personal income tax.

Furthermore, interest from bank accounts in Malaysia paid to non-residents is tax-exempt as well.³⁷⁸ Tax exemption also includes dividends paid to any shareholders. That means the shareholders are not subject to double taxation on their dividends because Malaysia has adopted the single-tier system.³⁷⁹

³⁷⁶ Income Tax Act 1967, Schedule 6, Part I Income Which is Exempt

Paragraph 21 "Subject to paragraph 22, the income of an individual from an employment exercised by him while in Malaysia-

(a) for a period or periods which together do not exceed sixty days in the basis year for a year of assessment; or

(b) for a continuous period (not exceeding sixty days) which overlaps the basis years for two successive years of assessment; or

(c) for a continuous period (not exceeding sixty days) which overlaps the basic years for two successive years of assessment and for a period or periods which together with that continuous period do not exceed sixty days, if he is not resident for that basis year or for each of those basis years, as the case may be.

³⁷⁷ Income Tax Act 1967, Schedule 6, Part I Income Which is Exempt

Paragraph 34 "(1) Income of an individual derived from exercising an employment on board a Malaysian ship.

(2) For the purposes of subparagraph (1), "Malaysian ship" has the same meaning as in subsection 54A(6)."

³⁷⁸ Income Tax Act 1967, Schedule 6, Part I Income Which is Exempt

Paragraph 33 "Income of any person not resident in Malaysia for the basis year for a year of assessment, in respect of interest derived from Malaysia (other than such interest accruing to a place of business in Malaysia of such person) and paid or credited by any person (whether the same person or not) carrying on the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989"

³⁷⁹ Inland Revenue Board Of Malaysia, "Single Tier System," Accessed July 14, 2015, <http://www.hasil.gov.my/goindex.php?lgv=2&chg=1>.

5.3.3 Tax relief

Personal income tax provides several tax reliefs for taxpayers, such as³⁸⁰

| | |
|---|---|
| Self relief | 9,000 Ringgits (about 90,000 Bahts) |
| Disabled individual relief | 6,000 Ringgits (about 60,000 Bahts) |
| Spouse relief | 3,000 Ringgits (about 30,000 Bahts) |
| Disabled spouse relief | 3,500 Ringgits (about 35,000 Bahts) |
| Cost for books and other similar publications | up to 1,000 Ringgits (about 10,000 Bahts) |
| Relief for a personal computer (once every 3 years) | up to 3,000 Ringgits (about 30,000 Bahts) |
| Purchase of sport equipment | up to 300 Ringgits (about 3,000 Bahts) |

5.3.4 Tax rates

The tax base for personal Income Tax is chargeable income, which is computed from net income after any deductions available to the taxpayer.³⁸¹

$$\text{Chargeable Income} = \text{Gross Income} - \text{Deductions}$$

³⁸⁰ Inland Revenue Board of Malaysia, "Tax Relief for Resident Individual," Accessed November 25, 2015, <http://www.hasil.gov.my/goindex.php?kump=5&skum=1&posi=3&unit=1&sequ=1>.

³⁸¹ Income Tax Act 1967, Section 45(1) "Subject to this section, the chargeable income of a person for a year of assessment shall be his total income for that year less any deductions allowed by this Chapter for that year"

In case taxpayers are Malaysian Residents, tax rates in 2016 are 0-26% as follows.³⁸²

Personal Income Tax Rates 2016 and 2017

| Chargeable Income (Ringgits) | Tax Rates |
|------------------------------|-----------|
| 0 - 5,000 | Exempt |
| 5,001 - 20,000 | 1% |
| 20,001 - 35,000 | 5% |
| 35,001 - 50,000 | 10% |
| 50,001 - 70,000 | 16% |
| 70,001 - 100,000 | 21% |
| 100,001 - 250,000 | 24% |
| 250,001 - 400,000 | 24.5% |
| 400,001 - 600,000 | 25% |
| 600,001 - 1,000,000 | 26% |
| > 1,000,000 | 28% |

5.3.5 Tax filing

Taxpayers are required to assess themselves for income derived and file their tax return to the Inland Revenue Board on an annual basis, which requires taxpayers to file within every June 30.³⁸³

³⁸² Inland Revenue Board of Malaysia, "Income Tax Rates," Accessed November 25, 2016, <http://www.hasil.gov.my/goindex.php?kump=5&skum=1&posi=2&unit=5000&sequ=11>.

5.4 Corporate Income Tax

Corporate Income Tax is a direct tax on companies that earn income (on the territorial income basis) in a period of 12 months or a year of assessment (calendar year: January 1 - December 31).³⁸⁴

5.4.1 Taxpayers

A corporate income taxpayer is generally a company carrying on a business in Malaysia and the management and control of its business are exercised in Malaysia. In other words, if the management and control of its business are exercised in Malaysia, the company is a Malaysian resident and a corporate taxpayer.³⁸⁵

5.4.2 Taxable Income

Taxable income under the corporate income tax is the so-called "Chargeable Income" which is computed from net income after any deductions available to the taxpayer. Chargeable income is the tax base for corporate income tax. Taxable income is the income derived on a year of assessment.³⁸⁶

However, income from an offshore business activity carried on by a Malaysian offshore company is not chargeable³⁸⁷ except income from offshore insurance,³⁸⁸ banking business,³⁸⁹ or transportation undertakings.³⁹⁰

³⁸³ Income Tax Act 1967, Section 77(1)(a) "Every person, other than a company, trust body or co-operative society to which section 77A applies, shall for each year of assessment furnish to the Director-General a return in the prescribed form not later than 30 April in the year following that year of assessment: Provided that that person has-

(a) chargeable income for that year of assessment;"

³⁸⁴ Income Tax Act 1967, Section 20 "For the purposes of this Act, the calendar year coinciding with a year of assessment shall constitute the basis year for that year of assessment."

Section 21A(1) "Except as provided in this section, the basis year for a year of assessment shall constitute, in relation to a source of a company, limited liability partnership, trust body or co-operative society, the basis period for that year of assessment."

³⁸⁵ Income Tax Act 1967, Section 8(1) "For the purposes of this Act –

(b) a company or a body of persons (not being a Hindu joint family) carrying on a business or businesses is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia;"

³⁸⁶ Income Tax Act 1967, Section 33 "(1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source..."

³⁸⁷ Income Tax Act 1967, Section 3B "Notwithstanding section 3, tax shall not be charged under this Act on income in respect of an offshore business activity carried on by an offshore company, other than an offshore company (in this Act referred to as "chargeable offshore company"), which has made an election under section 3A of the Labuan Offshore Business Activity Tax Act 1990."

³⁸⁸ Income Tax Act 1967, Section 60B, "(1)(a) Where an insurer carries on off-shore insurance business in conjunction with other insurance businesses, the part of the chargeable income for a year of assessment which is attributable to that off-shore insurance business shall consist of an amount which bears the same proportion to the chargeable

5.4.3 Tax rates

Corporate income tax rates are applicable as follows.³⁹¹

(1) a company carrying business in Malaysia

(a) SMEs (paid-up capital below 2.5 million Ringgits) - an 18% tax rate for the first chargeable 500,000 Ringgits and 24% for the above.³⁹²

(b) Typical company (paid-up capital 2.5 million Ringgits or more) - a 24% tax rate.

(2) an off-shore company - a 24% tax rate

SMEs eligible for preferential tax rate must meet not only paid-up capital below 2.5 million Ringgits, but also meet the following criteria³⁹³

income for that year of assessment of the insurer as the part of the aggregate income which relates to the off-shore insurance business bears to the whole of the aggregate income for that year of assessment from all sources of the insurer; and

(b) the amount arrived at under paragraph (a) shall be treated as the chargeable income for a year of assessment of an insurer from off-shore insurance business for the purposes of paragraph 3 of Part I of Schedule 1.

(2) As soon as any amount of chargeable income from the offshore insurance business of an insurer (being a company) resident for the basis year for a year of assessment has been subject to income tax at the rate of five per cent-

(a) the net amount of that income (after deduction of such tax) shall be credited to an account (that account and company being referred to as the exempt account and the relevant company respectively); and

(b) paragraph 5 (except subparagraph (1) thereof) and paragraph 6 of Schedule 7A shall apply as if any reference in those paragraphs to any income exempted or which has become exempt under paragraph 3 were a reference to income credited to the exempt account."

³⁸⁹ Income Tax Act 1967, Section 60C "Where a person who is resident for the basis year for a year of assessment carries on a business of banking in Malaysia and elsewhere, his gross income and adjusted income or adjusted loss for the basis period for that year of assessment from that business and his statutory income for that year of assessment from that business shall be ascertained by reference to his income there from wherever accruing or derived excluding the gross income, adjusted income or adjusted loss and statutory income attributable to an offshore business activity of a licensed Malaysian Offshore bank."

³⁹⁰ Income Tax Act 1967, Section 54(2)(a) "Subject to section 54A, where that person is resident for the basis year for a year of assessment, his gross income and adjusted income or adjusted loss for the basis period for that year of assessment from the business of transporting passengers or cargo by sea or air his statutory income for that year of assessment from that business shall be ascertained by reference to his income there from wherever accruing or derived;"

³⁹¹ Inland Revenue Board Of Malaysia, "Tax Rate of Company," Accessed August 12, 2018, http://www.hasil.org.my/bt_goindex.php?bt_kump=5&bt_skum=2&bt_posi=5&bt_unit=1&bt_sequ=1&bt_lgv=2.

³⁹² Income Tax Act 1967, Schedule I, Part I Rates of Tax

Paragraph 2A. "Subject to paragraphs 2B, 2C and 3, income tax shall be charged for a year of assessment on the chargeable income of a company resident and incorporated in Malaysia which has a paid-up capital in respect of ordinary shares of two million five hundred thousand Ringgit and less at the beginning of the basis period for a year of assessment at the following rates:

| Chargeable income | RM | Rate of income tax |
|--------------------------------|---------|---|
| For every Ringgit of the first | 500,000 | 18 per cent |
| For every Ringgit exceeding | 500,000 | 25 per cent for the year of assessment 2015 and 24 per cent for the subsequent years of assessment" |

- (a) 50% of the paid-up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
- (b) 50% of the paid-up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first-mentioned company; or
- (c) 50% of the paid-up capital in respect of ordinary shares of the first-mentioned company and the related company

Corporate income tax rates

| Chargeable Income (Ringgits) | Tax Rates |
|------------------------------|-----------|
| not exceeding 500,000 | 18% |
| over 500,000 | 24% |

If it is a Labuan company doing business in Labuan, it can choose to either pay a flat tax at the rate of 3% of its chargeable profits³⁹⁴ or pay the lump sum amount at 20,000 Ringgits (about 200,000 Bahts).³⁹⁵

5.4.4 Tax Filing

Taxpayers are required to assess themselves for income derived and file their tax return to the Inland Revenue Board. Generally, it is on an annual basis, which requires taxpayers to file within 7 months of the close of the accounting period.³⁹⁶

³⁹³ Income Tax Act 1967, Schedule I, Part I Rates of Tax
Paragraph 2B. "The provisions of paragraph 2A shall not apply to a company referred to in that paragraph if more than—

(a) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;

(b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or

(c) fifty per cent of the paid up capital in respect of ordinary shares of the first mentioned company and the related company"

³⁹⁴ Labuan Business Activity Tax Act 1990, Section 4(1) "Tax shall be charged at the rate of three per cent for a year of assessment upon the chargeable profits of a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity for the basis period for that year of assessment."

³⁹⁵ Labuan Business Activity Tax Act 1990, Section 7(1) "Notwithstanding section 4, a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity may, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of a year of assessment, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand ringgit."

5.5 Double Tax Agreement

Double Tax Agreement is necessary to determine whether the income derived by non-resident in Malaysia is subject to taxation in Malaysia. Malaysia and Thailand have a mutual agreement on the double taxation issue on March 29, 1982.

5.5.1 Scopes

Applicable to residents of each state or both states

5.5.2 Taxes covered

Malaysia - Income tax and excess profit tax, supplementary income taxes, that is, tin profits tax, development tax and timber profits tax, and petroleum income tax³⁹⁷

Thailand - Income tax and petroleum income tax³⁹⁸

5.5.3 Income covered

- (1) Income from immovable property³⁹⁹
- (2) Business income or profits⁴⁰⁰
- (3) Shipping and air transport⁴⁰¹
- (4) Dividends⁴⁰²
- (5) Interest⁴⁰³
- (6) Royalties⁴⁰⁴

³⁹⁶ Income Tax Act 1967, Section 77A(1) "Every company, trust body or co-operative society shall for each year of assessment furnish to the Director-General a return in the prescribed form within seven months from the date following the close of the accounting period which constitutes the basis period for the year of assessment."

