



# GENERAL POLICIES, FACILITIES AND GUIDELINES

## CHAPTER I: ESTABLISHING YOUR BUSINESS PRESENCE IN MALAYSIA

Malaysia is an ideal place to set up a business, with a range of business entities that can be registered to suit everyone's needs. Whether you are just testing the waters, or intend to commit wholeheartedly into setting up your business, there is an appropriate business entity to allow you to get started on your business journey in Malaysia.

### 1. REGISTERING BUSINESS ENTITIES IN MALAYSIA

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#### Methods of Conducting Business in Malaysia

In Malaysia, a business may be conducted:

- By an individual operating as a sole proprietor, or
- By two or more (but not more than 20) persons in partnership, or
- By a locally incorporated company, or
- By a foreign company, or
- By a limited liability partnership (LLP).

#### 1.1 Registration of Sole Proprietor & Partnership

The first two business entities, i.e. sole proprietor and partnership, must be registered with the Companies Commission of Malaysia (SSM) under the Registration of Businesses Act 1956. 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. A formal partnership deed may be drawn up governing the rights and obligations of each partner, but this is not obligatory. The sole proprietor and partnership entities can only be owned by citizens or permanent residents.

#### 1.2 Registration of Company

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

### 1.2.1 Types of Companies

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

- a. 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;
- b. A company limited by guarantee is a company 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; or
- c. An unlimited company is a company formed on the principle of having no limitation on the liability of its members.

### 1.2.2 Company Limited by Shares

The most common company structure in Malaysia is a company limited by shares, which may be incorporated either as a private or public company. These two (2) entities could be distinguished by the end of the company's name i.e. "Sendirian Berhad" or "Sdn. Bhd." for private companies and "Berhad" or "Bhd." for public companies.

A company having a share capital may be incorporated and remain as a private company if it:

- Restricts the right to transfer its shares;
- 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;
- Prohibits any invitation to the public to subscribe for its shares and debentures; and
- Prohibits any invitation to the public to deposit money with the company for fixed periods 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:

- It has registered a prospectus with the Securities Commission under the Capital Markets and Services Act 2007; and
- It has lodged a copy of the prospectus with the SSM on or before the date of its issue.

### 1.2.3 Procedure for Incorporation

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

- The name of the proposed company;
- Whether the company will be private or public;
- The nature of business of the proposed company;
- The proposed registered address;
- The name, identification, nationality, and ordinary place of residence of every member of the company;

- The name, identification, nationality and ordinary place of residence of every person who is to be director;
- In the case of a company limited by shares, the details of class and number of shares to be taken by every member; and
- In the case of a company limited by guarantee, the amount up to which every member undertakes to contribute to the assets of the company in the event of its being wound up.

The application must be accompanied by a fee of RM1,000 in the case of a 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 with respect to registration, and matters precedent and incidental to the registration, have been complied with.

#### 1.2.4 Client's Charter

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

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

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

*\*Application for the availability and reservation of a company's name may be made separately prior to incorporating the company.*

#### 1.2.5 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 Romanised 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 the 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 director, while a public company must have at least two 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 old and the CA 2016 does not specify any maximum age. A director of the company need not necessarily be a shareholder of the company.

### **1.3 Registration of Foreign Company**

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

- Incorporating a local company; or
- Registering a branch in Malaysia.

A 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.

#### **1.3.1 Registration Procedures**

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

Applications for name reservations 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 reserved for 30 days from the date of approval.

- b. Upon receiving the company's name approval, applicants must submit the following registration documents to SSM within 30 days from the date of approval:
  - Application for registration of foreign company under section 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 any other instrument defining its Constitution;
  - For directors who reside in Malaysia, and are members of the local board of directors of the foreign company, a memorandum stating that their powers can be executed by or on behalf of the foreign company should be submitted to SSM;

- A memorandum of appointment or power of attorney, authorising 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; and
- Additional documents consisting of a copy of the application of reservation of name and a copy of the 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.*

- c. 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 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.

