

# Doing Business in Malaysia

## A LEGAL FACT SHEET

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## GOVERNMENT AND LEGAL SYSTEM

Malaysia is a constitutional monarchy headed by the Yang Di Pertuan Agong (“Federal Monarch”) who is elected every 5 years by a Council of Rulers. A federal system of government links together 13 states and the federal territories of Kuala Lumpur (financial and commercial capital of Malaysia), Putrajaya (administrative centre of the Federal Government) and Labuan (International Financial Centre of Malaysia).

Malaysia’s legal system is based upon English common law. The Civil Law Act, 1956 incorporated principles of English common law as at 1957 (Malaysia’s year of independence). As a result, common law doctrines have been adopted into Malaysian jurisprudence and applied by Malaysian courts. English cases as at 1957 are immediately binding on Malaysian courts but cases after 1957 together with decisions of courts of other Commonwealth countries continue to have persuasive authority and are considered by Malaysian courts in arriving at their judgments.

The states of Sabah and Sarawak in East Malaysia joined the then Federation of Malaya in 1963 to form the Federation of Malaysia. The agreement between the then Federation of Malaya and the 2 states granted those states autonomy in certain matters. As a result, the laws in the 2 states are not identical to those of the other 11 states in Peninsular Malaysia.

Malaysian commercial law comprises of case law and statute law. Case law is based upon the doctrine of *stare decisis* where courts are bound by precedence. This means that a decision of a superior court is binding upon itself as well as upon inferior courts. Statute law is passed in accordance with the constitution and becomes law upon receiving the royal assent from the Federal Monarch.

The Constitution of Malaysia guarantees the rule of law and also establishes the separation of powers between Parliament, the Executive and the Judiciary. All matters relating to land and religion are the prerogative of State Governments. Islamic jurisprudence is predominantly limited to Muslims and their property and seldom enters the realm of corporate commercial transactions except where Islamic financing instruments are used.

## COURTS

The courts of Malaysia are divided into Superior Courts and Subordinate Courts. The Subordinate Courts have limited jurisdiction and comprise the Magistrate Courts and the Sessions Courts. The Superior Courts comprise the High Court of Malaya,

the High Court of Sabah, the High Court of Sarawak, the Court of Appeal and the Federal Court. English is predominantly used in the Superior Courts but Bahasa Malaysia (the national language) is more commonly used in the Subordinate Courts.

## CONTRACTS AND LEGAL DOCUMENTATION

Commercial contracts are almost exclusively written in English although certain government related contracts may be written in Bahasa Malaysia as well as in English. Malaysian courts will recognise contracts regulated by a foreign law provided that the foreign law can be clearly presented and explained. Malaysian courts will generally also recognise a valid judgment of a foreign court.

Freedom of contract is an underlying philosophy of contract law and as such parties are free to agree the terms of their contracts provided they are not illegal or contrary to public policy as understood under the common law. However, certain statutes may incorporate compulsory terms into certain contracts for consumer protection. Provided that the contract is not for an illegal purpose or consideration or contrary to public policy, the reasonable contractual intention of parties which has been clearly expressed or evidenced will be upheld regardless of the nationality of the contracting parties.

## BUSINESS ENTITIES

Business in Malaysia can be carried out either as a sole proprietorship, a partnership or a company.

Sole proprietorships and partnerships must be registered with the Companies Commission of Malaysia (“CCM”) under the Registration of Business Act, 1956. However, only Malaysian citizens and permanent residents can be registered as sole proprietors with the CCM. As a matter of practice, the CCM does not permit companies (whether locally incorporated or foreign) or foreign individuals to be registered as partners in a partnership.

Partners of a business are advised to draw up a formal partnership agreement governing their rights and obligations. In the absence of a partnership agreement, the provisions of the Partnership Act, 1961 will apply. Business partnerships of more than 20 members for the acquisition of gain are generally not permitted and should be incorporated under the Companies Act, 1965 (“CA”).

The Limited Liability Partnerships Act 2012 (“LLPA”) came into force on 26<sup>th</sup> December 2012. Partners of a limited liability partnership are advised to draw up a formal partnership agreement governing their rights and obligations. In the absence of such an

agreement, the provisions of the LLPA will apply. The advantage of having a limited liability partnership instead of a partnership is that any obligation of a limited liability partnership whether arising in contract, tort or otherwise, is solely the obligation of the limited liability partnership. However this obligation does not include any personal liability of a partner in tort for his own wrongful act or omission. Registered foreign limited liability partnerships are allowed to carry on business in Malaysia.