³⁹⁷ Article 2.2(a) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

³⁹⁸ Article 2.2(b) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

³⁹⁹ Article 6 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰⁰ Article 7 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰¹ Article 8 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰² Article 10 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰³ Article 11 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

- (7) Gain from the alienation of property⁴⁰⁵
- (8) Personal services⁴⁰⁶
- (9) Director's fees⁴⁰⁷
- (10) Artistes and athletes⁴⁰⁸
- (11) Pension and annuities⁴⁰⁹
- (12) Governmental functions⁴¹⁰
- (13) Students and apprentice⁴¹¹
- (14) Professors, teachers, and researchers⁴¹²
- (15) Income not expressly mentioned⁴¹³

5.5.4 Residents covered

The residents covered by the Agreement are:

- (1) Residents⁴¹⁴
- (2) Enterprises with a permanent establishment in Malaysia

⁴⁰⁴ Article 12 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰⁵ Article 13 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰⁶ Article 14 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰⁷ Article 15 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰⁸ Article 16 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴⁰⁹ Article 17 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹⁰ Article 18 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹¹ Article 19 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹² Article 20 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹³ Article 21 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹⁴ Article 4 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Malaysia and Thailand concluded a tax treaty called “Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.” The agreement is for the avoidance of double taxation and the prevention of fiscal evasion concerning the income tax in the case of a resident of contracting state earning income in another contracting state. The agreement can be summarized as follows.

(1) Income from immovable property

If a resident of Thailand earns income from immovable property in Malaysia, the income is subject to income tax in Malaysia.⁴¹⁵

(2) Business income or profits

Generally, if a resident of Thailand earns business profits through a permanent establishment in Malaysia, the business profits will be subject to income tax in Malaysia.⁴¹⁶ The permanent establishment means a fixed place of business that the business of the enterprise is wholly or partly carried on,⁴¹⁷ such as offices, branches.⁴¹⁸ The Thai resident can be either a company or an individual.

However, if the business profits are not earned through a permanent establishment in Malaysia, the business profits are not subject to income tax in Malaysia.⁴¹⁹

(3) Interest

According to the double tax agreement, if a resident of Malaysia receives interest arising in Thailand, the interest is subject to withholding tax in Thailand at the maximum

⁴¹⁵ Article 6.1 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹⁶ Article 7.1 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹⁷ Article 5.1 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹⁸ Article 5.2 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴¹⁹ Article 7.1 Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

rate of 25%.⁴²⁰ If the resident of Malaysia is a financial institution, the maximum rate will not exceed 10%.⁴²¹

If a resident of Thailand receives interest arising in Malaysia, the interest is subject to withholding tax in Malaysia at the maximum rate of 15%.⁴²² In general, however, a resident of Thailand is a non-Malaysian resident and is already exempted from taxation on the interest arising in Malaysia.⁴²³

(4) Dividends

According to the double tax agreement, if a Malaysian company receives dividends arising from a Thai company engaging in an industrial undertaking and owns not less than 15% of the voting shares of the Thai company, the dividends are subject to withholding tax in Thailand at the maximum rate of 15%. Other cases are subject to the maximum rate of 20% in Thailand.⁴²⁴

A resident of Thailand receiving dividends from a Malaysian company is exempted from taxation in Malaysia.⁴²⁵

However, as Malaysia adopts the Single-Tier System, a resident of Thailand receiving dividends from a Malaysian company is already exempted from taxation in Malaysia.⁴²⁶

⁴²⁰ Article 11.2(a)(2) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴²¹ Article 11.2(a)(1) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴²² Article 11.2(b) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴²³ Income Tax Act 1967, Schedule 6, Paragraph 33 "Income of any person not resident in Malaysia for the basis year for a year of assessment, in respect of interest derived from Malaysia (other than such interest accruing to a place of business in Malaysia of such person) and paid or credited by any person (whether the same person or not) carrying on the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989"

⁴²⁴ Article 10.2(a) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴²⁵ Article 10.2(b) Agreement between the Government of the Kingdom of Thailand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

⁴²⁶ Inland Revenue Board of Malaysia, "Single Tier System," Accessed July 14, 2015, <http://www.hasil.gov.my/goindex.php?lgv=2&chg=1>.

5.6 Other Tax Incentives

Malaysia offers various tax incentives, such as tax exemptions and additional deductions for industries promoted by the government. There are several tax incentives for tax resident companies in many areas as follows.⁴²⁷

- Agriculture
- Automotive
- Business Trust
- Biotechnology
- Cold chain facilities
- Economic corridors
- Education & Training
- Financial Services
- Food production
- Green incentives
- Halal incentives
- Healthcare & Wellness
- Hotel & Tourism
- Logistics & Shipping
- Manufacturing
- Multimedia Super Corridor
- National & Strategic Projects
- Oil & Gas
- Property & Construction

⁴²⁷ PWC, 2016/2017 Malaysian Tax Booklet, pp.31-50, Accessed August 12, 2018, <https://www.pwc.com/my/en/assets/publications/2017-malaysian-tax-booklet.pdf>.

- Research & Development (R&D)
- Regional operations
- Telecommunication
- Tun Razak Exchange

Business promoted by Malaysia will enjoy some special tax benefits, such as

- Companies organizing a seminar in Malaysia with at least 500 foreign attendants in a year will obtain tax-exempt on the income from the seminar.
- Advertising costs for a Malaysian brand qualify for a double deduction.
- Insurance premiums for import-export paid to a Malaysian insurance company qualify for a double deduction.
- Director's fees a Labuan company pays to its foreign directors are tax-exempt.
- Interest paid from a bank or qualified financial institution to a non-resident is tax-exempt.⁴²⁸
- Hybrid vehicles in Malaysia are eligible for 100% import duty exemption and 50% excise duty exemption.⁴²⁹

Tax incentives for investment promotion can be found in detail from the topic *1.2.3 Investment promotion law*.

⁴²⁸ Income Tax Act 1967, Schedule 6, Part I Income Which is Exempt

Paragraph 33 "Income of any person not resident in Malaysia for the basis year for a year of assessment, in respect of interest derived from Malaysia (other than such interest accruing to a place of business in Malaysia of such person) and paid or credited by any person (whether the same person or not) carrying on the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989"

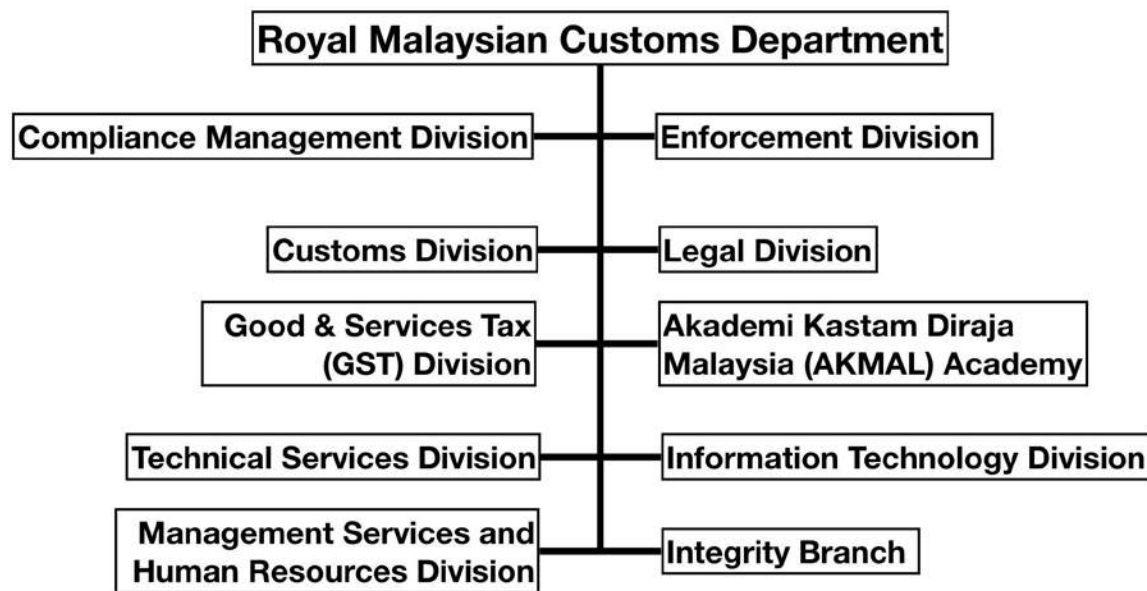
⁴²⁹ Loo Choo Hong, Environmental Tax Laws in Malaysia Today, Meref Review, page 10, accessed July 14, 2015, <http://library.wou.edu.my/vertical/vf2011-6.pdf>.

5.7 Agencies regarding taxation

5.7.1 Royal Malaysian Customs Department

Jabatan Kastam Diraja Malaysia (Royal Malaysian Customs Department)⁴³⁰ is responsible for customs duty⁴³¹ and control import-export, including excise tax⁴³²

The Organization Structure of the Royal Malaysian Customs Department ⁴³³



⁴³⁰ Location: Kompleks Kementerian Kewangan No.3 Persiaran Perdana Presint 2, 62596 Putrajaya Tel. +60 3-8882 2111 Website: www.customs.gov.my

⁴³¹ Customs Act 1967, Section 4. "There shall be appointed so many Chief Customs Officers, Senior Customs Officers, and Customs Officers as may be considered necessary for the purposes of this Act."

⁴³² Goods and Services Act 2014, Section 5. "(1) The Director-General shall have the superintendence of all matters relating to goods and services tax, subject to the direction and control of the Minister."

⁴³³ Organization Chart, http://www.customs.gov.my/en/ci/Pages/ci_os.aspx

5.7.2 Inland Revenue Board of Malaysia

Laman Rasmi Lembaga Hasil Dalam Negeri Malaysia (Inland Revenue Board of Malaysia)⁴³⁴ is an agency responsible for personal and corporate income tax, including overseeing compliance of tax filing.

The Organization Structure of the Inland Revenue Board of Malaysia⁴³⁵



⁴³⁴ Location: 1, Jalan Lintang, MenaraMaa, 70000 Seremban, Negeri Sembilan Tel. +60 6-766 5000 Website: www.hasil.gov.my

⁴³⁵ Inland Revenue Board Of Malaysia, "Organization Chart," Accessed July 11, 2018, <http://www.hasil.gov.my/goindex.php?kump=2&skum=2&posi=1&unit=5&sequ=1>.

6. Laws regarding Land

6.1 Laws governing land title and possessory on lands including immovable properties

6.1.1. Introduction

Malaysia adopts the Federation system. Each state is governed under Schedule 9 of the Federal Constitution, which prescribes details on land under the government authority. The government of each state has the highest authority to award verdicts concerning land in each state. The Federal Lands Commissioner in Malaysia, in accordance with the National Land Code 1965, carries out any land-related functions which include counseling for the government. A counselor must be appointed by the King or Yang di-Pertuan Agong⁴³⁶ under the Constitution, as well as the Director-General of Lands and Mines, and also many Assistant Directors General of Lands and Mines and such other officers as he may consider necessary.

The following laws govern land title and possessory on lands and immovable properties in Malaysia:

- (1) Federal Constitution – As of November 2010
- (2) National Land Code 1965
- (3) Town and Country Planning Act 1976
- (4) Land Ordinance - Sabah
- (5) Sarawak Code
- (6) Mining Enactment 1936
- (7) National Forest Act 1984
- (8) Strata Title Act 1985

⁴³⁶ National Land Code 1965, Section 6. "The Federal Lands Commissioner appointed under the Federal Lands Commissioner Ordinance, 1957, shall have the functions conferred on him by or under this Act and in carrying out such functions he shall be known as the Director-General of Lands and Mines; and the Yang di-Pertuan Agong may appoint a Deputy Director-General of Lands and Mines and so many Assistant Directors General of Lands and Mines and such other officers as he may consider necessary for the purposes of this Act."

6.1.2. Land possessory

(1) Definitions and types of land

Land under the National Land Code 1965 includes:⁴³⁷

- a) the surface of the earth and all substances forming that surface;
- b) the earth below the surface and all substances therein;
- c) all vegetation and other natural products, whether or not requiring the periodical application of labor to their production, and whether on or below the surface;
- d) all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface; and
- e) land covered by water.

Land could be classified as the land above the shore-line, and land at the foreshore and sea-bed.⁴³⁸ The land above the shore-line shall be classified as, namely,⁴³⁹

- a) town land;
- b) village land;

⁴³⁷ National Land Code 1965, Section 5. "'land" includes-

- (a) that surface of the earth and all substances forming that surface;
- (b) the earth below the surface and all substances therein;
- (c) all vegetation and other natural products, whether or not requiring the periodical application of labour to their production, and whether on or below the surface;
- (d) all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface; and
- (e) land covered by water;"

⁴³⁸ National Land Code 1965, Section 51. "(1) For the purposes of this Act land shall be classified as follows-

- (a) land above the shore-line; and
- (b) foreshore and sea-bed. "

⁴³⁹ National Land Code 1965, Section 51. "(2) Land above the shore-line shall be classified as follows-

- (a) town land, that is to say, land in any area of the State declared in accordance with the provisions of section 11 to be a town or, by virtue of section 442, deemed to be a town duly constituted as such under those provisions;

- (b) village land, that is to say, land in any area of the State declared in accordance with the provisions of section 11 to be a village or, by virtue of section 442, deemed to be a village duly constituted as such under those provisions;

- (c) country land, that is to say, all land above the shoreline other than town land or village land."

c) country land.

Malaysia adopts the land registration system under the National Land Code 1965 called the Torrens System.⁴⁴⁰ The Torrens System enables the verification by the Registrar conducted at District Land Office, depending on the office issuing title deeds, or the Department of Land. The registered rights could be a title or possession. Any transaction concerning lands shall comply with the requirements of the laws.⁴⁴¹ Every register of titles, registered instruments and other related instruments shall be stored and kept under the responsibility of the registrar, this includes all related instruments from past up to present.⁴⁴²

(2) Types of title deed

State land is used as a general principle in Malaysia unless there is a registered document of title to be alienated.⁴⁴³ There are 2 types of titles under the National Code Land 1965, namely, Final title and Qualified title.⁴⁴⁴

(a) Final title

The Final title is an instrument issued by the State because an accurate cadastral survey has been conducted which can be claimed to anyone. Lands could be separated to the parcel or with structures as evidenced by the registered instruments. Such deeds could be either permanent deed or scheduled deed.

