

# LEGAL SERVICES





# Introduction

This booklet is one of a series of 20 booklets prepared by MIDA for the purpose of providing investors with relevant information on establishing projects in the identified services sub-sectors in Malaysia. The complete list of booklets is as follows:

- Booklet 1:** General Policies, Facilities and Guidelines
- Booklet 2:** Regional Operations
- Booklet 3:** Research and Development (R&D) Services
- Booklet 4:** Logistics Services
- Booklet 5:** Specialised Technical Support Services
- Booklet 6:** Information and Communication Technology Services
- Booklet 7:** Environmental Management Services
- Booklet 8:** Distributive Trade Services
- Booklet 9:** Tourism and Travel Related Services
- Booklet 10:** Education and Industrial Training Services
- Booklet 11:** Legal Services
- Booklet 12:** Accounting, Auditing and Taxation Services
- Booklet 13:** Architectural Consultancy Services
- Booklet 14:** Surveying Consultancy Services
- Booklet 15:** Medical and Healthcare Services
- Booklet 16:** Engineering and Energy Consultancy Services
- Booklet 17:** Management Consultancy Services
- Booklet 18:** Market Research Services
- Booklet 19:** Advertising Services
- Booklet 20:** Quick Reference

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# LEGAL SERVICES

Malaysia acknowledges the rule of law, and has inherited the rich legal traditions of the English Common Law, enabling the nation to draw on centuries of legal experience and precedence. At the same time, Malaysia is a signatory to many critical international treaties, and has aligned the nation's legal framework accordingly. As such, the legal services subsector is a vibrant one, attracting a significant pool of talent.

Legal services (classified under code 74110 of the Malaysia Standard Industrial Classification) include advice and representation in civil, criminal, and other cases, i.e. representation of one party's interest against another party, whether or not before courts or other judicial bodies. These activities are generally performed by, or under supervision of, persons who are members of the Malaysian Bar.

Also included are activities in connection with patents and copyrights, with the preparation of deeds, wills, trusts, etc., and activities of notary public, arbitrators, examiners and referees. However, it excludes court activities which are classified in item 75235: Judiciary and Legal Service.

## 1. SETTING UP YOUR BUSINESS

### 1.1 Registration with the Bar Council of Malaysia/Sabah Law Society/Advocates' Association of Sarawak

The Bar Council of Malaysia is the body that regulates the provision of legal services in Peninsular Malaysia.

The provision of legal services in the State of Sabah is regulated by the Advocates Ordinance (Sabah) (Sabah Cap. 2), which was amended by the Advocates (Sabah) (Amendment) Act 2016 which came into effect since 1 July 2017.

The provision of legal services in the State of Sarawak is regulated by the Sarawak Advocates Ordinance (Cap. 110).

In Peninsular Malaysia, an advocate and solicitor can practice either on his own account as a sole proprietor, or in partnership, or be employed as a legal assistant. The requirements for setting up a legal practice in Peninsular Malaysia are as follows:

Types of Establishment	Requirements
Sole Proprietorship and Partnership	<ul style="list-style-type: none"> <li>The advocate(s) and solicitor(s) must practise under the approved name of the firm.</li> <li>The advocate(s) and solicitor(s) must write to the Bar Council seeking approval to set up a firm with the proposed name of the firm, date of commencement, address, telephone, fax numbers and e-mail addresses. The letter shall be signed by the sole proprietor/ partner.</li> <li>The proposed name of the firm shall be in accordance with Section 85 of the Legal Profession Act, 1976.</li> <li>Once the name is approved, the firm shall obtain the mandatory Professional Indemnity Insurance cover.</li> </ul>
Setting up a branch office	<ul style="list-style-type: none"> <li>To set up a branch office, the firm must comply with Rule 59 of the Legal Profession (Practice and Etiquette) Rules, 1978.</li> <li>The firm must write to the Bar Council with the details of the branch that they propose to set up including the name of the resident lawyer and an undertaking to comply with Rule 59 of the Practice and Etiquette Rules. The letter shall be signed by all the partners of the firm or the managing partner of the firm as the case may be.</li> </ul>
Merger	<ul style="list-style-type: none"> <li>The Bar Council must be notified of a merger. The letter informing the Bar Council shall be signed by all the partners/sole proprietors of the firms that are merging.</li> </ul>

To set up a practice in the legal service, a pre-requisite is the possession of the Annual Certificate from the Bar Council of Malaysia issued pursuant to Section 32 of the Legal Profession Act 1976 and Practising Certificate from the High Court of Malaya. The Annual Certificate and the Practising Certificate expire on 31 December of each year and must be renewed before 31 December. Applications for renewal are normally made in the month of September of the preceding year.