Under the CA, 3 main types of companies may be incorporated or established in Malaysia:

- a private limited company which has liability limited by shares;
- a public limited company which has liability limited by shares; and
- a public company limited by guarantee only.

All 3 types of companies are corporate entities and have separate legal identities and may enter into legally binding commitments, sue and be sued. Companies limited by shares are the most frequently used in Malaysia. Private limited companies are known as 'Sendirian Berhad' or 'Sdn. Bhd.' (for short) and public limited companies are known as 'Berhad' or 'Bhd.' (for short).

A joint venture may be formed between a foreign company and a local entity by agreement (unincorporated joint venture) or by forming a company in which the parties to the joint venture are shareholders (incorporated joint venture).

Prior to the incorporation of a company, an application must be done to determine if the proposed name of the intended company is available. The proposed name of a company will be rejected if the name already exists in the records of the CCM. Certain names may also be rejected for policy reasons. It is also possible to purchase 'shelf companies' but in doing so, it is important to ensure that these companies do not have liabilities.

The constitutional documents of a company are called the Memorandum of Association and the Articles of Association. These documents must be filed with the CCM. Companies must also file annual audited accounts and other returns with the CCM showing changes to shareholders, directors or secretaries and special resolutions passed by them.

All companies must have at least 2 initial subscribers. Companies normally apply for an initial authorised share capital of RM400,000 to save costs and time of having to enlarge the minimum authorized share capital later. However, it is not necessary to have all

the authorized capital issued and fully paid up.

There may also be different capital requirements for certain industries. For instance, companies engaging in wholesale and retail trade must comply with the policy on foreign participation in Distributive Trade Services administered by the Ministry of Domestic Trade and Consumer Affairs. This policy requires all wholesale and retail businesses with foreign interest to operate through a locally incorporated company with certain specified minimum capital requirement.

All companies must have at least 2 resident directors (need not be Malaysian citizens). There must also be a duly qualified and licensed person to act as a company secretary. A circular or paper resolution may be adopted if this is allowed by the Articles of Association of the company or agreed by the shareholders of the company. Board meetings may be held via teleconferencing.

Another popular form of business organisation is the Operational Headquarters ("OHQ") which has been permitted by the Malaysian government to promote the use of Malaysia as a regional base for providing management services to affiliates outside Malaysia. In order to qualify for tax incentives, the OHQ must demonstrate that it provides qualifying services to its offices or related companies within and outside Malaysia.

In addition to the OHQ, Malaysia offers further incentives and infrastructure for the establishment of special procurement and distribution centres eligible for certain commercial and taxation benefits.

An international procurement centre ("IPC") carries on a business in Malaysia to undertake procurement and sale of raw materials, components and finished products for its group of related companies and unrelated companies in Malaysia and abroad. This includes procurement from, and sales made to, local sources as well as third countries. A regional distribution centre ("RDC") is a collection and consolidation centre for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries or other unrelated companies within or outside the country. Among the value-added activities involved are bulk breaking, repackaging and labelling.

In order to apply for IPC or RDC status from the Malaysian Industrial Development Authority ("MIDA"), the applicant must be locally incorporated and have a minimum paid-up capital of RM0.5 million.

A company that has been granted IPC or RDC status in accordance with the Malaysian Income Tax Act 1967 is allowed 100% foreign equity ownership. Further benefits include the importation of raw materials, components or finished products with customs duty exemption into free industrial zones (FIZs), free commercial zones (FCZs), licensed manufacturing warehouse (LMWs) and bonded warehouses for re-packaging, cargo consolidation and integration before distribution to its final consumers.

It is also possible to set up a representative office/regional office which will entitle a foreign party to establish an office in Malaysia albeit as a cost centre only. A representative office/regional office may not transact business or effect sales.

The CA permits the registration of a branch of a foreign company in Malaysia. The branch operates as an extension of the foreign company and is not a separate legal entity. A branch of a foreign company may be permitted to carry on business in Malaysia.