⁴⁴⁰ Department of Director-General of Lands and Mines, Ministry of Natural Resources and Environment, Review of the National Land Code 1965, p. ii, Accessed April 28, 2019, <https://ptgns.ns.gov.my/NLC%20Review%20Consultation%20Paper.pdf>

⁴⁴¹ National Land Code 1965, section 206. "(1) Subject to the following provisions of this section- (a) every dealing under this Act shall be effected by an instrument complying with the requirements of sections 207 to 212; and (b) no instrument effecting any such dealing shall operate to transfer the title to any alienated land or, as the case may be, to create, transfer or otherwise affect any interest therein, until it has been registered under Part Eighteen."

⁴⁴² National Land Code 1965, section 375. "(1) The Registrar shall be responsible for the safekeeping of-
(a) every register of title maintained under this Act or any previous land law by him or any predecessor in office;

(b) all instruments registered under this Act or any previous land law and filed in the Registry or Land Office in question; and

(c) all other instruments, and all books and other records including digital data and information on any matters virtually stored in the land database of land Registry and the Disaster Recovery Centre, required by or under this Act or any previous land law to be filed or kept in that Registry or Land Office.

⁴⁴³ National Land Code 1965, section 78. "(3) The alienation of State land shall take effect upon the registration of a register document of title there to pursuant to the provisions referred to sub-section (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time."

⁴⁴⁴ National Land Code 1965, section 77. "(1) The titles under which State land may be alienated under this Act are-
(a) Registry title and Land Office title (being forms of final title), and
(b) qualified title."

The Final title can be classified according to the type of land, namely,

1) Land Office title

The Land Office title or Geran Mukim⁴⁴⁵ is under the operation of the Land Office. Such title is issued for country land not over 4 hectares (40,000 square meters or 25 Rai)⁴⁴⁶ which could be either perpetual (Mukim grant)⁴⁴⁷ or a specific term (Mukim lease).⁴⁴⁸ In general, a residence is granted the Land Office title.

2) Registry title

The Registry title or Geran Daerah⁴⁴⁹ is under the operation of the Registrar of Title. The Registry title is usually issued for the following cases:⁴⁵⁰

- Town or village land;
- Any lot of country land exceeding 4 hectares in area (40,000 square meters or 25 Rai); and
- Any part of the foreshore or sea-bed.

The Registry title could be in the form of a Grant for perpetuity⁴⁵¹ or a State lease for a specific term.⁴⁵² Although the law imposes specific criteria of both the Land Office title and Registry title, the Registrar may grant a Registry title for the land not over 4 hectares (40,000 square meters or 25 acres) if the land is deemed appropriate.⁴⁵³

⁴⁴⁵ National Land Code 1965, section 5. "Land Office title" means title evidenced by a Mukim grantor Mukim lease, or by any document of title registered in a Land Office under the provisions of any previous land law;"

⁴⁴⁶ National Land Code 1965, section 77 (3) "Of the said forms of final title-(b) Land Office title shall be appropriate in the case of any lot of country land, not exceeding four hectares in area".

⁴⁴⁷ National Land Code 1965, section 5. "Mukim grant" means a register document of title in Form 5D (that is to say, in the form appropriate under this Act to land held under Land Office title in perpetuity);"

⁴⁴⁸ National Land Code 1965, section 5. "Mukim lease" means a register document of title in Form 5E (that is to say, in the form appropriate under this Act to land held under Land Office title for a term of years);

⁴⁴⁹ National Land Code 1965, section 5. "Registry title" means title evidenced by a grantor State lease, or by any document of title registered in a Registry under the provisions of any previous land law;"

⁴⁵⁰ National Land Code 1965, Section 77(3). "Of the said forms of final title-

(a) Registry title shall be appropriate in the case of-

(i) town or village land,
 (ii) any lot of country land exceeding four hectares in area, and
 (iii) any part of the foreshore or sea-bed;

⁴⁵¹ National Land Code 1965, section 5. "grant" means a register document of title in Form 5B (that is to say, in the form appropriate under this Act to land held under Registry title in perpetuity);"

⁴⁵² National Land Code 1965, section 5. "State lease" means a register document of title in Form 5C (that is to say, in the form appropriate under this Act to land held under Registry title for a term of years)"

⁴⁵³ National Land Code 1965, section 77 (3). "Provide that-

(b) Qualified title

The Qualified title is a document of title issued before an accurate survey is conducted.⁴⁵⁴ Such land will be granted a land title under conditions. The Qualified title can convert to the Final title after the survey was conducted with the approval of the Director of Survey and Mapping and Director-General of Lands and Mines. The Qualified title may be restricted e.g. such land is not capable of being subdivided or partitioned or with structures.⁴⁵⁵

If the land is being granted the Land Office title, the Registrar will issue the Qualified title called HS (M). If the land is being granted the Registry title, the Registrar will issue a Qualified title called HS (D). "HS" stands for Hakmilik Sementara which means Qualified title. "M" stands for Mukim which means registered by the Land Office. "D" stands for Daerah which means registered by the Registrar Office.

6.1.3 Sales of land

When the State issues the Final title, such land is eligible for sale.⁴⁵⁶ A transaction on land is completed only when the registration with the Registrar.⁴⁵⁷ Form 14A is required by Malaysian law.⁴⁵⁸

(i) the State Authority may if it thinks fit, on approving the alienation of any country land, direct that the land shall ultimately be held under Registry title notwithstanding that its area does not exceed four hectares,"

⁴⁵⁴ National Land Code 1965, section 5. "qualified title" means title issued under Chapter 2 or 3 of Part Eleven, that is to say, in advance of survey;"

⁴⁵⁵ National Land Code 1965, Section 176. "(2) Qualified title shall confer on the proprietor the like rights in every respect as those conferred (as mentioned in section 92) by final title, save that- (a) the boundaries of the land shown on the document of title there to shall be provisional only except so far as any of them may have been established by any earlier survey, and (b) unless otherwise provided for under this Act, the land shall not be capable of being subdivided or partitioned, or included in any amalgamation, nor shall any building thereon be capable of subdivisions."

⁴⁵⁶ National Land Code 1965, section 92. "(2) The rights exercisable by any person or body to whom State land has been alienated under final title shall include the following - (b) the right (subject as aforesaid) to sub-divide any building thereon in accordance with the provisions of Chapter 4 of Part Nine; (c) the right (subject as aforesaid) to effect transfers, leases, charges, surrenders, and any other dealings permitted under Division IV;"

⁴⁵⁷ National Land Code 1965, section 206(1). "(b) no instrument effecting any such dealing shall operate to transfer the title to any alienated land or, as the case may be, to create, transfer or otherwise affect any interest therein, until it has been registered under Part Eighteen."

⁴⁵⁸ National Land Code 1965, section 215. "(1) The transfer under this Act of any alienated land shall be effected by an instrument in Form 14A."

| <p style="text-align: center;">National Land Code Act No 95 Of 1965 FIRST SCHEDULE</p> <hr/> <p>Form 14A [Section 215, 217, 218] - Transfer Of Land, Share Or Lease [Heading]</p> <p style="text-align: center;"><i>National Land Code</i> Form 14 A <i>(Sections 216, 217, 218)</i></p> <p style="text-align: center;">TRANSFER OF LAND, SHARE OR LEASE [Heading]</p> <p>I, _____ of _____ "proprietor of the land/undivided share in the land - "lessee/sub-lessee under the "lease/sub-lease - described in the schedule below. "(a) In consideration of the sum of RM _____ the receipt of which sum I hereby acknowledge; "(b) In consideration of - _____ [Here state the consideration (if other than money) and from whom it moves.] "(c) For no consideration; Hereby transfer to the transferee named below, all such title or interest as is vested in me. Dated this _____ day of _____, 19 _____</p> <p style="text-align: right;">_____ <i>Signature (or other form of execution) by or on behalf of transferor</i></p> <p style="text-align: center;">[Attestation Clause]</p> <p>I, _____ of _____ accept this transfer. We, _____</p> | <p>accept this transfer of the undivided shares in the land as stated against names below:-</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; width: 40%;">Names of transferees</th> <th style="text-align: left; width: 30%;">Address</th> <th style="text-align: left; width: 30%;">Shares of Land</th> </tr> <tr> <td colspan="3" style="height: 100px; vertical-align: top;"> <div style="text-align: right; margin-right: 20px;">(Signature or other form of execution) by or on behalf of transferees</div> <div style="text-align: center;">[Attestation Clause]</div> <div style="text-align: center;">[Schedule]</div> <div style="text-align: center;">*Delete as appropriate.</div> </td> </tr> </table> <p style="text-align: center; font-size: small;">Copyright © 2005 PHOTOLANDER. All rights reserved.</p> | Names of transferees | Address | Shares of Land | <div style="text-align: right; margin-right: 20px;">(Signature or other form of execution) by or on behalf of transferees</div> <div style="text-align: center;">[Attestation Clause]</div> <div style="text-align: center;">[Schedule]</div> <div style="text-align: center;">*Delete as appropriate.</div> | | |
|---|---|----------------------|---------|----------------|--|--|--|
| Names of transferees | Address | Shares of Land | | | | | |
| <div style="text-align: right; margin-right: 20px;">(Signature or other form of execution) by or on behalf of transferees</div> <div style="text-align: center;">[Attestation Clause]</div> <div style="text-align: center;">[Schedule]</div> <div style="text-align: center;">*Delete as appropriate.</div> | | | | | | | |

Form 14A Transfer of Land

After the alienation, all rights and obligations on the land will be transferred to the transferee,⁴⁵⁹ for instance, any tenancy, servitude and other agreements obtained prior to the alienation.⁴⁶⁰ Besides the prohibitions or restrictions under the National Land Code, other laws may also prohibit or restrict the alienation. For example, a law concerning reservation area in other states involving the Malaysian peninsula prohibits the alienation of the reserved land to a non-citizen.

⁴⁵⁹ National Land Code 1965, section 215. "(2) The title of the transfer or shall pass to and vest in the transferee upon the registration of any such transfer, together also with the benefit of any registered interests then enjoyed with the land."

⁴⁶⁰ National Land Code 1965, section 215. "(3) The transferee of any alienated land shall hold the same subject to-

- (a) any lease, charge or other registered interest subsisting in respect thereof at the time the transfer is registered;
- (b) subject to sub-section (3) of section 213, any tenancy exempt from registration granted by the transferor or any predecessor in title;
- (c) all conditions and restrictions in interest then applicable thereto; and
- (d) all other matters then appearing on, or referred to in, the register document of title."

6.1.4. Land leasing

Individual persons shall be capable of transfer any lease of alienated land or any tenancy exempt from registration to others.⁴⁶¹ In general, land leasing shall be made in a registered instrument but the tenancy may not require the instrument.⁴⁶² A tenancy may be made verbally and exempt from the registration.⁴⁶³

However, if the lease is registered, the entitlement on the land shall be valid and indefeasible.⁴⁶⁴ Therefore, the registered claims are superior to unregistered claims.

Types of land leasing are as follows

(1) Land leasing not exceeding 3 years

Land leasing not exceeding 3 years is considered "Tenancy" which is exempted from registration and could be granted in a verbal or written form.⁴⁶⁵

⁴⁶¹ National Land Code 1965, section 214.

⁴⁶² National Land Code 1965, section 206. "(1) Subject to the following provisions of this section-

(a) every dealing under this Act shall be effected by an instrument complying with the requirements of sections 207 to 212; and

(b) no instrument effecting any such dealing shall operate to transfer the title to any alienated land or, as the case may be, to create, transfer or otherwise affect any interest therein, until it has been registered under Part Eighteen.

(2) The provisions of sub-section (1) shall not apply to-

(a) the creation of, or other dealings affecting, tenancies exempt from registration (which may be effected, instead, as mentioned in subsection (2) of section 213); or

(b) the creation of liens (which may be created, instead, as mentioned in section 281)."

⁴⁶³ National Land Code 1965, section 213. "Special provisions with respect to tenancies exempt from registration. (1) In this Act "tenancy exempt from registration" means-

(a) any tenancy or sub-tenancy for a term not exceeding three years granted pursuant to section 223; and

(b) any tenancy or sub-tenancy for a team not exceeding one year granted pursuant to the provisions of any previous land law."

⁴⁶⁴ National Land Code 1965, section 340. "Registration to confer indefeasible title or interest, except in certain circumstances.

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible."

⁴⁶⁵ National Land Code 1965, section 223. "Power of proprietors, lessees, etc., to grant tenancies not exceeding 3 years.

(1) Subject to the provisions of sections 225 and 226, tenancies (or, as the case may be, sub tenancies) for terms not exceeding three years may be granted as follows-

(a) by the proprietor of any alienated land, in respect of the whole or any part thereof;

(b) by any lessee or sub-lessee for the time being of any alienated land, in respect of the whole or any part of the land comprised in his lease or sub-lease;

(c) by any person for the time being holding any alienated land under such a tenancy of sub-tenancy, in respect of the whole or any part of the land so held.

