

CHAPTER

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# GETTING STARTED





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# GETTING STARTED

## 1. APPROVAL OF MANUFACTURING PROJECTS

### 1.1 The Industrial Co-ordination Act 1975

The Industrial Co-ordination Act 1975 (ICA) was introduced with the aim to maintain an orderly development and growth in the country's manufacturing sector.

The ICA requires manufacturing companies with shareholders' funds of RM2.5 million and above or engaging 75 or more full-time paid employees to apply for a manufacturing licence for approval by the Ministry of International Trade and Industry (MITI).

Applications for manufacturing licences are to be submitted to the Malaysian Investment Development Authority (MIDA), an agency under MITI in charge of the promotion and coordination of industrial development in Malaysia.

The ICA defines:

- "Manufacturing activity" as the making, altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; and includes the assembly of parts and ship repairing but shall not include any activity normally associated with retail or wholesale trade.
- "Shareholders' funds" as the aggregate amount of a company's paid-up capital, reserves, and balance of profit and loss appropriation account, where:
  - Paid-up capital shall be in respect of preference shares and ordinary shares and not including any amount in respect of bonus shares to the extent they were issued out of capital reserve created by revaluation of fixed assets.
  - Reserves shall be reserves other than any capital reserve created by revaluation of fixed assets and provisions for depreciation, renewals or replacements and diminution in value of assets.
- "Full-time paid employees" as all persons normally working in the establishment for at least six hours a day and at least 20 days a month for 12 months during the year and who receive a salary.

This includes travelling sales, engineering, maintenance and repair personnel who are paid by and are under the control of the establishment.

It also includes directors of incorporated enterprises except those paid solely for their attendance at board of directors meetings. The definition encompasses family workers who receive regular salaries or allowances and who contribute to the Employees Provident Fund (EPF) or other superannuation funds.

### 1.2 Guidelines for Approval of Industrial Projects

The government's guidelines for approval of industrial projects in Malaysia are based on the following criteria:

Projects must have Capital Investment Per Employee (CIPE) of at least RM140,000.00; and

Total full-time workforce of the company must comprise at least 80% Malaysians. Employment of foreign workers including outsourced workers is subjected to current policies; and

Total number of managerial, technical and supervisory levels (MTS) is at least 25% of total employment or having a value added (VA) of at least 40%

#### Expansion of Production Capacity and Product Diversification

A licensed company which desires to expand its production capacity or diversify its product range by manufacturing additional products will need to apply to MIDA.

## 2. REGISTERING BUSINESS ENTITIES IN MALAYSIA

### 2.1 Methods of Conducting Business in Malaysia

In Malaysia, a business may be conducted:

- i. By an individual operating as a sole proprietor, or
- ii. By two or more (but not more than 20) persons in partnership, or
- iii. By a limited liability partnership (LLP), or
- iv. By a locally incorporated company or by a foreign company registered under the provisions of the Companies Act (CA) 2016.

Under the Registration of Businesses Act 1956, sole proprietorships and partnerships in Malaysia must be registered with the Companies Commission of Malaysia (SSM). In the case of partnerships, partners are both jointly and severally liable for the debts and obligations of the partnership should its assets be insufficient. Formal partnership deeds may be drawn up governing the rights and obligations of each partner but this is not obligatory.

### 2.1.1 Company Structure

The CA 2016 governs all companies in Malaysia. The Act stipulates that a company must be registered with the SSM in order to engage in any business activity.

There are three (3) types of companies that can be incorporated under the CA 2016:

- i. A company limited by shares is a company formed on the principle that the members' liability is limited to the amount, if any, unpaid on the shares taken up by them;
- ii. A company limited by guarantee where the liability of the members is limited to the amount which the members have undertaken to contribute to the assets of the company in the event the company is wound up;
- iii. An unlimited company is a company formed on the principle of having no limit placed on the liability of its members.

#### 2.1.2 Company Limited by Shares

The most common company structure in Malaysia is a company limited by shares. Such limited companies may be incorporated either as a private company (identified through the words "Sendirian Berhad" or "Sdn Bhd" as part of the company's name) or a public company (identified through the words "Berhad" or "Bhd" as part of the company's name).