Federal as well as local government licenses may be required to carry out certain businesses. For instance, companies engaging in manufacturing activities with a paid up capital of RM2.5 million and above or who employ more than 75 full time employees would require a manufacturing license from MIDA.

### EQUITY CONDITIONS

Foreign ownership of shares of Malaysian companies is not prohibited by law. However, prevailing government policy may impose restrictions on the level of foreign ownership of Malaysian companies as a condition to the grant of certain licences or permits by the government.

The Government has gradually liberalised and in some cases removed investment restrictions on foreign ownership to attract more foreign investments. The prevailing policy allows foreign ownership in the following companies and sectors:

- 27 sub-sectors of the service industry including health, tourism, transport and computer related services;
- additional 7 broad services sectors, consisting of 18 sub-sectors of the service industry including telecommunications, healthcare, professional, environment, distributive trade, education and courier services;
- companies with Multimedia Super Corridor ("MSC") status (see discussion on Growth Corridors below);
- manufacturing companies licensed by the

Ministry of International Trade and Industry;

- approved OHQ, IPC, RDC, representative offices and regional offices, Labuan companies and companies that are granted the status of international procurement centre;
- companies listed on Bursa Malaysia Securities Berhad ("Bursa Malaysia"), Malaysia's only approved securities exchange (however, companies with Malaysian based operations going for initial public offering are required to offer half of the 25% public spread shares to Bumiputra); and
- companies endorsed by the Secretariat of the Malaysian International Islamic Financial Centre, which is an initiative to position Malaysia as a hub for international Islamic finance.

### FOREIGN OWNERSHIP OF REAL PROPERTY

The acquisition of property in Malaysia by a foreign-interest is subject to policy considerations set out in the 'Guideline on the Acquisition of Properties' issued by the Economic Planning Unit ("EPU") in the Prime Minister's Department, effective as of 1<sup>st</sup> March 2014.

Under this policy EPU approval is required for (a) direct acquisition of property (except for residential unit) valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputra interest and/or government agency; and (b) indirect acquisition of property (except for residential unit) by other than Bumiputra interest through the acquisition of shares, effecting a change of control in company owned by Bumiputra interest and/or government agency, having property constituting over 50% of its total assets and valued at RM20 million or above..

Foreign interests are not allowed to acquire (a) properties valued less than RM1,000,000 per unit; (b) residential units under the category of low and low-medium cost as determined by the state authority; (c) properties built on Malay reserved land; and (d) properties allocated to Bumiputra interest in any property development project as determined by the state authority.

In addition, under the National Land Code, 1965, all foreign interests must obtain the prior approval of the relevant state authority before acquiring or taking security in landed property with the exception of industrial land (i.e. land used for the purposes of erection or maintenance of factories, workshops, warehouses or other buildings where any manufacturing, processing or storage activities take place).

A foreign company that intends to construct its own

retail premises must do so in a commercial zone. In addition, the relevant state authority may impose further restrictions on the permitted use of certain lands.

### FOREIGN PARTICIPATION IN DISTRIBUTIVE TRADE SERVICES

All foreign business operators who wish to engage in distributive trade services in Malaysia must obtain approval from the Ministry of Domestic Trade, Cooperatives and Consumerism ("MDTCC") in accordance with the 'Guidelines on Foreign Participation in Distributive Trade Services Malaysia', which came into effect on 6<sup>th</sup> January 2010. This is a policy document having no force of law.

For the purposes of the Distributive Trade Guidelines, distributive trade is inclusive of all linkage activities involving the channeling of goods and services to intermediaries for resale or directly to end-consumers. Expressly excluded from the definition of distributive trade are all manufacturing companies and those companies granted the status of regional establishments by MIDA, namely OHQ, IPC and RDC. Retailers who direct their goods into the domestic market fall within the definition of distributive traders.

The Distributive Trade Guidelines set out various operational, capitalization and equity requirements based on the proposed retail stores specific format. Store categories include, hypermarkets, departmental stores, superstores, specialty stores, franchises, and other distribution formats. With the exception of hypermarkets, none of the retail store formats are presently subject to any equity requirements but may be required as a matter of policy to maintain minimum paid up capital for each retail outlet.