(2) As provided by sub-sections (1) and (2) of section 213, tenancies and sub-tenancies granted pursuant to this section shall constitute tenancies exempt from registration, and may be so granted either by word of mouth or by a written instrument in any form whatsoever."

(2) Land leasing exceeding 3 years

Land leasing exceeding 3 years is considered “Lease.” The leasing period could be up to a maximum of 99 years if leasing a whole of the land, and up to 30 years if leasing a part of the land.⁴⁶⁶

Form 15A is required in the case of a Lease of land.⁴⁶⁷

| | |
|---|---|
| <p style="text-align: center;">National Land Code Act No 96 Of 1965</p> <p style="text-align: center;">FIRST SCHEDULE</p> <hr/> <p>Form 15A [Section 221] - Lease Of Land [Heading]</p> <p style="text-align: center;"><i>National Land Code</i></p> <p style="text-align: center;">Form 15 A</p> <p style="text-align: center;">(Section 221)</p> <p style="text-align: center;">LEASE OF LAND</p> <p style="text-align: center;">[Heading]</p> <p>I, of proprietor of the land described in the schedule below, hereby lease to the lessee named below - “the whole of the land; “that part of the land specified in the plan and description attached.</p> <p>2. The term of this lease is- “(a) for the fixed period of years beginning on the day of 19..... and terminating on the day of 19..... “(b) from to beginning on the day of 19..... [+ Here enter “month”, “quarter”, “year” etc., as the case may be.]</p> <p>3. This lease is subject to the provisions of the National Land Code and more particularly, to those of Part Fifteen thereof and to all the express provisions annexed thereto.</p> <p>Dated this day of 19.....</p> <p style="text-align: right;">Signature (or other form of execution) by or on behalf of lessor</p> <p style="text-align: center;">[Attestation Clause]</p> <p>I, of hereby accept this lease.</p> | <p style="text-align: right;">Signature (or other form of execution) by or on behalf of lessee</p> <p style="text-align: center;">[Attestation Clause]</p> <p>I, of chargee of the land by virtue of Charge Registered No hereby consent to the granting of this lease.</p> <p>[To be completed only where the land is under charge and where consent to this lease is not included in the instrument of charge]</p> <p>Dated this day of 19.....</p> <p style="text-align: right;">Signature (or other form of execution) by or on behalf of chargee</p> <p style="text-align: center;">[Attestation Clause] [Schedule]</p> <p style="text-align: center;">ANNEXURE</p> <p>The express provisions to which this lease is subject -</p> <p style="text-align: center;">(Continuation Sheets to be added as required)</p> <p style="text-align: center;">“Delete as appropriate</p> <p style="text-align: center; font-size: small;">Copyright © 2005 PHMS Limited. All rights reserved.</p> |
|---|---|

Form 15A Lease of Land

⁴⁶⁶ National Land Code 1965, section 221. “(1) Subject to the provisions of sections 225 and 226, the proprietor of any alienated land may grant leases of the whole or any part thereof in accordance with the following provisions of this section.

(2) Every lease granted pursuant to this section shall be for a term exceeding three years.

(3) The maximum term for which any lease may be so granted shall be-
(a) ninety-nine years if it relates to the whole of any alienated land, and
(b) thirty years if it relates to a part only thereof.”

⁴⁶⁷ National Land Code 1965, section 221. “(4) Every such lease shall be granted by an instrument in Form 15A; and in any case where the lease relates to a part only of any alienated land, there shall be attached to the instrument a plan and description sufficient to enable the part to be accurately identified.”

Form 15B is required in the case of a Sub-lease of land.⁴⁶⁸

The image shows two pages of Form 15B Sub-lease of Land. The left page is the front cover and the right page is the back cover. Both pages contain fields for signature, date, and attestation.

Page 1 (Left):

- National Land Code Act No 56 OF 1965
- FIRST SCHEDULE
- Form 15B [Section 222] - Sub-lease Of Land (Heading)
- National Land Code
- Form 15 B
- (Section 222)
- SUB-LEASE OF LAND
- (Heading)
- I, _____ of _____
- "lessee/sub-lessee under the "lease/sub-lease described in the schedule below of "the whole/part of the land so described;
- hereby sub-lease to the sub-lessee named below :-
- "The whole of the land comprised in such "lease/sub-lease,
- "such part of the land comprised in such "lease/sub-lease as is specified in the plan and description attached.
- 2. The term of this sub-lease is:-
- "(a) for the fixed period of _____ years beginning on the _____ day of _____, 19 _____ and terminating on the _____ day
- "(b) from _____ to _____ beginning on the _____ day of _____, 19 _____
- [= Here enter "month", "quarter", "year" etc., as the case may be.]
- 3. This sub-lease is subject to the provisions of the National Land Code and, more particularly, to those of Part Fifteen thereof and to all the express provisions annexed thereto.
- Dated this _____ day of _____, 19 _____.
- Signature (or other form of execution) By or on behalf of "lessee/sub-lessee
- (Attestation Clause)

Page 2 (Right):

- I, _____ of _____ hereby accept this lease.
- Signature (or other form of execution) by or on behalf of sub-lessee
- (Attestation Clause)
- "I, _____ of _____ chargee of the "lease/sub-lease above referred to by virtue of Charge Registered No _____ hereby consent to the granting of this sub-lease.
- (To be completed only where the schedule lease or sub-lease is under charge and where consent to this sub-lease is not included in the instrument of charge.)
- Dated this _____ day of _____, 19 _____.
- Signature (or other form of execution) by or on behalf of chargee
- (Attestation Clause)
- (Schedule)
- ANNEXURE
- The express provisions to which this sub-lease is subject:-
- (Continuation Sheets to be added as required)
- "Delete as appropriate.
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Form 15B Sub-lease of Land

6.1.5 Taxation on Land

In Malaysia, taxes levied on all alienated land are called "Quit-rent" and "Assessment Tax."

- (a) Quit-rent or Cukai Tanah is annually levied from owners or proprietors by calculating from types and sizes of land by the square foot.⁴⁶⁹ In general, the tax rate is not over 100 RM (approx. 1,000 THB) per annum.⁴⁷⁰
- (b) Assessment Tax or Cukai Pintu is levied twice a year according to a leased fee of certain immovable property.⁴⁷¹ In general, the tax rate is 4% per

⁴⁶⁸ National Land Code 1965, section 222, "(4) Every such sub-lease shall be granted by an instrument in Form 15B; and in any case where the sub-lease relates to a part only of the land comprised in the grantors's lease or sub-lease, there shall be attached to the instrument a plan and description sufficient to enable the part to be accurately identified."

⁴⁶⁹ Kuala Kangsar Municipal Council, "FAQ", Accessed April 28, 2019, <http://www.mpkpk.gov.my/en/faq>

⁴⁷⁰ Transferwise, "Paying property tax in Malaysia? Here's your 2017-2018 guide," Accessed April 28, 2019, <https://transferwise.com/au/blog/property-tax-in-malaysia>

annum.⁴⁷² The calculation is made of the annual leased fees (12 months) multiplied by the tax rate of immovable property's type e.g. residence, at a 4% tax rate. If the monthly rental fees are 3,000 RM, the tax is 1,440 RM (rental 3,000 x 12 months x 4% tax rate).⁴⁷³

6.1.6 Tax on purchased and sale on Land

The sale of immovable property is subject to the Stamp Duty and Real Property Gains Tax.

(1) Stamp Duty

A land purchaser shall pay for stamp duty for registered land alienation with a progressive tax.⁴⁷⁴

| Purchasing Price (Ringgit Malaysian) | Stamp Duty Rate |
|--------------------------------------|-----------------|
| Not exceeding RM 100,000 | 1% |
| In excess of RM 100,000 – 500,000 | 2% |
| In excess of RM 500,000 | 3% |

(2) Real Property Gains Tax

Gains from the sale of real property are subject to the real property gains tax under the Real Property Gains Tax Act 1976.⁴⁷⁵ The following category of disposal is subject to different tax rates.⁴⁷⁶

⁴⁷¹ Kuala Kangsar Municipal Council, "FAQ", Accessed April 28, 2019, <http://www.mpkpkpk.gov.my/en/faq>

⁴⁷² Transferwise, "Paying property tax in Malaysia? Here's your 2017-2018 guide," Accessed April 28, 2019, <https://transferwise.com/au/blog/property-tax-in-malaysia>

⁴⁷³ Kim Wong, "All Malaysians Should Be Aware Of These Property Taxes," Accessed April 28, 2019 <https://wmaproperty.com/blog/all-malaysians-should-be-aware-of-these-property-taxes/>

⁴⁷⁴ Stamp Duty 1949, First Schedule.

"32 CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE: (a) On sale of any property (except For every RM100 or stock, shares, marketable securities fractional part of and accounts receivables or book RM100 of the amount debts of the kind mentioned in of the money value of paragraph (c)) the consideration or the market value of the property, whichever is the greater—

(i) RM1.00 on the first RM100,000;

(ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM 500,000;

(iii) RM3.00 on any amount in excess of RM500,000."

| Category of disposal | Rate of tax for juristic persons (e.g. a company limited) | Rate of tax for individuals (citizens and permanent residents) | Rate of tax for individuals who are non-citizens |
|---|---|--|--|
| Disposal within 3 years after the date of acquisition of the chargeable asset | 30% | 30% | 30% |
| Disposal in the 4 th year | 20% | 20% | 30% |
| Disposal in the 5 th year | 15% | 15% | 30% |
| Disposal in the 6 th year or year thereafter | 5% | 0% | 5% |

6.2 Use of land

6.2.1 Category of Land Use

The use of land under the National Land Code 1965 categorizes 3 different types of land, namely, land for agriculture, land for building and land for industry.⁴⁷⁷ The scope of land use under the law could be explained as follows:

(1) Land for Agriculture

This category is for agricultural purposes which allows no building on the land,⁴⁷⁸ except the houses or buildings of owners or agricultural or livestock's workers for

⁴⁷⁵ Real Property Gains Tax Act 1976, Section 3. "(1) A tax, to be called real property gains tax, shall be charged in accordance with this Act in respect of chargeable gain accruing on the disposal of any real property (hereinafter referred to as "chargeable asset")."

⁴⁷⁶ Real Property Gains Tax Act 1976, Schedule 5.

"Except where Part II or Part III is applicable, the following rates of tax shall apply:

| | |
|--|-------------|
| Category of disposal | Rate of tax |
| Disposal within three years after the date of acquisition of the chargeable asset | 30 per cent |
| Disposal in the fourth year after the date of acquisition of the chargeable asset | 20 per cent |
| Disposal in the fifth year after the date of acquisition of the chargeable asset | 15 per cent |
| Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter | Nil |

⁴⁷⁷ National Land Code 1965, section 52, "(1) For the purposes of this Act there shall be three categories of land use, to be known respectively as "agriculture", "building" and "industry"..."

residential purpose which is not exceeding 1/5 of the whole areas; but it shall not be exceeding 2 hectares (or 20,000 Square meters or 12.5 acres) or buildings involving agriculture such as rice mill including other buildings located on agricultural land which are deemed appropriate by the government.⁴⁷⁹

In addition, such land shall have good faith in the commencement of agriculture and it shall be prepared for cultivation within 12 months from the first date applying benefits of the Land for Agriculture.⁴⁸⁰ The said area of the land shall be continuously cultivated. Each round of cultivation shall not exceed 12 months.⁴⁸¹

(2) Land for Buildings

The land for construction or buildings shall be built within 2 years since the first date of applying for benefits from the Land for Buildings. Such area of land is not subject to agricultural or industrial purposes.⁴⁸² Any altered or extended of buildings shall be permitted in written by the relevant authorities.⁴⁸³

⁴⁷⁸ National Land Code 1965, section 115, "(1) Where any alienated land is subject by virtue of any provision of this Act to the category "agriculture", the following implied conditions shall, subject to sub-section (3), apply thereto- (a) that no building shall be erected on the land other than a building or buildings to be used for one or more of the purposes specified or referred to in subsection (4);"

⁴⁷⁹ National Land Code 1965, section 115, "(4) The purposes referred to in paragraph (a) of sub-section (1) are the following-

(a) the purposes of a dwelling-house for the proprietor of the land or any other person lawfully in occupation thereof, or for the servants of, or any persons employed for agricultural purposes by, the proprietor or any other such person: Provided that the dwelling-house for the proprietor of the land or any other person lawfully in occupation thereof shall not occupy more than one-fifth of the whole area of the land or two hectares, whichever is the lesser;

(b) the purposes of agriculture;

(c) the purpose of extracting or processing raw material from any agricultural produce of such land;

(d) the purpose of preparing for distribution any such material or produce, or any honey-bees, livestock or reptiles kept or bred on such land, or the produce of such livestock or aquaculture on such land;

(e) the purposes of providing educational, medical, sanitary or other welfare facilities, including (so far as they are provided primarily for use by persons employed on the land) facilities for the purchase of goods and other commodities;

(f) any purpose which the State Authority may prescribe for the purposes of this section by rules under section 14;

(g) any purpose which the State Authority may think fit to authorise in the circumstances of any particular case;

(h) any purpose incidental to a purpose falling within any of the preceding paragraphs."