A company having a share capital may be incorporated, changes its status into or remains as a private company if it:

- i. Restricts the right to transfer its shares;
- ii. Limits the number of its members to 50, excluding employees in the employment of the company or its subsidiary and some former employees of the company or its subsidiary;
- iii. Prohibits any invitation to the public to subscribe for its shares and debentures;
- iv. Prohibits any invitation to the public to deposit money with the company for fixed periods of payable at call, whether interest-bearing or interest-free.

A public company can be formed or, alternatively, a private company can be converted into a public company subject to Section 41 of the CA 2016. Such a company can offer shares to the public provided:

- i. It has registered a prospectus with the Securities Commission; or
- ii. It has lodged a copy of the prospectus with the SSM on or before the date of its issue.

### 2.2 Procedure for Incorporation

To incorporate a company, an application must be made to the SSM through the MyColD 2016 Portal by providing the following information:

- i. the name of the proposed company;
- ii. the status whether the company is private or public;
- iii. the nature of business of the proposed company;
- iv. the proposed registered address;
- v. the name, identification, nationality and ordinary place of residence of the member of the company;
- vi. the name, identification, nationality and ordinary place of residence of every person who is to be the director;
- vii. in the case of company limited by shares, the details of class and number of shares to be taken by a member;
- viii. in the case of company limited by guarantee, the amount up to which the member undertakes to contribute to the assets of the company in the event of its being wound up.

The application must be accompanied with a fee of RM1,000 in the case of company limited by shares; or RM3,000 in the case of a company limited by guarantee.

Once the Registrar is satisfied with the information provided, a notice of registration will be emailed to the applicant. The notice serves as conclusive evidence that the requirements in respect of registration and matters precedent and incidental to the registration have been complied with.



## Incorporation of Companies – Client's Charter

SSM undertakes to process, approve and register a complete application in a speedy and efficient manner within the time period stated as follows:

Activity	Time
<b>COMPANY REGISTRATION</b>	
Incorporation of a company	1 day
Conversion of status	1 day
Change of company name	1 day
Commencement of business for public companies	1 day
Registration of charge	2 days
Approval of a trust deed	5 days
Registration of prospectus	3 days
Uncertified copy of company documents	30 minutes
Certified copy of company documents	1 hour

\*Application for the approval of company name only, may be made without incorporating the company.

\*\*Time taken begins from the moment payment is received until the certificate is issued.

### 2.2.1 Requirements of a Locally Incorporated Company

A company must maintain a registered office in Malaysia where all books and documents required under the provisions of the Act are kept. The name of the company shall appear in legible Romanized letters, together with the company number, on its seal, official documents, publications and website, if any.

A company cannot deal with its own shares or hold shares in its holding company. A holder of a share has the right to vote on a show of hands on any resolution of a company at a general meeting. In a case of a poll, each equity share of a company carries the right to one vote.

The secretary of a company must be a natural person of full age who has his principal or only place of residence in Malaysia. He must be a member of a prescribed body or is licensed by the Registrar of Companies. The company must also appoint an approved company auditor to be the company auditor in Malaysia.

In addition, a private company is required to have at least one (1) director whereas a public company must have at least two (2) directors. Each of the minimum director(s) must have his principal or only place of residence within Malaysia. The minimum age of a director is 18 years and the CA 2016 does not specify any maximum age. A director of the company need not necessarily be a shareholder of the company.

## 2.3 Registration of Foreign Companies

A foreign company may carry on business in Malaysia by either:

- incorporating a local company; or
- registering a branch in Malaysia.

Foreign company is defined under the CA 2016 as:

- a company, corporation, society, association or other body incorporated outside Malaysia; or
- 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.

### 2.3.1 Registration Procedures

- An applicant must first conduct a name search in order to determine if the proposed name for the intended company is available. The name to be used to register the foreign company should be the same as registered in its country of origin.