### TAXATION

Generally, all income of companies and individuals accrued in or derived from Malaysia is taxable. Foreign sourced income remitted to Malaysia (other than by companies carrying on the business of banking, insurance, air and sea transportation) are exempted from tax. To encourage the export of financial services, banking institutions are given tax exemption on statutory income from overseas branches for 5 years from date of commencement of operation of the new overseas branches. Sources of income which are liable to income tax are as follows:

- gains or profits from trade, profession and business;
- gains or profits from employment (salaries, remuneration, etc.);
- dividends, interests and discounts;
- pensions, annuities or other periodic payments;

- rents, royalties or premiums; and
- other gains or profits of an income nature.

A company, whether resident or not, is liable for corporate income tax currently at the rate of 25% on income accrued in or derived from Malaysia (a company carrying on petroleum upstream operations is subject to a petroleum income tax of 38%). A company is considered resident in Malaysia if the control and management of its affairs are exercised in Malaysia.

Labuan companies and other Labuan entities that are taxed under the Labuan Business Activity Tax Act, 1990 have the option of electing annually to pay 3% of audited net profits or a fixed sum of RM20,000 as the corporate tax for income from 'offshore trading activities'. The income from 'offshore non-trading activities' such as the holding of investments in securities, loans, deposits and immovable properties as well as the management of estate, is tax-exempt, unless they are carried on as part of the offshore trading activities. Effective from year of assessment 2009, Labuan companies can also make an irrevocable option to be taxed under the Income Tax Act, 1967 applicable to all other states in Malaysia so that they can enjoy the tax treaty benefits with countries who have specifically excluded Labuan in their tax treaties with Malaysia.

All individuals are liable to personal income tax on taxable income accrued in or derived from Malaysia. The rate of tax depends on the residency status of the individual. The residency status of an individual is determined by the duration of his stay in Malaysia. Generally, an individual is regarded as a tax resident if he has been in Malaysia for at least 182 days in a calendar year. Resident individuals are taxed at scaled rates of up to a maximum of 25%, while non-resident individuals are subject to a flat tax rate of 25%.

Payment to non-resident individuals are subject to withholding tax of 10% on royalties, and special classes of income such as use of moveable property, technical advice, assistance or service and installation services on supply of plant and machinery; and 15% on services of a public entertainer.

Real property gains tax is charged on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such real property as well as the disposal of shares in real property companies held for less than 5 years. The real property gains tax rates are 30% for disposals within 3 years, 20% for disposal in the 4<sup>th</sup> year and 15% for disposals in the 5<sup>th</sup> year.



Disposals after the 5<sup>th</sup> year are no longer subject to real property gains tax unless the disposer is a company where the tax rate is 5%. In the case of an individual who is not a citizen and not a permanent resident of Malaysia, the real property gains tax rate are 30% for disposal within 5 years and 5% for disposal after the 5<sup>th</sup> year.

With effect from 1<sup>st</sup> April 2015, the sales tax and service tax have been replaced by goods and services tax ("GST") at a rate of 6%. GST is chargeable on all taxable supplies of goods and services made in the course or furtherance of any business in Malaysia carried on by taxable persons and on any importation of goods into Malaysia, save and except for supplies that fall under zero-rated supply or exempt supply.

Import duties are levied on a large number of imports to protect certain developing industries. However, many of these will be removed in line with the Malaysian government's commitment to trade liberalization driven by agreements under the World Trade Organization (WTO) and obligations under free trade agreements. Export duties are imposed on the country's main commodities like crude petroleum and palm oil. Excise duties are levied on selected products manufactured locally or imported into Malaysia, namely, cigarettes, liquors, playing cards, mahjong tiles and motor vehicles.

A variety of tax incentives are available for companies that produce promoted products or engaged in promoted industries. In recent years incentives have also been given to the service sector especially for those involved in Islamic financial services, ICT, research and development. These incentives include the grant of pioneer status to qualifying companies, investment tax allowance, re-investment allowance, export incentives, research and development incentives, abatement of tax for training and R&D activities, tax exemptions for OHQ and abatement of tax for the use of Labuan as an international financial centre.

### **EXCHANGE CONTROL**

Non-residents can bring in any amount of foreign currency notes and/or traveller's cheques provided that any amounts in excess of the equivalent of US\$10,000 must be declared. Non-residents would need to seek permission from the Bank Negara Malaysia if the amount of foreign currency notes to be carried out of Malaysia exceeds the amount brought in and is more than the equivalent of US\$10,000. Non-residents may bring in or out of Malaysia, Ringgit notes of up to the equivalent of US\$10,000. All payments, including the repatriation of capital, profits, dividends, interest and rental are

freely permitted.