The Legal Profession (Group Law Practice) Rules 2018 came into effect on 30 June 2018, which allow small law firms with not more than five advocates and solicitors and no branch, to practise and operate as a group by sharing premises and facilities while remaining as separate entities. A Group Law Practice is not a legal entity, is not operated as a partnership, and cannot have a branch.

Foreign law firms and foreign lawyers are permitted to practise in Peninsular Malaysia subject to the conditions of the licences set forth below:

**a) International Partnership (IP)**

- IP is a partnership between a foreign law firm and a Malaysian law firm. Approval shall be given for the name of the IP to be a combination of the names of the foreign law firm and the Malaysian law firm.
- Licences will be for a period of three (3) years and are renewable. Application and registration fees will apply. Licences may be granted subject to terms and conditions.
- The IP will also be subject to prudential requirements in terms of professional indemnity insurance at a level appropriate to the nature and extent of its business pursuant to section 78A of the Act. In the case of a new IP, the new firm shall provide evidence of professional indemnity insurance with the following minimum terms and conditions:
  - (i) Insurance is obtained from a registered Malaysian insurance company.
  - (ii) Minimum mandatory limit of RM5,000,000 for each and every claim. The policy Retention (or Deductible) to be no more than RM500,000 for each and every claim (any requests for higher Retentions will be subject to the discretion and any additional requirements of the Bar Council).
  - (iii) Coverage for worldwide jurisdiction or as a minimum, covering the jurisdiction(s) equivalent to the foreign law work/advice given now or at any time in the past by the IP.
  - (iv) The IP must provide evidence of the insurance policy purchased to the Bar Council within 30 days of receiving its licence (and annually for renewal) and the scope of cover must, where reasonably practical, not be materially more restrictive than the mandatory scheme.
  - (v) A worldwide professional indemnity insurance policy will be acceptable as long as there is a locally compliant policy subject to the minimum agreed standards and limits as above.

**b) Qualified Foreign Law Firms (QFLF)**

- A Foreign Law Firm licensed as a QFLF will not require a Malaysian law firm as a partner. Only up to five QFLF licences will be granted, as this avenue has been created to support the Malaysian Government's Malaysian International Islamic Finance Centre (MIFC) initiative. QFLF licences will therefore only be granted to international law firms that have proven expertise in international Islamic finance, and which would be able to support and contribute to the MIFC.
- Licence will be for a period of three (3) years and are renewable. Application and registration fees will apply. Licences may be granted subject to terms and conditions.
- The QFLF will also be subject to prudential requirements in terms of professional indemnity insurance at a level appropriate to the nature and extent of their business pursuant to section 78A of the Act. In the case of a QFLF, the firm shall provide evidence of professional indemnity insurance with the following minimum terms and conditions:

- (i) Insurance is obtained from a registered Malaysian insurance company. If the firm has a worldwide cover from its country of origin, the firm is to provide Bar Council with an endorsement from its insurance company registered in Malaysia.
- (ii) Minimum mandatory limit of RM5,000,000 for each and every claim. The policy Retention (or Deductible) to be no more than RM500,000 for each and every claim (any requests for higher Retentions will be subject to the discretion and any additional requirements of the Bar Council).
- (iii) Coverage for worldwide jurisdiction or as a minimum, covering the jurisdiction(s) equivalent to the foreign law work/advice given now or at any time in the past by the QFLF.
- (iv) The QFLF must provide evidence of the insurance policy purchased to the Bar Council within 30 days of receiving its licence (and annually for renewal) and the scope of cover must, where reasonably practical, not be materially more restrictive than the mandatory scheme. Should the firm's worldwide cover expires anytime within the licenced period, the firm must provide to Bar Council proof of renewed insurance policy purchased within 30 days.
- (v) A worldwide professional indemnity insurance policy will be acceptable as long as there is a locally compliant policy subject to the minimum agreed standards and limits as above.