Application for reservation of name should be submitted to SSM through the MyCoID 2016 Portal with a payment of RM50 for each name applied. When the proposed company's name is approved by SSM, it shall be valid for thirty (30) days from the date of approval.

- Upon approval, applicants must submit the following registration documents to SSM within thirty (30) days from the date of approval:
  - Application for Registration of Foreign Company under s. 562(1) CA 2016;
  - A certified copy of the certificate of incorporation or registration of the foreign company;
  - A certified copy of the foreign company's charter, statute or Memorandum and Articles of Association or other instrument defining its constitution;

- d. If the directors residing in Malaysia who are members of the local board of directors of the foreign company, a memorandum stating their powers that are executed by or on behalf of the foreign company, should be submitted to SSM;
- e. A memorandum of appointment or power of attorney authorizing the person(s) (agent) residing in Malaysia, to accept on behalf of the foreign company, any notices required to be served on such foreign company;
- f. Additional documents consisting copy of an application of reservation of name and copy of email from SSM approving the name of the foreign company.

*Note: If any of the described registration documents are in languages other than Bahasa Malaysia or English, a certified translation of such documents in Bahasa Malaysia or English shall be required.*

- iii. Registration fees shall be made to the SSM as per the following schedule:

Share Capital (RM)	Fees Payable (RM)
Up to 1,000,000	5,000
1,000,001 – 10,000,000	20,000
10,000,001 – 50,000,000	40,000
50,000,001 - 100,000,000	60,000
100,000,001 and above	70,000

In determining the amount of registration fees, the share capital of the foreign company should first be converted to the Malaysian currency (Ringgit Malaysia) at the prevailing exchange rate.

In the event a foreign company does not have any share capital, a flat rate of RM70,000 shall be paid to SSM.

- iv. A Notice of Registration will be issued by SSM upon compliance with the registration procedures and submission of duly completed registration documents.

- v. Upon approval, the company or its agent is responsible for ensuring compliance of the CA 2016. Any change in the particular of the company or in the company's name must be filed with SSM within fourteen days from the date of change together with the appropriate fees. Any change in the share capital of the company must be notified to SSM within fourteen days of such change. Every company is required to keep proper accounting records. Annual return must be lodged with SSM once in every calendar year not later than 30 days from the anniversary of its registration date.

*Note: Foreigners are advised to seek the services of an advocate and solicitor, an accountant or a practicing company secretary for further assistance.*

## 2.4 Limited Liability Partnership (LLP) Structure

### 2.4.1 Features of an LLP

An LLP is a body corporate and has legal personality separate from its partners. Like any other body corporate, LLP has perpetual succession. Any changes in the partners will not affect the existence, rights or liabilities of the LLP. LLP has unlimited capacity and capable of suing and being sued, acquiring, owning, holding and developing or disposing of property. LLP may do and suffer such other acts and things as bodies corporate may lawfully do and suffer. An LLP is a business vehicle which would offer simple and flexible procedures in terms of its formation, maintenance and termination.

The registration fee for a new LLP and conversion is RM500. The fee for the application of reservation of name is RM30.

### 2.4.2 Who may form an LLP?

An LLP may be formed by a minimum of two (2) persons (wholly or partly individuals or bodies corporate) for any lawful business with a view of profit and in accordance with the terms of the LLP agreement. Any individual or body corporate can be a partner.

However, an LLP formed for professional practice must consist of natural persons of the same profession and have in force professional indemnity insurance as approved by the Registrar.

Thus, LLPs may be set up by the following:

- i. Start Ups; or
- ii. Small & Medium Sized Businesses; or
- iii. Professionals; or
- iv. Joint Ventures; or
- v. Venture Capitals.

### 2.4.3 Procedure for Registration

To register an LLP, an applicant must provide the following information:

- i. proposed name of LLP;
- ii. nature of business;
- iii. address of the registered office;
- iv. name and details of the partners;
- v. name and details of the compliance officer;
- vi. the approval letter (in cases of professional practice).