Malaysia has been moving towards greater liberalization of its investment environment to encourage increased investment from non-residents. In accordance with the same, payments by foreign investors for investment in Ringgit assets can be sourced from a non-residents' own Ringgit accounts maintained with a licensed onshore bank ("External Accounts") or settled through payment in foreign currency.

Further to this, a non-resident can elect to make payments to or receive payments from a resident in either Ringgit or foreign currency as settlement for goods or services.

To better facilitate these recent changes to the exchange control rules, non-residents are free to open and maintain Ringgit denominated accounts with licensed onshore banks, financial institutions and merchant banks. Non-residents are also free to obtain credit facilities from licensed onshore banks in Ringgit or foreign currency, and can borrow any amount for margin financing from resident stockbroking companies.

Residents, bank or non-bank, may subject to their own internal credit assessment guidelines extend immovable property loans in Ringgit to a non-resident to finance or refinance the purchase or construction of any immovable property in Malaysia (purchase of land only is not permitted).

All exchange control regulations are applied uniformly to transactions with all countries, except Israel for which special restrictions apply. Exchange controls are, however, subject to changes and modifications from time to time.

### **INTELLECTUAL PROPERTY LAWS**

Malaysia has extensive and progressive legislation in the field of intellectual property rights protection.

The classification of goods and services under the Trade Marks Regulations, 1997 is in line with the Nice Classification of goods and services for the purposes of registering trade marks and service marks. Malaysia is a party to the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS"). Hence Malaysian intellectual property rights will be granted the same recognition and protection in other TRIPS member countries provided local registration requirements are met.

Malaysia has also acceded to the World Intellectual Property Organisation's ("WIPO") Patents Cooperation Treaty ("PCT") and as such the PCT

has been adopted into national law. The owner of a foreign patent, who is a citizen of a PCT signatory country or who has registered or is seeking registration of his patent in a PCT signatory country can apply via the International Bureau of WIPO in Geneva, or through his local patent's office for the registration of the patent in Malaysia.

Trade marks, patents and industrial designs registered in Malaysia have protection under Malaysian laws for 10 years, 20 years and 5 years, respectively. The period of registration for trade marks can be renewed indefinitely for periods of 10 years per renewal subject to payment of the prescribed renewal fees. The registration period for industrial designs can be renewed for 2 further consecutive terms of 5 years each subject to payment of the prescribed renewal fees. The basic term of a copyright is the life of the author plus 50 years after his death.

Intellectual property rights are also protected under the common law. For example, unregistered trade marks may be protected under the law of passing off and action may be brought against any person who injures the reputation or goodwill which attaches to the trade mark. Non-registrable trade secrets and other valuable confidential information are also protected under the English law doctrine of breach of confidence.

Apart from the intellectual property mentioned above, Malaysia also provides protection for layout-design of an integrated circuit under the Layout-Designs of Integrated Circuit Act 2000. The term of protection is a period of 10 years from the date it is first commercially exploited. Notwithstanding this, the protection granted lapses 15 years after the date it is created.

Other intellectual property statutes include the Geographical Indications Act 2000 to protect geographical indications, the Protection of New Plant Varieties Act 2004 to protect the rights of breeders of new plant varieties, amongst others, and the Optical Discs Act 2000 to deal with piracy of copyrighted works in the form of optical discs.

## BIOTECHNOLOGY

To develop Malaysia's biotechnology potential, a National Biotechnology Policy was launched on 28 April 2005 and the Malaysian Biotechnology Corporation Sdn Bhd ("Biotechcorp"), a dedicated government agency, was established to oversee, promote and coordinate the development of Malaysia's biotechnology industry. The incentives that are currently available to a qualified company undertaking biotechnology activity that has been

approved with bionexus status by Biotechcorp ("Bionexus Company") are:

- 100% income tax exemption for 10 years commencing from the first year the company derives profit or Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years;
- exemption of import duty and sales tax on raw materials/components and machinery/equipment;
- double deduction on expenditure incurred for research and development and for the promotion of exports;
- dividends distributed from the Bionexus Company will be treated as tax exempt income for its shareholders;
- tax deduction for a company that invests in a Bionexus Company, equivalent to the amount of investment made in that subsidiary;
- concessionary tax rate of 20% on income from qualifying activities for 10 years upon the expiry of the tax exemption period to a Bionexus company;
- tax deduction equivalent to the total investment made in seed capital and early stage financing for a company or an individual investing in a Bionexus Company; and
- Industrial Building Allowance over a period of 10 years for buildings that are used solely for the purpose of biotechnology research activities.