⁴⁸⁰ National Land Code 1965, section 115 (1), "(b) that a bona fide commencement of cultivation of the land shall be made within twelve months of the relevant date;"

⁴⁸¹ National Land Code 1965, section 115 (1), (e) that the said area of the land shall be continuously cultivated: Provided that the condition specified in paragraph (e) shall be regarded as complied within the case of any area of the land so long as any period during which less than the whole thereof is cultivated does not exceed twelve months

⁴⁸² National Land Code 1965, section 116 (1), "(1) Where any alienated land is subject by virtue of any provision of this Act to the category "building", the following implied conditions shall, subject to sub-section (3), apply thereto-

(a) that, unless on the relevant date such a building already existed on the land, there shall within two years of that date be erected thereon a building suitable for use for one or more of the purposes specified or referred to in sub-section (4);

The buildings on this area of land, in general, are for residential, commercial, exhibiting, administrative purposes e.g. education, medicine, entertainment or other likewise relevance including other building which the authority see fit to authorize to build.⁴⁸⁴

(3) Land for Industry

The land for industry shall be used for industrial purposes e.g. a factory or a warehouse.⁴⁸⁵ Such industry shall be commenced operation within 3 years since the first date applying for benefits from the Land of Industry.⁴⁸⁶ Any altered or extended of buildings shall be permitted in written by the relevant authorities. Any building located on this type of industrial land may be used for facilitation purposes such as education, medicine; for the proprietor or the industrial workers of the land, or other likewise relevance including other buildings which the authority sees fit to authorize to build.⁴⁸⁷

(b) that no part of the land shall be used for agricultural or industrial purposes (except in so far as the erection or maintenance of any building for a purpose or purposes falling within paragraph (f) or (g) of sub-section (4) may constitute such a use);"

⁴⁸³ National Land Code 1965, section 116 (1), "(d) that no such building shall be demolished, altered or extended without the prior consent in writing of the appropriate authority".

⁴⁸⁴ National Land Code 1965, section 116 (4), "The purposes referred to in paragraph (a) of sub-section (1) are the following-

- (a) residential purposes;
- (b) administrative or commercial purposes, or the purposes of passenger transport;
- (c) the purposes of exhibiting, selling by retail, repairing or otherwise dealing in any goods or commodities, or of providing any services;
- (d) the purposes of providing educational, medical, sanitary or other welfare facilities;
- (e) the purposes of entertainment, refreshment or recreation;
- (f) any purpose which the State Authority may prescribe for the purposes of this section by rules under section 14;
- (g) any purpose which the State Authority may think fit to authorise in the circumstances of any particular case;
- (h) any purpose incidental to a purpose falling within any of the preceding paragraphs."

⁴⁸⁵ National Land Code 1965, section 117 (1), "Where any alienated land is subject by virtue of any provision of this Act to the category "industry", the following implied conditions shall, subject to sub-section (2), apply thereto-

(a) that it shall be used only for industrial purposes, that is to say, for the purposes of the erection or maintenance of factories, workshops, foundries, warehouses, docks, jetties, railways or other buildings or installations for use for or in connection with one or more of the following purposes-

- (i) manufacture;
- (ii) smelting;
- (iii) the production or distribution of power; (iv) the assembling, processing, storage, transport or distribution of goods, or other commodities; (v) such other purposes as the State Authority may prescribe for the purposes of this section by rules under section 14;

⁴⁸⁶ National Land Code 1965, section 117 (1), "(B) that the industry shall commence operations within three years of the relevant date and that every building or installation thereon (whensoever erected or installed) shall be maintained in repair;"

⁴⁸⁷ National Land Code 1965, section 117 (1), "without the prior consent in writing of the appropriate authority: Provided that the condition specified in paragraph (a) shall not prevent the maintenance or erection on the land of any building used or to be used-

6.2.2 Law on Town and Country Planning

An important law on town and country planning in Malaysia is the Town and Country Planning Act 1976 or TCPA. The main purpose of the Act is to impose regulations and the use of land with utility and efficiency to the public, including the determination of a clear urban development plan.

(1) Types of the development plan

The urban development plan shall start from the big picture by the Federation of Malaysia before states and districts respectively.

(a) National Physical Plan

This plan sets forth strategies and directions for the national physical development prepared and proposed by the Director-General of Town and Country Planning to the National Physical Planning Council before approving to be the National physical plan subsequently.⁴⁸⁸ The National Physical Plan determines an overall national development plan, as follows:⁴⁸⁹

- 1) Determining area framework of the country;
- 2) Developing country's competitiveness;
- 3) Developing agriculture;
- 4) Strengthening the tourism business;
- 5) Managing the well-being of human;
- 6) Environmental saving;
- 7) Connecting transportation network of the country;

(i) for the provision of educational, medical, sanitary or other welfare facilities for the proprietor of the land or any other person lawfully in occupation thereof, or for the servants of, or any person employed for industrial purposes by, the proprietor or any other such person.

(ii) for any purpose which the State Authority may think fit to authorise in the particular circumstances of the case."

⁴⁸⁸ Town and Country Planning Act 1976, section 6B. "(1) The Director-General of Town and Country Planning shall, upon the direction of the Council, prepare and submit to the Council for its approval a draft national physical plan which covers Peninsular Malaysia.

(2) The draft national physical plan shall—

(a) be a written statement formulating strategic policies for the purpose of determining the general directions and trends of the physical development of the nation;"

⁴⁸⁹ Foziah Johar, "Urban Planning in ASEAN Developing Countries: The Malaysian Case," Accessed, April 28, 2019, http://pwk.fst.uin-alauddin.ac.id/file/pwk_file/MAKASSAR1.pdf.

8) Preparing proper infrastructure.

The National Physical Plan shall be reviewed every 5 years.⁴⁹⁰ The latest version is National Physical Plan 2020 for the environmental physical and sustainable development plan.⁴⁹¹

(b) Structure Plan

The Structure Plan is for policy-making and general proposals for the use of land and urban development at the state level. The State Director shall prepare and submit the draft Structure Plan to the State Planning Committee to approve the structure plan at the state level.⁴⁹²

The Structure Plan strategizes for policy-making, for instance, environmental development, physical well-being, communication development, traffic management, economic and social well-being development and promotion of economic growth as well as a sustainable development⁴⁹³ which will lead to development and local planning at the district level.⁴⁹⁴

The Structure planning at the state level requires to have key elements on physical, economic, social, and environmental in the area, this includes size, factors and geographical distribution of the population as well as the communication system, transportation, and traffic in that area.⁴⁹⁵

⁴⁹⁰ Town and Country Planning Act 1976, section 6B. “(4) The national physical plan shall be reviewed every five years in tandem with the review of the National Five Year Development Plans, or as and when directed by the Council.”

⁴⁹¹ Mohd Sukuran bin Taib and Ho Chin Siong, “4.1 The National Physical Plan, “Planning system in Malaysia”, Accessed, April 28, 2019, <http://epublication.fab.utm.my/154/1/Sustainable-Development0802.pdf>.

⁴⁹² Town and Country Planning Act 1976, section 8. “(1) The State Director shall, within such period as the Council or Committee may specify, prepare and submit to the Committee a report of his survey under section 7 and at the same time prepare and submit to the Committee for its approval a draft structure plan complying with subsection (3) for the State.”

⁴⁹³ Town and Country Planning Act 1976, section 8. “(3) The draft structure plan for the State shall be a written statement—

(a) formulating the policy and general proposals of the State Authority in respect of the development and use of land in that State, including measures for the improvement of the physical living environment, the improvement of communications, the management of traffic, the improvement of socio-economic well-being and the promotion of economic growth, and for facilitating sustainable development;”

⁴⁹⁴ Mohd Sukuran bin Taib and Ho Chin Siong, “4.2 The Structure Plan, “Planning system in Malaysia”, Accessed, April 28, 2019, <http://epublication.fab.utm.my/154/1/Sustainable-Development0802.pdf>.

⁴⁹⁵ Mohd Sukuran bin Taib and Ho Chin Siong, “4.2 The Structure Plan, “Planning system in Malaysia”, Accessed, April 28, 2019, <http://epublication.fab.utm.my/154/1/Sustainable-Development0802.pdf>.

(c) Local Plan

The Local Plan consists of details of a draft local plan on maps and specifies a guideline to the development and the use of land at the district level.⁴⁹⁸ The Local Planning authority oversees the preparation and submits the draft local plan to the State Planning Committee for approval.⁴⁹⁹

The Local Plan shall also describe the Structure Plan from the state level which relates to policies and proposals. The Local Plan requires detailed illustrations to demonstrate the development of proposals, the use of land's explanation, environmental protection measures, natural preservation plan, topography, conversation and reforestation, and creation of public spaces.⁵⁰⁰ The Local Plan is an overall and explanation of the plan and an ability to have a clear operational plan within the area.

⁴⁹⁸ Town and Country Planning Act 1976, section 15. "(1) After the expiry of the period afforded for making objections to or representations in respect of a draft local plan or, if such objections or representations have been duly made during that period, after considering the objections or representations, the local planning authority shall submit the draft local plan or the draft local plan as modified so as to take account of the objections or representations or of any matters arising therefrom, to the Committee for its approval."

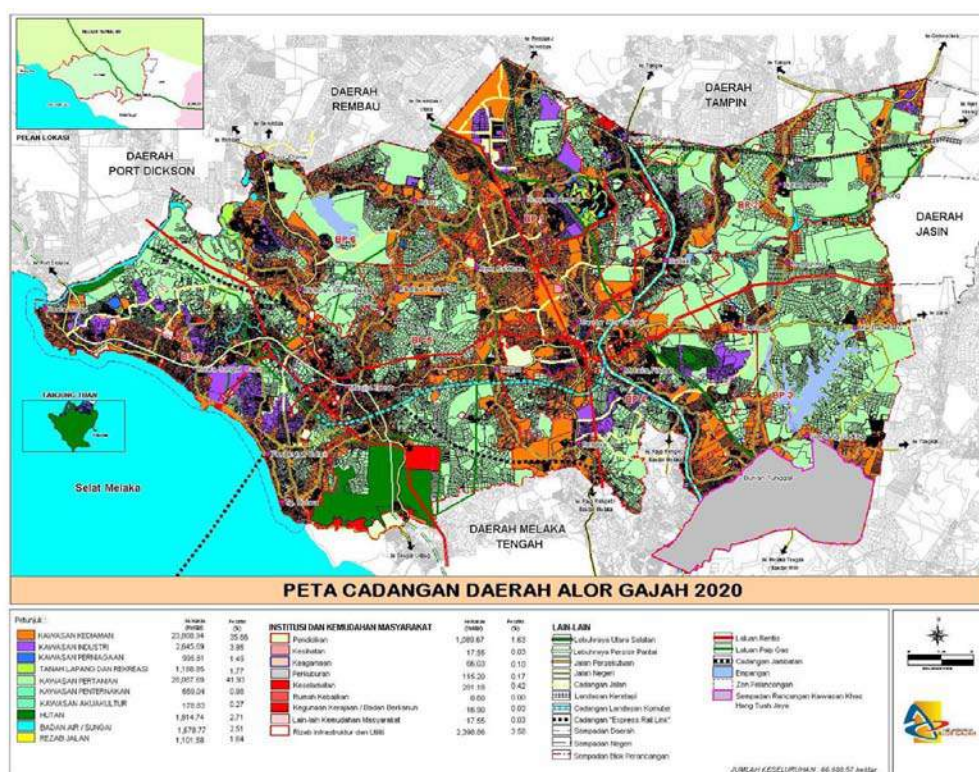
⁴⁹⁹ Town and Country Planning Act 1976, section 12. "(3) A draft local plan shall consist of a map and a written statement and shall—

(a) formulate, in such details as the local planning authority thinks appropriate, its proposals for—

- (i) the development of;
- (ii) the use of land in;
- (iii) the protection and improvement of the physical environment of;
- (iv) the preservation of the natural topography of;
- (v) the improvement of the landscape of; Town and Country Planning 31
- (vi) the preservation and planting of trees in;
- (vii) the making up of open spaces in;
- (viii) the preservation and enhancement of character and appearance of buildings in;
- (ix) the improvement of communications in; and
- (x) the management of traffic in, the area of the local plan; and

(b) contain such matters as may be prescribed or as the Committee may in any particular case specify."

⁵⁰⁰ Mohd Sukuran bin Taib and Ho Chin Siong, "4.3 The Local Plan, "Planning system in Malaysia", Accessed, April 28, 2019, <http://epublication.fab.utm.my/154/1/Sustainable-Development0802.pdf>.