The application for registration must be accompanied by a payment of RM500. Upon satisfaction of application to register LLP, the Registrar shall register the LLP and issue a notice of registration together with a registration number to the LLP. Notice of registration serves as conclusive evidence that the LLP has been registered. Registration does not mean that requirements of other written law relating to the business of the LLP have been fulfilled. The name of the LLP shall end with "Perkongsian Liabiliti Terhad" or abbreviation of "PLT".

### 2.4.4 Conversion to an LLP

Apart from new registration, existing entities may also convert into an LLP. The entities which are allowed to convert are:

- i. Conventional partnerships which have been registered under the Registration of Businesses Act 1956 or any partnership established by two (2) or more persons for the carrying on any professional practice; or
- ii. Private companies incorporated under the CA 2016 or any previous corresponding law.

The eligibility criteria for a conventional partnership to convert into an LLP are as follows:

- i. Same partners and no one else;
- ii. At the date of application, the conventional partnership appears to be able to pay its debts;
- iii. In cases of professional practice, the approval letter from the governing body.

The eligibility criteria for a private company for conversion are:

- i. Same shareholders and no one else;
- ii. There is no subsisting security interests in its assets;
- iii. At the date of application, the private company is solvent;
- iv. All outstanding statutory fees to government agencies has been settled;
- v. Advertisement has been placed in a widely circulated newspaper and the Gazette;
- vi. All creditors agreed to the conversion.

The effects of conversion are as follows:

- i. Vesting of assets, rights, privileges, obligations and liabilities of the conventional partnership or the private company into the LLP;
- ii. Pending proceedings may be continued, completed and enforced against or by the LLP;
- iii. Existing agreements, contracts shall have effect as though the LLP were a party;
- iv. In the case of the conversion of a conventional partnership, the partners shall continue to be personally liable (jointly and severally with the LLP) for liabilities and obligations incurred prior to the conversion.
- v. In the case of the conversion of a private company, the LLP will continue to be liable for the liabilities and obligations incurred prior to the conversion.

### 2.4.5 Requirements of an LLP

An LLP must appoint at least one (1) compliance officer who may be either one (1) of the partners or persons qualified to act as a secretary under the CA 2016. The compliance officer must be either a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia. A person is disqualified to act as a compliance officer if he is an undercharged bankrupt or is disqualified to act as a director or secretary under the CA 1965.

An LLP must maintain a registered office in Malaysia where communications and notices may be addressed. The LLP has the obligation to keep at the registered office, a notice of registration issued under this Act, a copy of the LLP agreement, the register of name and address of each partners and compliance officer, a copy of the latest annual declaration and if any, a copy of any instrument creating a charge.

An LLP is required to keep accounting records as to show the true and fair view of the state of affairs of the LLP. There is no requirement for the appointment of auditor unless specifically provided for in the LLP agreement.

## 2.5 E-Services

E-Services were introduced as an alternative to the traditional method of conducting business with SSM i.e. via counter services. It allows for the lodgement of documents (MyCoLD Services) and the procurement of corporate and business information. Corporate and business information can be purchased from e-Info and MyData. Payments can be made via credit card, direct debit or prepaid accounts.

MyCoLD enables simultaneous registration with the Employees Provident Fund (EPF), the Inland Revenue Board of Malaysia (IRBM), the Social Security Organisation (SOCSO), Small and Medium Enterprise Corporation (SME Corp) and the Human Resources Development Fund (HRDF) once a company is incorporated at SSM via a single submission.

For further information please visit SSM website at [www.ssm.com.my](http://www.ssm.com.my) or [www.ssm-einfo.com.my](http://www.ssm-einfo.com.my) or [www.mydata-ssm.com.my](http://www.mydata-ssm.com.my).

## 3. GUIDELINES ON EQUITY POLICY

### 3.1 Equity Policy in the Manufacturing Sector

Malaysia has always welcomed investments in its manufacturing sector. Desirous of increasing local participation in this activity, the government encourages joint-ventures between Malaysian and foreign investors.