## GROWTH CORRIDORS

### The Multimedia Super Corridor

The Malaysian government has created a special zone which extends from the Kuala Lumpur City Centre to the Kuala Lumpur International Airport in Sepang, known as the MSC to promote Malaysia's competitiveness in IT and multimedia.

Companies which obtain 'MSC status' from the Multimedia Development Corporation enjoy certain incentives guaranteed by the Malaysian government under a Bill of Guarantees, including:

- world class physical and information infrastructure (only applicable to TIER 1 Company);
- unrestricted employment of foreign knowledge workers;
- freedom of ownership of MSC status companies;
- free mobility of capital and finance;
- competitive financial incentives including 100% income tax exemption for profits derived from MSC status qualifying activities for up to 10 years or 100% investment tax allowance for up to 5 years;
- intellectual property rights protection in line with international laws;
- freedom from censorship of the internet;

- eligibility to tender for key MSC infrastructure contracts if the MSC is used as a regional hub;
- competitive telecommunication tariffs; and
- one-stop processing of regulatory approvals.

### Iskandar Malaysia

Iskandar Malaysia (“Iskandar”) is one of the 5 special economic zones created around the country as part of Malaysia’s development planning. Companies undertaking creative industries, educational services, financial advisory and consulting services, healthcare services, logistic services and tourism related services (“Qualifying Activities”) in Iskandar located in the southern state of Johor can apply to the Iskandar Regional Development Authority (“IRDA”) to obtain ‘IDR status’ and enjoy a host of incentives for their operations within the IDR including:

- corporate income tax exemption for 10 years, upon commencement of operations in respect of income from Qualifying Activities carried out within the approved location for customers located within the approved locality and outside Malaysia or wholly outside Malaysia provided that it is before the end of year 2015;
- withholding tax exemption on payments for services and royalties to non-residents for 10 years upon commencement of operations;
- freedom to source capital globally;
- unrestricted employment of foreign employees within the approved zones;
- Malaysians and foreign knowledge workers residing in Iskandar and working in Qualifying Activities will be taxed at 15% instead of 26% if they apply and commence work before 31 December 2015; and
- flexibilities under the foreign exchange administration rules.

### Other corridors

Besides Iskandar, there are 4 other regional economic zones being developed in tandem. These are the Northern Corridor Economic Zone and the Eastern Corridor Economic Zone in Peninsular Malaysia; and the Sabah Development Corridor and the Sarawak Corridor of Renewable Energy in East Malaysia. These are part of Malaysia’s development planning and various incentives will be given to spur the economic growth in these areas.

### EMPLOYMENT

Generally, parties are free to agree on the terms of employment contracts. However, a minimum level of statutory protection which relates mainly to medical benefits and leave taking is afforded under the Employment Act, 1955 to manual workers and employees whose monthly salaries do not exceed RM2,000.

The Industrial Relations Act, 1967 ensures that employees are fairly treated and that due process is observed in the termination of employment. Generally, an employer does not have unfettered right to hire and fire his employees. An employer is only entitled to terminate employees for just cause or excuse and such a right is subject to industrial adjudication. Just cause and excuse could either be misconduct, negligence or poor performance and the onus is on the employer to establish his allegations. Given such a burden, proper procedures must be adopted in order to show that just cause or excuse exists.

The Trade Unions Act, 1959 permits the formation of employee unions. However, the powers of these unions are limited.

All Malaysian employees (other than domestic helpers and those above 60 years old) are required to make a statutory contribution of 11% of their gross salary to the Employee Provident Fund (“EPF”). Employers are required to make a statutory contribution of 12% of the employee’s gross salary to EPF or 13% of the employee’s gross salary if the salary is RM5,000 and below. Foreign citizens are exempted from making EPF contributions but they may elect to contribute, if they wish.

