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Malaysia

Doing Business In

Contributor

Wong & Partners

Munir Abdul Aziz

Partner, Corporate, Commercial and Securities Practice Group | munir.abdulaziz@wongpartners.com

Eddie Chuah

Partner, Dispute Resolution Practice Group | eddie.chuah@wongpartners.com

Krystal Ng

Partner, Tax, Trade and Wealth Management Practice Group | krystal.ng@wongpartners.com

Lydia Kong

Partner, Corporate, Commercial and Securities Practice Group | lydia.kong@wongpartners.com

Nico Ho

Associate, Corporate, Commercial and Securities | nico.ho@wongpartners.com

Justin Lew

Legal Assistant, Corporate, Commercial and Securities | justin.lew@wongpartners.com

This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Malaysia.

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Malaysia: Doing Business In

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The Malaysian legal system is based on the English common law system in which sources of law consist of legislation and case law precedents. Many Malaysian statutes draw upon equivalent legislation from common law counterparts, and English law continues to be strongly persuasive in cases argued in Malaysian courts. In addition, Malaysia has *Syariah* laws which are applicable only to Muslims in personal and religious matters.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

In Malaysia, a business may be carried on through one of several corporate vehicles, the most common of which are:

a. locally incorporated companies;
b. branches of foreign companies;
c. representatives/regional offices; and
d. limited liability partnerships.

Locally Incorporated Companies

Locally incorporated companies are regulated under the Malaysian Companies Act 2016 ("**MCA**"). A locally incorporated company has a separate legal personality, and the liabilities of the shareholders are limited by the amounts invested for shares of the company or by guarantee. A locally incorporated private limited company must have at least one shareholder, and there is a minimum capital requirement of one ordinary share. The company must also have at least one director who is resident in Malaysia. There is no blanket prohibition against the establishment of a wholly foreign-owned company as long as there are no foreign equity restrictions in respect of the particular business carried on by the company.

Branches of Foreign Companies

Alternatively, a foreign company wishing to carry on business in Malaysia may register a branch under the MCA. Registering a branch may be an appropriate form of operation for a foreign company that foresees that its operations in Malaysia will likely be short-term to medium-term. A branch does not have a separate legal personality, so its liabilities are those of its parent company. It must appoint an agent in Malaysia who is answerable for all acts, matters and things required to be done by the branch under the MCA and is personally liable for all penalties imposed unless the agent can satisfy the court that they should not be so liable.

Representative/Regional Offices

A foreign company, especially one in the manufacturing or services sector, may establish a representative/regional office in Malaysia. Representative/regional offices are not regulated under the MCA but generally require the approval of the Malaysian Investment Development Authority ("**MIDA**"). Approval for a representative/regional office is usually given for an initial period of two years. Under the guidelines issued by MIDA, a representative/regional office is not allowed to:

a. engage in any form of commercial activity;
b. lease warehousing facilities;
c. sign business contracts for a fee; or
d. participate in the daily management of any entity within its corporate group in Malaysia.

Permissible activities for a representative/regional office include:

a. planning or coordinating business activities;
b. undertaking research and product development; and
c. other activities that will not result directly in actual commercial transactions.

Limited Liability Partnerships ("LLPs")

An LLP is an alternative business vehicle regulated under the Limited Liability Partnership Act 2012. Unlike a traditional partnership, an LLP has a separate legal personality, and the liabilities of the partners are limited in respect of claims against the LLP and the wrongful acts of other partners of the LLP. A LLP effectively shields the partners from the negligence or impropriety of other partners, whilst also having the flexibility of the traditional partnership model and it is not burdened by strict capital maintenance rules and compliance requirements applicable to a corporate entity. An LLP

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must be formed by two or more persons and must appoint at least one compliance officer from amongst its partners or persons qualified to act as company secretaries under the MCA.

In practice, foreign companies typically carry on business in Malaysia through a locally incorporated company. Many businesses have licensing or approval requirements (e.g., distributive trade), which means that it is necessary to have a locally incorporated company to carry on that business. Where such requirements do not exist, a branch or LLP may be suitable, particularly for start-ups and small and medium-sized enterprises (SMEs).

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

Under the MCA, a foreign company is not permitted to carry on business in Malaysia unless it incorporates a local subsidiary or registers a branch office in Malaysia. However, in certain industries, a foreign company is required to establish a local subsidiary to hold the requisite licence and to carry on the prescribed regulated activities in Malaysia, and it is not sufficient for the foreign company to merely register a branch in Malaysia.