#### Equity Policy for New, Expansion or Diversification Projects

Since June 2003, foreign investors could hold 100% of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, irrespective of the level of exports and without excluding any product or activity.

The equity policy also applies to:

- i. Companies previously exempted from obtaining a manufacturing licence but whose shareholders' funds have now reached RM2.5 million or have now engaged 75 or more full-time employees and are thus required to be licensed.
- ii. Existing licensed companies previously exempted from complying with equity conditions, but are now required to comply due to their shareholders' funds having reached RM2.5 million.

### Equity Policy Applicable to Existing Companies

Equity and export conditions imposed on companies prior to 17 June 2003 will be maintained.

However, companies can request for these conditions to be removed and approval will be given based on the merit of each case.

### 3.2 Protection of Foreign Investment

Malaysia's commitment in creating a safe investment environment has attracted more than 8,000 international companies from over 40 countries to make Malaysia their offshore base.

#### Equity Ownership

A company whose equity participation has been approved will not be required to restructure its equity at any time as long as the company continues to comply with the original conditions of approval and retain the original features of the project.

#### Investment Guarantee Agreements

Malaysia's readiness to conclude Investment Guarantee Agreements (IGAs) is a testimony of the government's desire to increase foreign investor confidence in Malaysia.

IGAs will:

- 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 entered into Investment Guarantee Agreements (IGAs), which aim to promote a conducive environment for investments.

#### List Of Signed & In Force Igas

Countries			
1. USA *	17. South Korea	33. Jordan	49. North Korea
2. Germany	18. China	34. Bangladesh	50. Yemen
3. Canada *	19. United Arab Emirates	35. Croatia	51. Turkey
4. Netherlands	20. Denmark	36. Spain	52. Lebanon
5. France	21. Vietnam	37. Mongolia	53. Burkina Faso
6. Switzerland	22. Republic of Chile	38. India ****	54. Republic of Sudan
7. Sweden	23. Taiwan	39. Uruguay	55. Republic of Ethiopia
8. Belgo-Luxembourg	24. Hungary	40. Peru	56. Senegal
9. United Kingdom	25. Poland	41. Kazakstan	57. State of Bahrain
10. Sri Lanka	26. Indonesia ***	42. Czech Republic	58. Algeria
11. Romania	27. Albania	43. Guinea	59. Saudi Arabia
12. Austria	28. Zimbabwe	44. Ghana	60. Morocco
13. Finland	29. Turkmenistán	45. Egypt	61. Iran
14. Kuwait	30. Namibia	46. Cuba	62. Syrian Arab Republic
15. ASEAN **	31. Cambodia	47. Uzbekistan	63. Slovak Republic
16. Italy	32. Argentina	48. Macedona	64. San Marino

#### Convention on the Settlement of Investment Disputes

In the interest of promoting and protecting foreign investment, the Malaysian government ratified the provisions of the Convention on the Settlement of Investment Disputes in 1966. The Convention, established under the auspices of the International Bank for Reconstruction and Development (IBRD), provides international conciliation or arbitration through the International Centre for Settlement of Investment Disputes located at IBRD's principal office in Washington.

#### Asian International Arbitration Centre (AIAC)

The **Asian International Arbitration Centre** (formerly known as Kuala Lumpur Regional Centre for Arbitration) was established in 1978 under the auspices of the Asian-African Legal Consultative Organization (AALCO) - an inter-governmental organization cooperating with and assisted by the Malaysian government.

A non-profit organization, the Centre serves the Asia Pacific region. It aims to provide a system to settle disputes for the benefit of parties engaged in trade, commerce and investments with and within the region.

Any dispute, controversy or claim arising out of or relating to a contract, or the breach, termination or invalidity shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

\* USA & CANADA - Insurance Guarantee Agreement.

\*\* Terminated upon the entry into force of the ASEAN Comprehensive Investment Agreement (ACIA) in February 2012.

\*\*\* Indonesia notified termination on 20th June 2014 and termination will come into force from 20th June 2015.

\*\*\*\* India notified termination on 23 March 2016 and termination will come into force from 23 March 2017.