**c) Employment of a foreign lawyer by a Malaysian law firm**

- A Malaysian law firm may apply to the Bar Council for a licence to employ a foreign lawyer to practise in the permitted practice areas if it satisfies such conditions as the Bar Council may think fit to impose in any particular case.
- If approved, a Malaysian law firm will be granted a three (3)-year licence to employ a foreign lawyer.
- The MLF shall ensure that its mandatory professional indemnity insurance cover is amended to include the following:
  - (i) The name of the foreign lawyer;
  - (ii) Worldwide jurisdiction or as a minimum cover the jurisdictions equivalent to the foreign law work/advice given now or at any time in the past by the Foreign Lawyer;
  - (iii) The policy limit required will remain as per existing Bar Council limit requirements for mandatory insurance. However, the additional premium (and any specific coverage terms, conditions, and retention variations) will be subject to individual underwriting by the Mandatory Insurer;
  - (iv) The MLF can have the option to purchase a separate policy, only for this foreign lawyer's activities (and not replacing the Mandatory policy) from any other Malaysian-registered Insurers equivalent to the minimum limit requirements for the entire firm. The firm must also provide a copy of the policy purchased to the Bar Council annually and the scope of cover must, where reasonably practical, not be materially more restrictive than the Mandatory scheme; and
  - (v) Please note that should the firm cease to employ foreign lawyers or practice such foreign law work, they will be required to maintain cover for the relevant jurisdictions as part of their Mandatory insurance coverage for at least six (6) years from the date that such work ceased.



## Registration of Foreign lawyers

- All individual foreign lawyers working in an International Partnership, QFLF, or Malaysian law firm will have to register as a foreign lawyer. Application and registration fees will apply, subject to terms and conditions, and will have to be renewed annually.
- Foreign lawyers working in International Partnerships and QFLFs will have to reside in Malaysia for not less than 182 days in any calendar year.

## Permitted Practice Areas

International Partnerships, QFLFs, and foreign lawyers employed by Malaysian law firms can only practise in the permitted practice areas. This is defined as a transaction regulated by Malaysian law and at least one other national law, or a transaction regulated solely by any law other than Malaysian law. In the case of a QFLF, the Malaysian Bar has stated that there should be a proviso that such aspect of work regulated by Malaysian law shall be undertaken in conjunction with one or more advocates and solicitors of the High Court of Malaya holding a valid and subsisting Practising Certificate.

Practice in the permitted practice areas will specifically exclude:

- Constitutional and administrative law;
- Conveyancing;
- Criminal law;
- Family law;
- Succession law, including wills, intestacy, probate and administration;
- Trust law, where the settlor is an individual, and the law relating to charities and foundations, whether the settlor is an individual or a corporation;
- Retail banking, including corporate or commercial loans to small and medium enterprises;
- Registration of patents and trademarks;
- Appearing or pleading in any court of justice in Malaysia;
- Representing a client in any proceedings instituted in such a court or giving advice, whether or not the main purpose of which is to advise the client on the conduct of such proceedings; and
- Appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Malaysia.

For more information on starting up a legal practice in Malaysia, please refer to the Malaysia Bar website at [www.malaysianbar.org.my](http://www.malaysianbar.org.my).

## Professional Indemnity Insurance

Once the name of the firm is approved, the new firm shall obtain the mandatory Professional Indemnity Insurance (PII). Under the Legal Profession (Professional Liability) (Insurance) Rules, 1992, every advocate and solicitor must be insured under the PII Master Policy taken out by the Bar Council in the name of the Malaysian Bar.

The purpose of the PII is to provide indemnity against such classes of professional liability stipulated under the Master Policy and Certificate of Insurance (COI). The current PII Policy is a claims-made Policy and the terms of the Policy and COI are reviewed by the Bar Council



annually to ensure efficiency and equitability. Possession of PII cover is a pre-requisite to the issuance of the Annual Certificate.

The Mandatory Limit is based on the number of lawyers in the firm with a maximum of up to 36 lawyers. The minimum limit is RM250,000 for the first lawyer and the maximum Mandatory Limit is RM2,000,000. Where necessary, according to the nature and quantum of work undertaken, the firm may purchase top-up insurance coverage from either the insurers under the Master Policy or any other insurers.

If a new firm is established or merged, a fresh cover must be obtained under the new name of the firm. Likewise, when a firm is closed, the insurance cover will be cancelled.

Detailed information on PII can be found at [www.praktis.com.my](http://www.praktis.com.my).

## **1.2 Registration with Ministry of Finance (MOF)**

Any consulting firm intending to tender for Government contracts must register with MOF using the codes specified by MOF.