- d. A Notice of Registration will be issued by SSM upon compliance with the registration procedures and submission of duly completed registration documents;
- e. Upon approval, the company or its agent is responsible for ensuring compliance of the CA 2016. Any change in the particulars of the company or in the company's name must be filed with SSM within 14 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 14 days of such change. Every company is required to keep proper accounting records. Annual returns 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.*

## **1.4 Limited Liability Partnership (LLP)**

### **1.4.1 Features of an LLP**

An LLP is an alternative business vehicle regulated under the Limited Liability Partnerships Act 2012, which combines the characteristics of a company and a conventional partnership.

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

#### **1.4.2 Who may form an LLP**

An LLP may be formed by a minimum of two 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:

- Start Ups;
- Small & Medium Sized Businesses;
- Professionals;
- Joint Ventures; or
- Venture Capitalists.

#### **1.4.3 Procedure for Registration**

To register an LLP, all applications should be submitted via the MyLLP portal. The applicant must provide the following information together with a fee of RM500:

- Proposed name of the LLP;
- Nature of business;
- Address of the registered office;
- Name and details of the partners;
- Name and details of the compliance officer; and
- The approval letter (in the case of professional practices).

Upon satisfaction that the application has complied with the requirement of registration, a notice of registration is issued together with its registration number. Notice of registration serves as conclusive evidence that the LLP has been registered. Registration does not mean that requirements of other written laws relating to the business of the LLP have been fulfilled. The name of the LLP shall end with "Perkongsian Liabiliti Terhad" or the abbreviation "PLT".

#### **1.4.4 Conversion to an LLP**

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

- Conventional partnerships which have been registered under the Registration of Businesses Act 1956 or any partnership established by two or more persons for the carrying on any professional practice; or
- 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:

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

The eligibility criteria for a private company for conversion are:

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

The effects of conversion are as follows:

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

#### **1.4.5 Requirements of an LLP**

An LLP must appoint at least one compliance officer who may be either one 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 who 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 partner 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 an auditor unless specifically provided for in the LLP agreement.

## **1.5 E-Services**

Besides over the counter services, SSM introduces E-Services as an alternative for online submissions and product purchases. Among E-Services portals are:

- Ezbiz Online for registration of business, renewal, changes of particulars, and termination;
- MyCoID for registration of a company, changes of particulars, and charges;
- MyLLP for registration of an LLP, changes of particulars, Annual Declaration, and winding up;
- SSM e-info and MyData for product purchases such as corporate and business information document images and Digital Certified True Copies (DCTC); and
- MBRS for submission of a company's Annual Return, Financial Statements, and Reports.

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

For further information please visit SSM's website at [www.ssm.com.my](http://www.ssm.com.my), or <https://www.ssm-info.com.my/>, or <https://www.mydata-ssm.com.my/>.

## **2 GUIDELINES ON EQUITY POLICY**

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CA 2016 does not stipulate any equity conditions on Malaysian-incorporated companies. However, to increase local participation in business, the Government encourages joint ventures/partnerships between Malaysians and foreign investors. Specific equity conditions may be imposed for specific approvals, operating licences, permits, or registrations by the regulating Ministries/Agencies, depending on the activities undertaken. Specific equity policies for service activities covered in this series of guidebooks can be obtained from the relevant booklets.

### **2.1 Autonomous Liberalisation**

Recognising the growth potential in the services sector, the Government liberalised 27 services sub-sectors on 22 April, 2009, with no equity condition imposed.



These sub-sectors are:

### **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;
- Data base services;
- Maintenance and Repair Services of Computers; and
- Other services – data preparation services: training services; data recovery services; and development of creative content.

### **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; and
- Vocational rehabilitation services for handicapped.

### **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); and
- Beverage Serving Services for consumption on the premises (for services provided in 4- and 5-star hotels only).

### **Transport Services**

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

### **Sporting and other recreational services**

- Sporting Services (Sports event promotion and organisation services).

### **Business Services**

- Regional Distribution Centre;
- International Procurement Centre;

- 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; and
- Management Consulting Services - general, financial (excluding business tax), marketing, human resources, production, and public relations services.

### **Rental/Leasing Services without Operators**

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

### **Supporting and Auxiliary Transport Services**

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

The Government had further liberalised an additional 18 services sub-sectors in 2012 to allow up to 100 per cent foreign equity participation in phases. These sub-sectors are:

- Telecommunications for Application Service Provider – ASP licence;
- Telecommunications for Network Service Provider – NSP and Network Facilities Provider NFP licences;
- Courier services;
- Private Hospitals ;
- Medical Specialists Clinics ;
- Dental Specialists Clinics;
- Private Universities;
- International Schools;
- Technical and Vocational Schools ;
- Technical and Vocational Schools for students with special needs;
- Skills Training Centres;
- Accounting (including audit) and taxation;
- Architectural services;
- Engineering services;
- Legal services;
- Departmental and Specialty stores;
- Incineration services; and
- Quantity Surveying services.