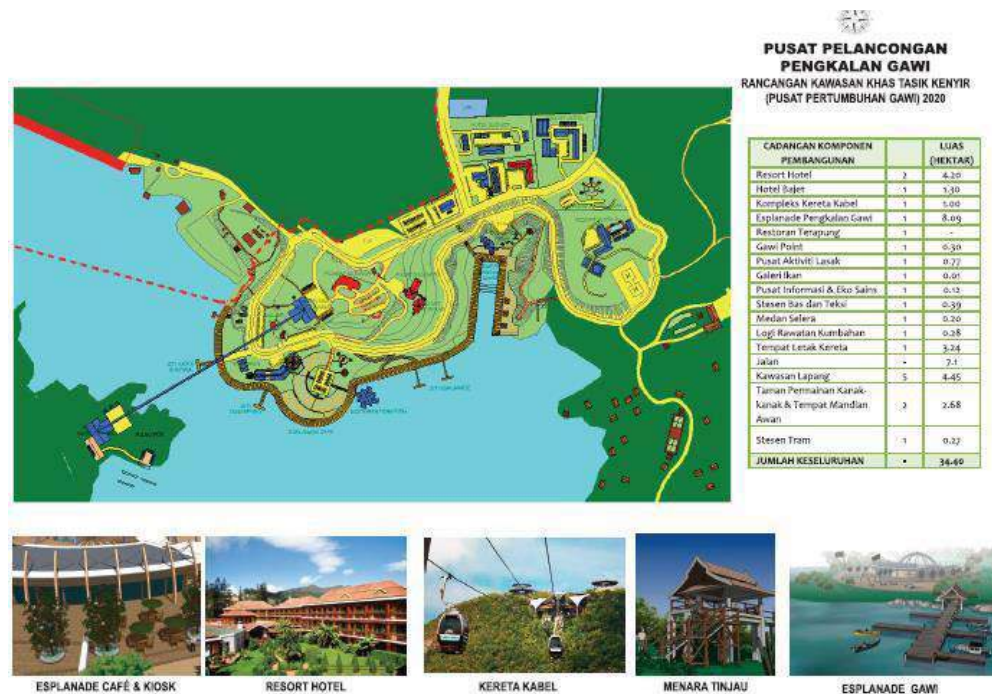


⁵⁰¹Foziah Johar, "Urban Planning in ASEAN Developing Countries: The Malaysian Case," Accessed, April 28, 2019, http://pwk.fst.uin-alauddin.ac.id/file/pwk_file/MAKASSAR1.pdf.

According to the above samples of the Local Plan in several districts, it includes maps and a breakdown of the use of land in detail each area by colors and other diagrams. The use of land shall conform with the specified Local Plan.⁵⁰²

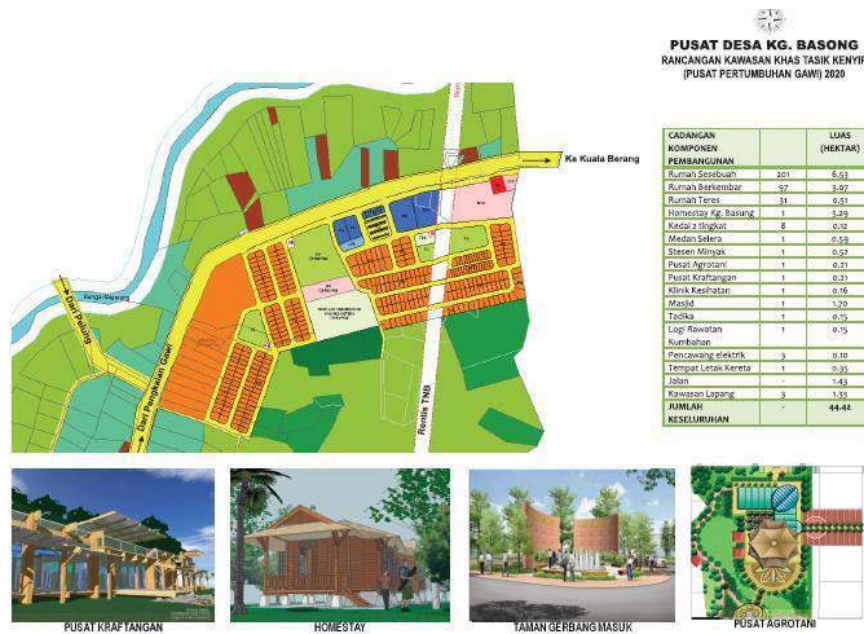
(d) Special Area Plan

This Special Area Plan has an equivalent status to the Structure Plan (or the Local Plan, as the case may be). It determines for a special case if there is any proposal from the local authority on the special development plan, e.g. a heritage conservation which is required to submit a proposal for the nature of the treatment in detail.⁵⁰³



⁵⁰² Town and Country Planning Act 1976, section 18. "(1) No person shall use or permit to be used any land or building otherwise than in conformity with the local plan."

⁵⁰³ Town and Country Planning Act 1976, section 16B. "(1) At any time during the preparation or upon the coming into effect of a structure plan or a local plan, a State Director or a local planning authority, on his or its own initiative or as directed by the Committee, may submit to the Committee a proposal for the designation of a special area for special and detailed treatment by development, redevelopment, improvement, conservation or management practice, or partly by one and partly by another method, of the whole or part of such special area, and the nature of the treatment proposed."



Samples of the Special Area Plan⁵⁰⁴

(2) Publicity in connection with the preparation of draft Structure Plans

When the draft Structure Plan has been prepared, the use of land shall conform to the specified plan. Hence, the publicity must get involved in determining the Structure Plan.⁵⁰⁵ This process including a survey photocopying and publishing such Structure Plan in the local newspapers for local communities to notice stating that copies of the survey are available for inspection to the relevant authorities. It shall determine a method of objections to the plan. Duration of making objections shall be not less than 1 month since the date of the first appearance of the notice in the newspapers; however, it may be extended once for more hearings, not more than 1 month.⁵⁰⁶

⁵⁰⁴Foziah Johar, "Urban Planning in ASEAN Developing Countries: The Malaysian Case," Accessed, April 28, 2019, http://pwk.fst.uin-alauddin.ac.id/file/pwk_file/MAKASSAR1.pdf.

⁵⁰⁵ Town and Country Planning Act 1976, section 9. "(1) When preparing a draft structure plan for the State and finally determining its content for submission to the Committee, the State Director shall take such steps as will in his opinion secure—

(a) that publicity is given in the State to the report of the survey under section 7 and to the matters that he proposes to include in the plan; and

(b) that persons who may be expected to desire an opportunity of making representations to the State Director in respect of those matters are made aware that they are entitled to, and are given, an opportunity of doing so, and the State Director shall consider every representation made within the prescribed period to him."

⁵⁰⁶ Town and Country Planning Act 1976, section 9. "(2) As soon as practicable after a draft structure plan has been submitted to the Committee, the State Director shall—

(a) publish, in three issues of at least two local newspapers, one of which being in the national language, a notice stating that copies of the plan are available for inspection at the office of the State Director and at such other places as he may determine and the time within which objections to the plan may be made to the Committee; and

In the case of the Local Plan, the law allowed the publicity to be part of the process of the preparation of the Local Plan by participating in the area to the draft Local Plan as well as giving any opinions.⁵⁰⁷

6.3 Authorities governing to the Land law

6.3.1. Department of Director-General of Lands and Mines or Jabatan Ketua Pengarah Tanah dan Galian Persekutuan. This department is responsible for the collection of databases on land and the whole land transaction in Malaysia.⁵⁰⁸

Address: Aras 4, Podium 1, Wisma Sumber Asli No.25. Persiaran Perdana, Presint 4, 62574 Putrajaya.

Telephone: +603-8000 8000

Website: <https://www.jkptg.gov.my/en>

6.3.2 Department of Town and Country Planning

This department is responsible for governance, studies, monitors, and operations on Town and Country Planning at the national and local levels as stipulated.⁵⁰⁹

Address: Cenderasari Road, 50646, Kuala Lumpur.

Telephone: +603-2265 0600

Website: www.townplan.gov.my

(b) make copies of the plan available for inspection at the places stated in the notice; and each copy shall be accompanied by a statement of the time, as stated in the notice, within which objections to the plan may be made to the Committee.

(3) The time within which objections to the draft structure plan may be made shall be not less than one month from the date of the first appearance of the notice under paragraph (2)(a) in a local newspaper in the national language, and any time stated in the notice may be extended once by the State Director by not more than one month in favour of any particular objector."

⁵⁰⁷ Town and Country Planning Act 1976, section 12A. "12A. Before commencing the preparation of a local plan, the local planning authority shall take such steps as will in its opinion secure—

(a) that publicity is given in its area to the draft local plan that will be prepared, its objectives and the purpose for its preparation, and matters that the local planning authority proposes to include in the plan;

(b) that persons who may be expected to desire an opportunity of making representations to the local planning authority in respect of those matters are made aware that they are entitled to, and are given, an opportunity of doing so."

⁵⁰⁸ Department of Director-General of Lands and Mines, "Departmental Function," Accessed April 28, 2019, <https://www.jkptg.gov.my/en/korporat/fungsi-jabatan>.

⁵⁰⁹ Federal Department of Town and Country Planning, "Functions of the Department," Accessed April 28, 2019, <https://www.townplan.gov.my/content.php?ID=20>.

7. Labour Laws

The Employment Act 1955 (Act 265) is the main legislation providing labour protection and worker welfare. According to the First Schedule of the Act, "an employee" means an employee who is protected under this Act which includes:

- any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed 2,000 Ringgit a month;
- any person, irrespective of the number of wages he earns in a month, who has entered into a contract of service with an employer, provided that the employed work is concerning manual labour or being an artisan, a supervisor of other employees engaged in manual labour, a boatman and a domestic servant.⁵¹⁰

The Employment Act 1955 applies to workers, regardless of their nationality, working in the Peninsular Malaysia⁵¹¹ and Labuan. Workers working in Sabah and Sarawak are governed by the Labour Ordinance, Sabah and the Labour Ordinance, Sarawak. Currently, worker welfare arranged by these three legislations is mostly similar.

Apart from the Employment Act 1955, as a parent law, there are several regulations, as subsidiary legislations,⁵¹² providing labour protection and worker welfare. Any terms or conditions of a contract of service less favourable to an employee

⁵¹⁰ Employment Act 1955. First Schedule of the Employment Act 1955 states that the provision of this Act not applicable to:

- 1) Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed two thousand Ringgit a month;
- 2) Any person who, irrespective of the number of wages he earns in a month, has entered into a contract of service with an employer to engage in manual labour including an artisan or apprentice, supervisor of other employees engaged in manual labour, operation or maintenance of any mechanically propelled vehicle and domestic servants.

⁵¹¹ Employment Act 1955, Section 1. "*This Act shall apply to *Peninsular Malaysia only*"

*NOTE—This Act has been extended to the Federal Territory of Labuan—see subsection 1(2) of the Federal Territory of Labuan (Extension and Modification of Employment Act) Order 2000 [P.U. (A) 400/2000] w.e.f. 1 November 2000.

⁵¹² Under the Employment Act 1955 as follows:

- Employment Regulations 1957
- Employment (Procedure - Reciprocal Provisions) Regulations 1957
- Employment (Employment of Women) (Female Conductors) Regulations 1958
- Employment (Employment of Women) (Shift Workers) Regulations 1970
- Employment (Limitation of Powers of Officers) Regulations 1993
- Employment (Minimum Rate of Maternity Allowance) Regulations 1976
- Employment (Termination and Lay-Off Benefits) Regulations 1980
- Employment (Limitation of Overtime Work) Regulations 1980

than the terms or conditions of service prescribed by the labour laws shall be void and of no effect to that extent.

The Ministry of Human Resources is empowered and responsible for administering, controlling and protecting all types of workers in Malaysia regardless of their nationality. Several legislations have been promulgated to provide and secure minimum labour welfare in Malaysia.

7.1 A Contract of Service or an Employment Agreement

In Malaysia, a contract of service can be made either in writing or oral. The Employment Act 1955 governs a contract of service which is made for a specified period exceeding 1 month, or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed 1 month. In such case, Section 10 provides that the contract must be executed in writing and it must contain a termination clause by both parties and a notice of termination of a contract.⁵¹³

It is required that a contract of service specify a wage period not exceeding 1 month.⁵¹⁴ Every employer shall pay wages to each of his employees not later than the 7th day after the last day of any wage period.⁵¹⁵ The wage must not less than the minimum wages according to the Minimum Wages Order 2016, under Section 23(1) of the National Wages Consultative Council Act 2011. The Order provides that an employee working in Peninsular Malaysia shall be paid an average minimum wage of not less than 1,000 Ringgit per month (about 10,000 Bahts). Those who work in Sabah, Sarawak and the Federal Territory of Labuan must be paid an average minimum wage of not less than 920 Ringgit per month (about 9,200 Bahts).⁵¹⁶

⁵¹³ Employment Act 1955, Section 10. "(1) A contract of service for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month, shall be in writing.

(2) In every written contract of service a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with this Part."

⁵¹⁴ Employment Act 1955, Section 18. "(1) A contract of service shall specify a wage period not exceeding one month.

(2) If in any contract of service no wage period is specified the wage period shall for the purposes of the contract be deemed to be one month."

⁵¹⁵ Employment Act 1955, Section 19. "(1) Subject to subsection (2), every employer shall pay to each of his employees not later than the seventh day after the last day of any wage period the wages, less lawful deductions earned by such employee during such wage period.

.....
(3) Notwithstanding subsections (1) and (2), if the Director-General is satisfied that payment within such time is not reasonably practicable, he may, on the application of the employer, extend the time of payment by a such number of days as he thinks fit."

⁵¹⁶ Minimum Wages Order 2016, Clause 3. as attached in the Annex.

7.2 Labour Welfares under the Employment Act 1955

A worker who falls within the Employment Act 1955 would gain labour protection and welfares as summarized below:

Working Hours

Working hours mean the time during which an employee is engaged to work for his employer.⁵¹⁷

The working hours of every work must not more than 8 hours a day and not more than 48 hours a week.⁵¹⁸

Period of Leisure

An employee must not work consecutively for more than 5 hours. After 5 hour-working, an employer must arrange a period of leisure of not less than 30 minutes.

