

CHAPTER

I

# ESTABLISHING YOUR BUSINESS PRESENCE IN MALAYSIA





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# 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 creating a manufacturing facility, there is an appropriate business entity to allow you to get started on your business journey in Malaysia.

## 1. APPROVAL OF MANUFACTURING PROJECTS

### 1.1 The Industrial Co-ordination Act 1975

The Industrial Co-ordination Act 1975 (ICA), requires companies engaging in manufacturing activity to apply for a manufacturing licence approved by the Ministry of Investment Trade and Industry (MITI). This refers to manufacturing companies with shareholders' funds of RM2.5 million and above, or engage 75 or more full-time paid employees.

Applications for manufacturing licences are to be submitted to the Malaysian Investment Development Authority (MIDA).

The ICA, which was introduced to maintain an orderly development and growth of the country's manufacturing sector, 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 does not include any activity usually associated with retail or wholesale trade.
- ❖ "Shareholders' funds" as the aggregate amount of a company's paid-up capital, reserves, balance of share premium account and balance of profit and loss appropriation account:
  - i. Paid-up capital refers to preference shares and ordinary shares and does not include any amount in respect of bonus shares to the extent they were issued out of capital reserve created by revaluation of fixed assets.

- ii. Reserves refers to 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 6 hours a day and at least 20 days a month for 12 months during the year and receiving salary directly under the applicant company. 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.

### 1.2 Guidelines for Approval of Manufacturing Projects

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

- ❖ Projects must have Capital Investment Per Employee (CIPE) of at least RM140,000; and
- ❖ The total full-time workforce of the company must comprise at least 80% Malaysians. Employment of foreign workers including outsourced workers is subject to current policies; and
- ❖ Total number of managerial, technical and supervisory levels (MTS) is at least 25% of total employment or having a value-add (VA) of at least 40%.

### Expansion of Production Capacity and Product Diversification

A licensed company which desires to expand its production capacity of its approved products or diversify its product range by manufacturing additional products will need to apply manufacturing license for the expansion or diversification project to MIDA.

## 2. REGISTERING BUSINESS ENTITIES IN MALAYSIA

### 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).

## 2.1 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.

Business includes every form of trade, commerce, craftsmanship, calling, profession or other activity carried out for the purpose of gain, but does not include any office or employment or any charitable undertaking or any occupation specified in the Schedule of the Registration of Businesses Act 1956 (ROBA 1956) & ROBA Rules 1957.

### Two (2) types of businesses:

1. **Sole proprietorship:** Business wholly owned by a single individual using personal name as per his / her identity card or trade name.
2. **Partnership:** Business owned by two or more person but not exceeding 20 person. Identity card name can't be used as business name.

## 2.2 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.

### 2.2.1 Types of Companies

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

1. 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;
2. 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
3. An unlimited company is a company formed on the principle of having no limitation on the liability of its members.

### 2.2.2 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 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;
- ❖ 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.

### 2.2.3 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 the director;
- ❖ In the case of a company limited by shares, the details of class and number of shares to be taken by every member.

The application to register a company limited by shares must be accompanied with a fee of RM1,000.

Meanwhile, to register a company limited by guarantee, the application may be submitted manually at any SSM's branch nationwide with a fee of RM3,000.

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.

#### 2.2.4 MyCoID

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), once a company is incorporated at SSM via a single submission.

#### 2.2.5 Client's Charter

SSM undertakes 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.*

#### 2.2.6 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 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.

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.

#### 2.3.1 Registration Procedures

- i. 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.

- ii. 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;
  - ❖ 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.*

- 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 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 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.*

## 2.4 Limited Liability Partnership (LLP)

### 2.4.1 Features of an LLP

A Limited Liability Partnership (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.

### 2.4.2 Who may form LLPs?

An LLP may be formed by a minimum of two person (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 person 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; or
- ❖ Small & Medium Sized Businesses; or
- ❖ Professionals; or

- ❖ Joint Ventures; or
- ❖ Venture Capitalists.

#### **2.4.3 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;
- ❖ 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”.

#### **2.4.4 Conversion to 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 person 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;
- ❖ 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;
- ❖ All creditors agreed to the conversion.

The effects of conversion are as follows:

- ❖ Vesting of assets, rights, privileges, obligations, and liabilities of the conventional partnership or the private company into the LLP;
- ❖ Pending proceedings may be continued, completed, and enforced against or by the LLP;
- ❖ Existing agreements and contracts shall have effect as though the LLP were a party;
- ❖ 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.
- ❖ 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 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.

## 2.5 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, MyData and XCESS Portal 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 (AR), Financial Statements and Reports (FS) and Exemption Applications (EA) related to the FS and AR.

For further information please visit SSM's website at [www.ssm.com.my](http://www.ssm.com.my).

## 3. GUIDELINES REGARDING THE EQUITY POLICY IN THE MANUFACTURING SECTOR

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

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

Since June 2003, foreign investors can 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.

The equity policy also applies to:

- ❖ 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;
- ❖ Existing licensed companies previously exempted from complying with equity conditions, as their shareholders' funds had not reached RM2.5 million.

### 3.2 Equity Policy Applicable to Existing Companies

Equity and export conditions imposed on companies prior to 17<sup>th</sup> June 2023 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.

## 3.3 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.

## 4. ESTABLISHMENT OF REPRESENTATIVE OFFICE (RE)/REGIONAL OFFICE (RO)

A Representative Office/Regional Office is a temporary office established in Malaysia by a foreign company/organisation to perform permissible activities for its head office/principal. The Representative Office/Regional Office serves to assess business viability prior to incorporating permanent business entities in Malaysia. The setting up of a Representative Office/Regional Office requires approval by the Government of Malaysia.

A Representative Office/Regional Office is eligible to apply for expatriate posts. The expatriates will only be considered for managerial and technical posts, and the number of posts allowed will depend on the functions and activities of the Representative Office/Regional Office.

### 4.1 Representative Office (RE)

A Representative Office is an office of a foreign company/organisation which serves to collect relevant information on investment opportunities in the country especially in the manufacturing and services sector, enhance bilateral trade relations, promote the export of Malaysian goods and services and carry out research and development (R&D).

### 4.2 Regional Office (RO)

A Regional Office is an office of a foreign company/organisation that serves as the coordination centre for its affiliates, subsidiaries, and agents in Southeast Asia and Asia Pacific. The Regional Office established is responsible for the designated activities of the company/organisation within the region it operates.

Application for the establishment of the RE/RO for manufacturing and services sub-sectors (excluding banking and financial services) must be submitted to MIDA.