The Government progressively undertakes liberalisation of services sub-sectors on an ongoing basis.

Please refer to MITI's website at [www.miti.gov.my](http://www.miti.gov.my) or [myservices.miti.gov.my/web/guest/autonomous/](http://myservices.miti.gov.my/web/guest/autonomous/) for information on liberalisation.

## 2.2 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 if the company continues to comply with the original conditions of approval and retain the original features of the project.

### Investment Guarantee Agreements (IGAs)

Malaysia's readiness to conclude IGAs is a testimony of the Government's desire to increase foreign investors' confidence in Malaysia. IGAs will:

- Protect against nationalisation and expropriation;
- Ensure prompt and adequate compensation in the event of nationalisation or expropriation;
- Provide free transfer of profits, capital, and other fees; and
- 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 concluded IGAs with the following groupings and countries (in alphabetical order):

### Groupings

- Association of Southeast Asian Nations (ASEAN)
- Organisation of Islamic Countries (OIC)

### Countries

Countries		
Albania	Ghana	Peru
Algeria	Guinea	Poland
Argentina	Hungary	Romania
Austria	India	Saudi Arabia
Bahrain	Indonesia**	Senegal
Bangladesh	Iran	Slovak, Republic of
Belgo-Luxembourg	Italy	Spain
Bosnia Herzegovina	Jordan	Sri Lanka
Botswana	Kazakhstan	Sudan, Republic of
Burkina Faso	Korea, North	Sweden

Cambodia	Korea, South	Switzerland
Canada*	Kuwait	Syrian Arab Republic
Chile, Republic of	Kyrgyz, Republic of	Taiwan
China, People's Republic of	Laos	Turkey
Croatia	Lebanon	Turkmenistan
Cuba	Macedonia	United Arab Emirates
Czech Republic	Malawi	United States of America*
Denmark	Mongolia	United Kingdom
Djibouti, Republic of	Morocco	Uruguay
Egypt	Namibia	Uzbekistan
Ethiopia, Republic of	Netherlands	Vietnam
Finland	Norway	Yemen
France	Pakistan	Zimbabwe
Germany	Papua New Guinea	

\*USA & CANADA - Insurance Guarantee Agreement

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

### **Convention on the Settlement of Investment Disputes**

In the interests of promoting and protecting foreign investments, 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.

### **Kuala Lumpur Regional Centre for Arbitration**

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Organization (AALCO) – an inter-governmental organisation cooperating with and assisted by the Malaysian Government.

A non-profit organisation, 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 thereof, shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

### 3 INCENTIVES FOR THE SERVICES SECTOR

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#### **Pioneer Status (PS)**

A company granted PS enjoys a five (5)-year partial income tax exemption on 70 per cent of its statutory income. It pays tax on 30 per cent of its statutory income<sup>1</sup>.

Unabsorbed capital allowances incurred during the pioneer period can be carried forward and deducted from the post-PS income of the company. Accumulated losses incurred during the PS period can be carried forward and deducted from the post-PS income of the company for a period of seven (7) consecutive years.

Applications for PS should be submitted to MIDA online via the [InvestMalaysia Portal](#). For more information, visit the [Forms and Guidelines](#) section on [MIDA website](#).

#### **Investment Tax Allowance (ITA)**

As an alternative to PS, a company may apply for ITA. A company granted ITA is entitled to an allowance of 60 per cent on its qualifying capital expenditure incurred within five (5) years from the date the first qualifying capital expenditure is incurred.

The company can offset this allowance against 70 per cent of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30 per cent of its statutory income will be taxed at the prevailing company tax rate.

Applications for ITA should be submitted to MIDA online via the [InvestMalaysia Portal](#). For more information, visit the [Forms and Guidelines](#) section on [MIDA website](#).

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<sup>1</sup> Statutory Income is derived after deducting expenditure and capital allowances from the gross income.