Weekly Rest Days

An employer must arrange for an employee a rest day at least 1 whole day in each week as the employer deems appropriate.⁵¹⁹ The employee is entitled to get paid on such a rest day.

An employee engaged in shift work shall be entitled to a rest period of continuous 30 hours which constitute a rest day.

Public holidays

An employer must arrange for an employee at least 11 public holidays which includes the National Day, Birthday of the Yang di-Pertuan Agong, Birthday of the Ruler

⁵¹⁷ Employment Act 1955, Section 60A. "(9) For the purposes of this Part -hours of work means the time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements.

⁵¹⁸ Employment Act 1955, Section 60A. "(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work—

- (a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;
- (b) more than eight hours in one day;
- (c) in excess of a spread over a period of ten hours in one day;
- (d) more than forty-eight hours in one week."

⁵¹⁹ Employment Act 1955, Section 59. "(1) Every employee shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer, and where an employee is allowed more than one rest day in a week the last of such rest days shall be the rest day for the purposes of this Part:

Provided that this subsection shall not apply during the period in which the employee is on maternity leave as provided under section 37, or on sick leave as provided under section 60F, or during the period of temporary disablement under the Workmen's Compensation Act 1952 [Act 273], or under the Employees Social Security Act 1969 [Act 4].

or the Yang di-Pertua Negeri, Workers' Day and Malaysia Day. An employee is entitled to get paid at his ordinary rate on these public holidays. Moreover, the employee has the right to rest and get paid on any day appointed as a public holiday by the federal or state government under Section 8 of the Holidays Act 1951.⁵²⁰

Annual Leaves

An employer must arrange the annual leave for an employee who has been working for a certain period as specified by law. The employee has the right to get paid on the annual leave. A number of days of the annual leave of each employee depending on the period of service he has been working for his employer as follows:⁵²¹

- if the employee has been working for more than 12 months but less than 2 years, he will be entitled to 8 days of paid annual leave for every 12 months;
- if the employee has been working for 2 years but less than 5 years, he will be entitled to 12 days of paid annual leave for every 12 months;
- if the employee has been working for more than 5 years, he will be entitled to 16 days of paid annual leave for every 12 months;

⁵²⁰ Employment Act 1955, Section 60D. "(1) Every employee shall be entitled to a paid holiday at his ordinary rate of pay on the following days in any one calendar year:

(a) on eleven of the gazetted public holidays, five of which shall be—

(i) the National Day;

(ii) the Birthday of the Yang di-Pertuan Agong;

(iii) the Birthday of the Ruler or the Yang di-Pertua Negeri, as the case may be, of the State in which the employee wholly or mainly works under his contract of service or the Federal Territory Day, if the employee wholly or mainly works in the Federal Territory;

(iv) the Workers' Day; and

(v) Malaysia Day; and

(b) on any day appointed as a public holiday for that particular year under section 8 of the Holidays Act 1951 [Act 369]:

Provided that if any of the public holidays referred to in paragraphs (a) and (b) falls on—

(i) a rest day; or

(ii) any other public holiday referred to in paragraphs (a) and (b), the working day following immediately the rest day or the other public holiday shall be a paid holiday in substitution of the first-mentioned public holiday."

⁵²¹ Employment Act 1955, Section 60E. "(1) An employee shall be entitled to paid annual leave of—(a) eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of fewer than two years;

(b) twelve days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and

(c) sixteen days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more,

and if he has not completed twelve months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service:

....."

- if the employee has not completed 12 months of continuous service with the same employer during the year, his entitlement to paid annual leave has to be in direct proportion to the number of completed months of service.

Sick Leaves

An employee is entitled to a paid sick leave without hospitalization, after examination and obtaining a medical certificate at the expense of the employer. An employee's entitlement to sick leave with pay is as follows:⁵²²

- an employee working for less than 2 years is entitled to 14 days of sick leave with pay in each calendar year;
- an employee working for 2 years but less than 5 years is entitled to 18 days of sick leave with pay in each calendar year;
- an employee working for 5 years or more is entitled to 22 days of sick leave with pay in each calendar year;
- if hospitalization is necessary, as may be certified by a doctor, an employee is entitled to not more than 60 days in each calendar year.

Maternity Leaves

A female employee is entitled to a paid maternity leave for a period of not less than 60 days.⁵²³

⁵²² Employment Act 1955, Section 60F. "(1) An employee shall, after examination at the expense of the employer—

(a) by a registered medical practitioner duly appointed by the employer; or

(b) if no such medical practitioner is appointed or, if having regard to the nature or circumstances of the illness, the services of the medical practitioner so appointed are not obtainable within a reasonable time or distance, by any other registered medical practitioner or by a medical officer, be entitled to paid sick leave,—

(aa) where no hospitalization is necessary,—

(i) of fourteen days in the aggregate in each calendar year if the employee has been employed for less than two years;

(ii) of eighteen days in the aggregate in each calendar year if the employee has been employed for two years or more but less than five years;

(iii) of twenty-two days in the aggregate in each calendar year if the employee has been employed for five years or more; or

(bb) of sixty days in the aggregate in each calendar year if hospitalization is necessary, as may be certified by such registered medical practitioner or medical officer:

Provided that the total number of days of paid sick leave in a calendar year which an employee is entitled to under this section shall be sixty days in the aggregate;

⁵²³ Employment Act 1955, Section 37(1). "(1) (a) Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days (also referred to in this Part as the eligible period) in respect of each confinement and, subject to this Part, she shall be entitled to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period."

7.3 Termination of Contract of Service and Lay-off Benefits

According to Section 11, a contract of service will be terminated in 2 scenarios. First, in the case of a fixed-term contract (a contract of service for a specified period of time or for the performance of a specified piece of work), it would be terminated when the term for which such contract was made has expired, or when the piece of work specified in such contract has been completed.

Second, an open-end contract (a contract of service for an unspecified time) would continue in force until one party give a prior notice of intention to the other to terminate the contract in the manner prescribed by the law. Both employer and employee are obliged to give prior notice to the other. The length of the notice period must be the same for both employer and employee.⁵²⁴

The parties may conclude the length of the notice period in the contract of service. If there is no such agreement, a statutory standard would apply to this case.⁵²⁵ provides the minimum length of notice period as follows:

- 4 weeks' notice in advance if the employee has been so employed for less than 2 years' service;
- 6 weeks' notice in advance if he has been so employed for 2 years or more but less than 5 years' service;
- 8 weeks' notice if he has been employed for 5 years' service or more.

However, either party can choose to waive the right to give or to be given a notice of intention by another party.

⁵²⁴ Employment Act 1955, Section 11. "(1) A contract of service for a specified period of time or for the performance of a specified piece of work shall, unless otherwise terminated in accordance with this Part, terminate when the period of time for which such contract was made has expired or when the piece of work specified in such contract has been completed.

(2) A contract of service for an unspecified period shall continue in force until terminated in accordance with this Part."

⁵²⁵ Employment Act 1955, Section 12. "(1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service.

(2) The length of such notice shall be the same for both employer and employee and shall be determined by a provision made in writing for such notice in the terms of the contract of service, or, in the absence of such provision in writing, shall not be less than—(a) four weeks' notice if the employee has been so employed for less than two years on the date on which the notice is given;

(b) six weeks' notice if he has been so employed for two years or more but less than five years on such date;

(c) eight weeks' notice if he has been so employed for five years or more on such date:

Provided that this section shall not be taken to prevent either party from waiving his right to a notice under this subsection.

According to the Employment (Termination and Lay-Off Benefits) Regulations 1980, an employee who is dismissed would be entitled to termination or lay-off benefits (a severance pay) if the employee was employed under a continuous contract of employment for at least 12 months before the termination, except the dismissal arising from retirement, misconduct to an employer or voluntary resignation. The amount of a severance pay varies depending on the length of service and must not less than the amount provided in the Regulation as follows:

An employee employed for a period of fewer than 2 years: 10 days' wages for every year of employment;

An employee has been employed for a period of 2 years or more but less than 5 years: 15 days' wages for every year of employment;

An employee has been employed for a period of 5 years or more: 20 days' wages for every year of employment⁵²⁶.

The minimum retirement age of private sectors is upon attaining the age of 60 years. Any retirement terms of less than 60 years must be void according to the Minimum Retirement Age Act 2012, which comes into force on 1st July 2013. This Act, however, does not apply to certain persons as specified in the Schedule attached to the Act, such as a person who is employed on a permanent, temporary or contractual basis by the Federal Government, the Government of any State, foreign employee, servant, etc.⁵²⁷

⁵²⁶ Employment (Termination and Lay-Off Benefits) Regulations 1980, Section 6(1). "(1) Subject to the provisions of these Regulations, the amount of termination or lay-off benefits payment to which an employee is entitled in any case shall not be less than -

(a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of fewer than two years; or

(b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for two years or more but less than five years; or

(c) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five years or more, and pro-rata as respect an incomplete year, calculated to the nearest month."

⁵²⁷ Clause 1 of the Schedule attached to the Minimum Retirement Age Act 2012 states that "This Act does not apply to (a) a person who is employed on a permanent, temporary or contractual basis and is paid emoluments by the Federal Government, the Government of any State, any statutory body or any local authorities;

(b) a person who works on a probationary term;

(c) an apprentice who is employed under an apprenticeship contract;

(d) a non-citizen employee;

(e) a domestic servant;

(f) a person who is employed in any employment with average hours of work not exceeding seventy percent of the normal hours of work of a full-time employee;

(g) a student who is employed under any contract for a temporary term of employment but does not include an employee on study leave and an employee who studies on a part-time basis;

7.4 Industrial Relations and Labour Union

The Industrial Relations Act 1967 regulates industrial relations in Malaysia under the authority of the Department of Industrial Relations. It applies throughout the country and to the employment in all business sectors. This Act provides for the regulation of the relations between employers and workmen and their trade unions, together with the prevention and settlement of any disputes arising from their relationship, the details of which are concerned with the following issues:

- (1) protecting workmen who are concerning the establishment of labour unions and participation therein;
- (2) supporting the presence of labour unions and collective negotiation;
- (3) providing a procedure of settlement of disputes arising from employment relationship;
- (4) protecting employees from unfair dismissal;
- (5) providing a legal procedure.

The establishment of the union must be under the Trade Union Act 1959,⁵²⁸ which applies throughout the country, under the authority of the Department of Trade Union. Workmen and employers shall have the right to associate and register a union within the legal framework of the Trade Union Act 1959. This Act also provides for the regulations of becoming unions' members as well as rights and duties of the union.

7.5 Social Security Scheme under the Employees' Social Security Act 1969

The Employees' Social Security Act 1969 applies throughout the country but only to Malaysian employees. The Act used to cover foreign employees, however, they currently fall under the protection of the Workmen's Compensation Act 1952, which will be mentioned in the next topic.

(h) a person who is employed on a fixed-term contract of service, inclusive of any extension, of not more than twenty-four months; and

(i) a person who, before the date of coming into operation of this Act, has retired at the age of fifty-five years or above and subsequently is re-employed after he has retired."

⁵²⁸ Trade Union Act 1959, Section 8. "(1) Every trade union established after the commencement of this Act shall apply to be registered under this Act within a period of one month reckoned from the date on which it is so established.

(2) The Director-General may, if he thinks fit, from time to time grant an extension of the period specified in subsection (1):

Provided that such period shall not in any particular case, be so extended as to exceed a period of six months in the aggregate."

The social security scheme is administered by the Social Security Organisation (SOCSO). There are 2 schemes to protect employees' welfare and their dependents as follows:

- The Employment Injury Insurance Scheme; and
- The Invalidity Pension Scheme

7.5.1 The Employer's Duties

The Employees' Social Security Act 1969 forces any employer of all industries having one employee or more to register with and pay contributions to the SOCSO.⁵²⁹

7.5.2 The Employees' Duties

An employee to be insured under the social security scheme is under the Employees' Social Security (Amendment) Act 2016 (Act A1508), which comes into force on 1 June 2016.⁵³⁰ All of the employees shall be insured under the protection of the social security scheme irrespective of the number of wages. However, if the employee's wages at any time exceed 4,000 Ringgit a month, his wages must be deemed to be 4,000 Ringgit for the purpose of the Employees' Social Security Act 1969.⁵³¹

⁵²⁹ Employees' Social Security Act 1969, Section 3. "(1) This Act shall apply to all industries having one or more employees."

⁵³⁰ Before the effectiveness of the Employees' Social Security (Amendment) Act 2016, the previous version of Section 5 provided that all employees with monthly wages of 3,000 Ringgit a month were covered by this Act. In the case of an employee who at any time wages more than 3,000 Ringgit a month, if he had been insured by the social security system, he would continue to remain to pay his contributions. In contrary, if such employee with monthly wages of more than 3,000 Ringgit a month and never be insured, the Act allowed him to pay contributions to the social security fund on his and employer's voluntary basis.

⁵³¹ Employees' Social Security (Amendment) Act 2016, Amendment to section 5, section 2(c). "(2) Notwithstanding subsection (1), if the wages of an employee at any time exceed four thousand Ringgit a month, his wages shall for the purposes of this Act be deemed to be four thousand Ringgit a month."