### IMMIGRATION PROCEDURES

A visit pass for the purpose of a social, tourist or business visit may be obtained at the point of entry if a visitor can satisfy the immigration authority at the point of entry that he has an international passport or other internationally recognized travel document and visa (where applicable) valid for travel to Malaysia for at least 6 months beyond the date of entry.

Foreign visitors, who have entered Malaysia on a social pass may apply to the Immigration Department to convert their pass into a business visit pass. A person seeking employment in Malaysia, must apply for one of the following passes:

- Visit Pass (Temporary Employment/ Professional); or
- Employment Pass (for foreigners entering the country to take up employment for a minimum period of 2 years and earn a monthly income of RM5,000 or more).

Dependant’s Pass will automatically be granted for the wife and child of any foreigner who have been issued with an Employment Pass.

All employment pass applications must be sponsored by a Malaysian who agrees to be



responsible for the maintenance and repatriation of the visitors from Malaysia should it become necessary. Foreign spouse of a Malaysian citizen (legally married under Malaysian law) with a permanent job offer can apply for an employment pass. Spouses of expatriates with professional qualifications are allowed to work in Malaysia.

Foreign owned companies are allowed to bring in expatriate personnel in areas where there is a shortage of trained Malaysians to do the job and for 'key posts', that is, managerial posts essential for companies to safeguard their interests and investments. The banking, insurance and capital market industries are accorded greater flexibility to employ foreign specialist expatriates that have expertise to contribute to the development of the financial system in Malaysia. An expatriate officer who is transferred from one post to another within the same company is also required to obtain a new employment pass. A new expatriate officer replacing another is also required to obtain a fresh employment pass. The holder of an employment pass will be issued with a multiple entry visa valid for the period that corresponds with the validity period of the employment pass.

Foreigners who fulfill certain criteria can apply under the Malaysia My Second Home Programme to stay in Malaysia (together with their spouses, unmarried children below 21 years old and parents above 60 years old as dependants) on a social visit pass with multiple entry visa for 10 years, renewable indefinitely.

For expatriate working in Malaysia and looking for a flexible long term option to work and live in Malaysia can apply for the Residence Pass-Talent (RP-T) provided that the requirements are satisfied.

### ENVIRONMENT

The Environmental Quality Act, 1974 is the existing legislation that governs the prevention, abatement, control of pollution and enhancement of the environment in Malaysia. This Act and the regulations thereunder establish standards for projects.

In efforts to promote energy conservation and discourage excessive energy consumption, companies are given tax incentives for provision of energy conservation activities, tax exemption for construction of environmentally friendly buildings and soft loans for promotion of green technology.

### COMPETITION LAW

Malaysia has become the fourth ASEAN nation to introduce specific rules to govern competition and to

ensure fair market play through the Competition Act 2010 which came into force on 1<sup>st</sup>. January 2012. The Malaysian Competition Commission ("MyCC") which is under the purview of MDTCC was established to enforce the Competition Act.

The Competition Act regulates commercial activities (except activities regulated under the Communications and Multimedia Act 1998 and the Energy Commission Act 2001), that affect competition in any market in Malaysia. Any agreement between enterprises which has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services is prohibited.

### DATA PROTECTION

The Personal Data Protection Act 2010 ("PDPA") aims to regulate the processing of personal data in commercial transactions.

There are 7 principles which form the basis of protection under the PDPA, namely:-

- General Principle – Prohibition from processing personal data unless the data subject has consented to it;
- Notice and Choice Principle – Providing the data subject with a written notice as soon as practicable;
- Disclosure Principle – Prohibition from disclosing personal data for any purpose other than the purpose for which it was to be disclosed at the time of collection without the consent of the data subject;
- Security Principle – All practical steps shall be taken to protect the personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction when processing personal data;
- Retention Principle – Personal data shall not be kept longer than is necessary for the fulfillment of the purpose;
- Data Integrity Principle – A data user shall take reasonable steps to ensure that the personal data is accurate, complete, not misleading and kept up-to-date by having regard to the purpose for which the personal data was collected and further processed; and
- Access Principle – A data subject shall be given access to his personal data and be able to correct that personal data where the personal data is inaccurate, incomplete, misleading or not up-to-date.