Conditions that must be fulfilled for registration with MOF:

- Firm with accumulated/paid-up capital as follows:

Sole proprietorship	-	minimum of RM50,000
Partnership	-	minimum of RM50,000
Sdn. Bhd.	-	minimum of RM50,000
- The firm needs to have a legitimate office address, whether leased or its own property.
- The business premise is not allowed to use the address of an online office, P.O. Box, mailing box office services, or other premises where the traceability and capacity of the firm is difficult to be determined.
- The firm must have at least three staff members under permanent employment and contributing to the Employees Provident Fund (EPF), with the following composition:
  - one professional with at least one degree in a related field;
  - one semi-professional with at least a diploma in a related field; and
  - one clerk.
- The owner of the firm must be appointed as a full-time Director, and can be appointed as part of the professional staff or the management, but is not allowed to be appointed as a worker in the firm.
- The owner of the firm must have the necessary professional qualification in the field of expertise applied for, in accordance with the provision of the relevant laws and regulations, and is required to submit his relevant CV/work experience.
- The professional staff and the semi-professional staff are required to submit their first degrees or diplomas together with their relevant CVs/work experience.

- All equity/shareholders must have at least five (5) years of working experience in the field of expertise applied for after obtaining their first degree.
- The field of expertise submitted for registration with MOF must be consistent with the practising licence issued by the respective Professional Boards.
- The consulting firm needs to have an active current account.
- For professions whose ethics of service are governed by the Professional Boards, the equity/shareholders shall be registered with their respective Professional Boards. The field of expertise to be registered with MOF will be the expertise approved by the Professional Boards.
- For professions whose ethics of service are yet to be governed by the Professional Boards, the field of expertise to be registered with MOF will be based on the academic qualification and the working experiences of the owner.
- The consulting firm is required to submit its registration certificate with the Professional Board as compliance with the provisions of the Act of the Professional Board for purposes of carrying out consultancy services.

Application must be made through [www.eperolehan.gov.my](http://www.eperolehan.gov.my).

Please refer to the above website for policy of registration, registration code, and other relevant information.

### **1.3 Business Licence**

Businesses intending to set up an office are required to obtain a business premise/signboard licence from the respective local authorities, depending on the nature of the business activity.

There are 155 local authorities in Malaysia responsible for approving business premise and signboard licences. The requirements for obtaining a business premise/signboard licence may vary from one local authority to another.

Applicants are advised to contact the relevant local authority (based on the location of the business premises) regarding the specific rules and regulations pertaining to business premise/signboard registration. The fees may vary according to each of the local authorities.

## **2. EQUITY POLICY**

A legal firm registered with The Bar Council of Malaysia is required to maintain a 100 per cent Malaysian equity ownership. The equity and voting rights of International Partnerships, QFLFs, and foreign lawyers employed by Malaysian law firms shall be as determined by the Selection Committee. This will be determined by reference to a business plan that must be submitted as part of the application process. The Malaysian Bar will recommend that the Selection Committee adopt the following guidelines in respect of this area:

- The Malaysian law firm should not have less than 60 per cent, and the foreign law firm no more than 40 percent, of the equity and voting rights and of the total number of lawyers in the International Partnership;

- The number of Malaysian lawyers in a QFLF shall not be less than 30 percent of the total number of lawyers in that firm; and
- The number of foreign lawyers employed by a Malaysian law firm shall not be more than 30 per cent of the total number of lawyers in that firm.

### **3. EMPLOYING EXPATRIATE PROFESSIONALS**

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Legal firms providing legal services in Peninsular Malaysia and the Federal Territory of Labuan may employ expatriates by submitting their applications for Employment Passes to the Immigration Department.

However, they must first apply for approval to employ expatriates from the Expatriate Committee of the Immigration Department prior to submitting the Employment Pass applications.

Spouses and children of expatriates can apply for Dependant Passes once the expatriates have been issued with the Employment Pass. The Dependant Passes may be applied for either together with the application for the Employment Pass or after the Employment Pass has been approved. Spouses and children of expatriates who enter the country on visit (temporary employment or professional) passes will be issued visit (social) passes.

### **4. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS), ASEAN FRAMEWORK AGREEMENT ON SERVICES (AFAS) AND FREE TRADE AGREEMENTS (FTAs)**

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Updates and information regarding the Schedule of Specific Commitments of GATS, AFAS, and FTAs are available from MITI's website at [www.miti.gov.my](http://www.miti.gov.my).



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