An employee who falls under this Act does not include a person prescribed in the First Schedule of the Employees' Social Security Act 1969.⁵³²

- any person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's industry;
- a domestic servant who is employed to work in a private dwelling house;
- a tributary which means a person who is permitted to win minerals or produce of any kind from or on the land of another and who, in consideration of such permission, gives a proportion of the minerals or produce so won to that other person or pays to him the value of such proportion;
- the spouse of the principal employer;

⁵³² Employees' Social Security Act 1969, First Schedule. "(1) Any person whose wages exceed three thousand Ringgit a month:

Provided that where after an employee has become liable to pay contributions as provided in section 6 of this Act, the wages of such employee at any time exceed three thousand Ringgit a month such employee shall not by reason only of this paragraph be deemed to have become excluded from the provisions of this Act, but his wages shall for all the purposes of this Act be deemed to be three thousand Ringgit a month:

And provided further that in any other case where a person, whose wages exceed three thousand Ringgit a month, and his employer elect to pay any contribution in accordance with this Act then such person shall be deemed to be an employee under this Act.

(2) Any person whose employment is of casual nature and who is employed otherwise than for the purposes of the employer's industry.

(3) A domestic servant, that is, a person employed exclusively in the work or in connection with work of a private dwelling house and not of any trade, business or profession carried on by the employer in such dwelling house and includes a cook, house servant (including bedroom and kitchen servants), waiter, butler, child's or baby's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use.

(4) A tributer, that is, a person who is permitted to win minerals or produce of any kind from or on the land of another and who, in consideration of such permission, gives a proportion of the minerals or produce so won to that other person or pays to him the value of such proportion.

(5) The spouse of the principal employer or the immediate employer.

(6) Any member of the Malaysian Armed Forces or of any Local Forces established under any written law or of any Visiting Force lawfully present in Malaysia under any written law relating to Visiting Forces.

(7) Any police officer, and any other person engaged to perform police duties in accordance with the provisions of any written law while so performing such duties.

(8) Any person detained in any prison, Henry Gurney School, approved school, detention camp, mental hospital, or leper settlement.

(9)–(11) (Deleted by Act A814).

(12) In so far as this Act relating to invalidity pension are concerned—

(i) an employee who has attained the age of fifty-five years and in respect of whom no contributions were payable before he attained the age of fifty-five years; or

(ii) an employee who has attained the age of sixty years; or

(iii) a certified invalid who is in receipt of invalidity pension.

(13) (Deleted by Act A1445)."

- any member of the Malaysian Armed Forces or any Local Forces established under any written law;
- any police officer;
- any person detained in any prison, Henry Gurney School, approved school, detention camp, mental hospital, or leper settlement;
- any person who is announced by the Minister not to be insured under this Act.

Furthermore, a foreign employee, government officer, sole proprietor, and the spouse, and self-employed person are exempted from the Employees' Social Security Act 1969.⁵³³

7.5.3 The Payment of contributions

The payment of contributions to the social security fund is divided into 2 following categories:

(1) The First Category: an employee under 60 years of age

This category provides an employee with the 2 protection schemes, namely:

- The Employment Injury Insurance Scheme; and
- The Invalidity Pension Scheme.

The contributions have to be shared by both employer and employee in the ratio specified in Part I of the Third Schedule⁵³⁴ of the Employees' Social Security Act 1969.⁵³⁵

(2) The Second Category: an employee who has been working and exceeds 60 years of age, or an employee who registers with the SOCSO for the first time when his age exceeds 55 years.

This category provides an employee with only the Employment Injury Insurance Scheme.

⁵³³ Social Security Organisation, "Employer And Employee Eligibility" accessed March 10, 2018, <https://www.perkeso.gov.my/index.php/en/social-security-protection/employer-employee-eligibility>

⁵³⁴ Employees' Social Security Act 1969, Section 6(4). "The contributions of the first category shall be shared by the employer and the employee in the ratio specified in Part I of the Third Schedule."

⁵³⁵ The Third Schedule has been altered from time to time. A recent update can be found at <https://www.perkeso.gov.my/index.php/en/quick-links/rate-of-contributions>

The contributions must be paid wholly by an employer in the ratio specified in Part III of the Third Schedule of the Employees' Social Security Act 1969. An employee is not obliged to pay the contributions.⁵³⁶

7.6 The Protection of foreign employees suffering from injury and sickness arising out of and in the course of the employment

The Workmen's Compensation Act 1952 (Act 273) is applicable throughout the country, of which the purpose is to protect foreign employees from injury or sickness arising out of and in the course of employment.

The Act forms the workmen's protection scheme by compelling an employer to purchase workmen's compensation insurance. The Workmen's Compensation (Foreign Worker's Scheme) (Insurance) Order 1993 specifies that an employer is responsible for purchasing insurance for every foreign employee from the authorized insurance companies. An employer must pay a yearly insurance premium and he is not allowed to deduct wages of an employee for the payment of insurance premiums. Any employer who does not abide by the law will be found guilty and will be subject to fine or imprisonment or both.

The workmen's compensation is administered by the Department of Labour.

7.7 The Employees Provident Fund

The Employees Provident Fund is a retirement saving scheme which is formed according to the Employees Provident Fund Act 1991. This Act is applicable throughout the country, under the authority of the Employees Provident Fund of Malaysia, the Ministry of Finance.

The Act requires employers and employees to make monthly contributions to the provident fund to secure lump-sum payments to employees at retirement or earlier in the case of incapacity. Moreover, this fund provides pre-retirement withdrawal for housing loan balance and other matters, such as medical expenses for illness or family aids.

Contributions are mandatory for employees who are Malaysian citizens or permanent residents. Foreign workers, who are not Malaysian citizens or permanent residents are not required to contribute to the provident fund, however, they may elect to do so.

⁵³⁶ Employees' Social Security Act 1969, Section 6(5). "The contributions of the second category shall be paid wholly by the employer."

The contribution rate to the fund is under the Third Schedule of the Employees Provident Fund Act 1991, which categorizes the contribution rates into Part A, B, C, and D.

Part A⁵³⁷ The rate of monthly contributions specified herein applies to the following employees until the employees attain the age of sixty years:

- 1) employees who are Malaysian citizens;
- 2) employees who are not Malaysian citizens but are permanent residents in Malaysia;
- 3) employees who are not Malaysian citizens who have elected to contribute before 1 August 1998.
 - In the case of an employee with monthly wages of not more than 20,000 ringgit, both employer and employee are obliged to pay contributions at the rate specified by law. The rate varies depending on the wages received. (This part calculates a contribution amount for wages of 0.01 Ringgit to 20,000 ringgit).
 - In the case of an employee with monthly wages of more than 20,000 ringgit, this part does not calculate a number of contributions, instead, it specifies the rate in percentage in which an employer must pay contributions at the rate of not less than 12% of the salary, and an employee must pay contributions at the rate of not less than 8% of the salary.

Part B⁵³⁸ The rate of monthly contributions specified herein applies to the following employees until the employees attain the age of sixty years:

- 1) employees who are not Malaysian citizens and have elected to contribute on or after 1 August 1998;
- 2) employees who are not Malaysian citizens and have elected to contribute under paragraph 3 of the First Schedule on or after 1 August 1998;

⁵³⁷ Employees Provident Fund, "Rate of Monthly Contributions Part A," Employees Provident Fund Act 1991, Third Schedule, p.1-19 Accessed August 22, 2018, http://www.kwsp.gov.my/portal/documents/10180/175560/JADUAL_KETIGA_04012019_ENG.pdf

⁵³⁸ Employees Provident Fund, "Rate of Monthly Contributions Part B," Employees Provident Fund Act 1991, Third Schedule, p.20-37 Accessed August 22, 2018, http://www.kwsp.gov.my/portal/documents/10180/175560/JADUAL_KETIGA_04012019_ENG.pdf

3) employees who are not Malaysian citizens and have elected to contribute under paragraph 6 of the First Schedule on or after 1 August 2001

- In the case of an employee with monthly wages of not more than 20,000 ringgit, both employer and employee are obliged to pay contributions at the rate specified by law. The rate varies depending on the wages received. (This part calculates a contribution amount for wages of 0.01 Ringgit to 20,000 ringgit).
- In the case of an employee with monthly wages of more than 20,000 ringgit, an employer must pay contributions at the rate of not less than 5% of the salary, and an employee must pay contributions at the rate of not less than 8% of the salary.

Part C⁵³⁹ The rate of monthly contributions specified herein applies to the following employees who have attained the age of sixty years:

- 1) employees who are Malaysian citizens;
- 2) employees who are not Malaysian citizens but are permanent residents in Malaysia;
- 3) employees who are not Malaysian citizens who have elected to contribute before 1 August 1998.

- In the case of an employee with monthly wages of not more than 20,000 ringgit, both employer and employee are obliged to pay contributions at the rate specified by law. The rate varies depending on the wages received. (This part calculates a contribution amount for wages of 0.01 Ringgit to 20,000 ringgit).
- In the case of an employee with monthly wages of more than 20,000 ringgit, an employer must pay contributions at the rate of not less than 6% of the salary, and an employee must pay contributions at the rate of not less than 4% of the salary.

⁵³⁹ Employees Provident Fund, "Rate of Monthly Contributions Part C," Employees Provident Fund Act 1991, Third Schedule, p.38-58 Accessed August 22, 2018, http://www.kwsp.gov.my/portal/documents/10180/175560/JADUAL_KETIGA_04012019_ENG.pdf

Part D⁵⁴⁰ The rate of monthly contributions specified herein applies to the following employees who have attained the age of sixty years:

1) employees who are not Malaysian citizens and have elected to contribute on or after 1 August 1998;

2) employees who are not Malaysian citizens and have elected to contribute under paragraph 3 of the First Schedule on or after 1 August 1998;

3) employees who are not Malaysian citizens and have elected to contribute under paragraph 6 of the First Schedule on or after 1 August 2001.

- In the case of an employee with monthly wages of not more than 20,000 ringgit, both employer and employee are obliged to pay contributions at the rate specified by law. The rate varies depending on the wages received. (This part calculates a contribution amount for wages of 0.01 Ringgit to 20,000 ringgit).
- In the case of an employee with monthly wages of more than 20,000 ringgit, an employer must pay contributions at 5 Ringgit per employee, and an employee must pay contributions at the rate of not less than 4% of the salary.

7.8 Occupational Safety and Health of Employees

The Department of Occupational Safety and Health, established under the Ministry of Human Resources, is empowered to enforce the law and regulations relating to occupational safety and health of employees. The main responsibilities of the Department are to oversee and secure the safety, health and workers' welfare to prevent workmen from unsafe due to any activity in the work process such as manufacturing process, mining, construction, agriculture, forestry and fishing, utilities, transport, storage, communication, wholesale and retail trade, hotels and restaurants, finance, insurance, real estate and business services, public services, etc.

⁵⁴⁰ Employees Provident Fund, "Rate of Monthly Contributions Part D," Employees Provident Fund Act 1991, Third Schedule, p.58-76, Accessed August 22, 2018, http://www.kwsp.gov.my/portal/documents/10180/175560/JADUAL_KETIGA_04012019_ENG.pdf

Two principal legislations are dealing with occupational safety and health of employees as follows:

(1) The Occupational Safety and Health Act 1994: this Act applies to the whole country⁵⁴¹ and to an employer in various industries, namely: manufacturing, mining, construction, agriculture, forestry and fishing, utilities, transport, storage, communication, wholesale and retail trade, hotels and restaurants, finance, insurance, real estate and business services, public services, and statutory authorities.⁵⁴²

This Act aims to promote and encourage employees and employers to have health and safety standards by creating their projects to suit the circumstances of each industry or organization.⁵⁴³ It must be the duty of every employer to ensure, so far as is practicable, the safety, health, and welfare at work of all his employees, especially in providing and maintaining his plant, machinery, and safety system.

(2) The Factories and Machinery Act 1967: This Act provides for the control of factories in matters relating to safety, health, and welfare of people working in the factories, and registration and inspection of machinery used in the factories. Before installing and using the machinery, it is required by law to have them certified and inspected by the Department of Occupational Safety and Health.

⁵⁴¹ Occupational Safety and Health Act 1994, Section 1(2) "...this Act shall apply throughout Malaysia to the industries specified in the First Schedule"

⁵⁴² Occupational Safety and Health Act 1994, Schedule 1. "[Subsection 1(2)]

1. Manufacturing
2. Mining and Quarrying
3. Construction
4. Agriculture, Forestry, and Fishing
5. Utilities
 - (a) Electricity;
 - (b) Gas;
 - (c) Water; and
 - (d) Sanitary Services
6. Transport, Storage, and Communication
7. wholesale and Retail Trades
8. Hotels and Restaurants
9. Finance, Insurance, Real Estate, and Business Services
10. Public services and Statutory Authorities

⁵⁴³ Occupational Safety and Health Act 1994, Section 15. "(1) It shall be the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health, and welfare at work of all his employees."

Annex 7. Labour Laws
Minimum Wages Order 2016

Clause 3

The minimum wages rates payable to an employee shall be as follows

| Regional areas | Minimum wages rates | | | |
|--|----------------------------|---|---------|---------------|
| | Monthly | Monthly | | Hourly |
| Peninsular Malaysia | RM1,000 | Number of working days in a week | | RM4.81 |
| | | 6 | RM38.46 | |
| | | 5 | RM46.15 | |
| | | 4 | RM57.69 | |
| Sabah, Sarawak and Federal Territory of Labuan | RM920 | 6 | RM35.38 | RM4.42 |
| | | 5 | RM42.46 | |
| | | 4 | RM53.08 | |