### ANTI-CORRUPTION

The Malaysian Anti-Corruption Commission ("MACC") officially began its operations on 1<sup>st</sup>. January 2009 pursuant to the enactment of the

Malaysian Anti-Corruption Commission Act (“MACCA”), thereby replacing the former Anti-Corruption Agency and the former Anti-Corruption Act 1997 (“ACA”) was repealed. It is one of the Malaysian Government’s efforts to enhance and strengthen the Malaysia’s national integrity and anti-corruption agenda. Notwithstanding, many serious issues remain over its enforcement.

The MACCA while retaining most of the offences and penalties prescribed under the ACA, it also introduces a few new offences. The offences under the MACCA are:-

- accepting gratification either by himself or by agent;
- intending to deceive principal by agent;
- corruptly procuring withdrawal of tender;
- bribery of officer of public body;
- bribery of foreign public officials; and
- using office or position for gratification.

All the offences under the MACCA, upon conviction, carry the penalty of imprisonment of not more than 20 years and fine of not less than 5 times the sum or value of the gratification, or ten thousand ringgit, whichever is the higher.

#### **ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING**

Money laundering is a commercial crime which was codified as a criminal offence by the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (“AMLATFA”). Money laundering is defined to mean any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources. On the other hand, financing of terrorism generally refers to carrying out transactions involving funds that may or may not be owned by terrorists, or that have been, or are intended to be, used to assist the commission of terrorism.

The AMLATFA has made it a duty for persons who come under the First Schedule to keep a record of any transaction for a minimum period of 6 years from the date of completion or termination of the transaction. Reporting Institutions are also required to report to the competent authority any suspicious transaction involving proceeds of an unlawful activity.

Therefore, it is advisable for persons who come under the First Schedule to conduct ongoing due diligence and scrutiny of customers’ identity and their investment objectives.

#### **ISLAMIC FINANCE**

The Islamic financial system is a fast growing economic activity in Malaysia and comprises four

main components namely Islamic Banking, Takaful and Retakaful, Islamic Interbank Money Market and the Islamic Capital Market.

#### **DISPUTE RESOLUTION**

Civil claims may be commenced in the Subordinate Courts or the High Court depending on the quantum of the claim. The jurisdiction of the Magistrates Court and Sessions Court is limited to RM100,000 and RM1,000,000.00 respectively and all claims above RM1,000,000 must commence in the High Court. With effect from 1<sup>st</sup> March 2013, the Sessions Court has been granted the power to grant injunctions and declaratory orders. If a monetary claim can be supported by clear evidence, a summary procedure may be adopted to obtain judgment without a trial. This procedure may permit a plaintiff to obtain judgment within 6 months to 1 year. This procedure is seldom used for other claims.

The Malaysian Mediation Centre and the Mediation Committee under auspices of the Bar Council of Malaysia are actively promoting mediation as an alternative method of dispute resolution. Mediators do not generally refer to any legal authorities and play a facilitating role in assisting conflicting parties to reach an agreement. As a mediator's decision is not binding, the parties still have the option of resorting to legal action in court.

The recently enacted Mediation Act 2012 which came into force on 1<sup>st</sup> August 2012 is an effort to promote and encourage mediation as a method of alternative dispute resolution and to facilitate the settlement of disputes in a fair, speedy and cost-effective manner.

Arbitration is encouraged in Malaysia and there are comprehensive arrays of facilities and services to facilitate arbitration in Malaysia. Both domestic and international arbitrations are governed by the Arbitration Act, 2005 which is based on the UNCITRAL Model Law on International Commercial Arbitrations. However, Part III of the Arbitration Act contains 7 provisions which apply only to domestic arbitrations unless parties to international arbitrations have ‘opted in’ for these provisions to apply to their arbitrations. One of the key provisions in Part III of the Arbitration Act is Section 42 which provides for references to the High Court on points of law arising during and after the arbitration. Parties are free to determine the number of arbitrators but in the absence of any determination, the arbitration tribunal shall consist of 3 arbitrators for international arbitration and 1 arbitrator for domestic arbitration. The substantive law for international arbitrations will be decided based on the common law principles for determining ‘proper law’.

The Kuala Lumpur Regional Centre for Arbitration established under the auspices of the Asian-African Legal Consultative Committee (an inter-

governmental organisation) acts as the appointing authority for arbitrators, where there is no agreed procedure in the arbitration agreement or where the agreed procedure has failed.