The term "carrying on business" is defined broadly by the MCA to include establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Malaysia as an agent, legal personal representative, or trustee, whether by servants or agents or otherwise. There are, however, a number of specific exceptions where a foreign company will not be regarded as carrying on business in Malaysia. These include where the foreign company:

a. is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action suit or proceeding or of any claim or dispute;
b. holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
c. maintains any bank account;
d. effects any sale through an independent contractor;
e. solicits or procures any order which becomes a binding contract only if the order is accepted outside Malaysia;
f. creates evidence of any debt, or creates a charge on movable or immovable property;
g. secures or collects any of its debts or enforces its rights in regard to any securities relating to those debts;
h. conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;
i. invests any of its funds or holds any property; or
j. imports goods temporarily under the Customs Act for the purpose of display, exhibition, demonstration or as trade samples with a view to subsequent re-exportation within a period of 3 months or within such further period as the Director General of Customs and Excise may in his discretion allow.

However, it should be noted that these factors are only indicators of, and do not purport to be exhaustive parameters of, when a company "carries on business" in Malaysia. In practice, whether or not the activities are deemed as "carrying on business" in Malaysia would depend on the particular facts and circumstances of each individual case.

4. Are there are any capital requirements to consider when establishing different entity types?

Generally, there are no minimum capital requirements when establishing different entities in Malaysia. Specifically:

a. **Locally Incorporated Companies:** A Malaysian company can be incorporated with a minimum of 1 ordinary share issued at RM 1. It is possible to increase the paid-up capital progressively.
b. **Branches of Foreign Companies:** A Malaysian branch is an extension of the principal company incorporated in another jurisdiction and therefore does not have any authorised or paid up capital. The Malaysian branch merely notifies the CCM of the authorised and paid up capital of its principal company.
c. **Representative/Regional Offices:** The representative office merely represents its principal company in Malaysia and therefore does not have any authorised or paid up capital. Generally, the operational expenditure of the representative office must be at least RM 300,000 per annum. Notwithstanding this, upon approval, the condition imposed will be based on the operational expenditure as proposed by the representative office. The representative office should be financed by funds emanating from sources outside Malaysia.
d. **Limited Liability Partnerships:** There is no minimum capital requirement under the Limited Liability Partnership Act 2012. This makes LLPs a flexible option for businesses, as partners can decide on the

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capital contribution based on the agreement between themselves.

Notwithstanding the above, it is important to understand that different government agencies, banks, and entities may impose their own minimum capital requirements for specific purposes such as loan applications, licensing, or business transactions. For instance, in certain sectors, the regulatory licences or permits may be contingent on meeting minimum paid-up capital requirements. The required level of capital commitment is typically higher where there is foreign involvement. For example, a foreign-owned inbound tour operator business is expected to commit RM 1,500,000 in share capital, compared to up to RM 200,000 for a locally owned counterpart.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

For incorporation of locally incorporated companies and registration of branches of foreign companies or LLPs, an application must first be submitted to the CCM to reserve the proposed entity name. Once the name is approved, all documents required for incorporation or registration (as applicable) must be lodged with the CCM within 30 days of the date of approval (subject to extension). Once the CCM is satisfied that the requirements for incorporation or registration (as applicable) have been met, the CCM will issue a notice of approval and registration, which is conclusive evidence of incorporation or registration (as applicable) of the entity.

In contrast, an application to set up a representative/regional office must be submitted to the MIDA through the online InvestMalaysia portal. The application must be submitted by the parent entity, signed by an authorised signatory of the parent entity and sealed with an official stamp.

In practice, foreign companies typically carry on business in Malaysia through a locally incorporated company. Many businesses (e.g., distributive trade) have the licensing or approval requirement to have a locally incorporated company to carry on that business. Where such requirements do not exist, a branch or LLP may be suitable, particularly for start-ups and small and medium-sized enterprises (SMEs), as these alternative business vehicles are not subject to the higher compliance requirements of locally incorporated companies and are thus easier to administer.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Companies in Malaysia adopt a single-tier board system, and the business and affairs of the company are managed by the board of directors who typically make decisions by the passing of a board resolution in writing or at a board meeting. The board of directors may delegate certain functions to committees under the board (e.g., an audit committee or a nomination and remuneration committee). Typically, the company's management team is responsible for implementing the resolutions of the board of directors and for managing the day-to-day operations of the company.

In LLPs, partners are responsible for managing the business. The rights and duties of the partners are governed by a limited liability partnership agreement entered into amongst the partners.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

Locally Incorporated Companies

Under the MCA, private companies must have at least 1 director, and public companies must have at least 2 directors, who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia. Each director of a company must be a natural person who is at least 18 years old and not disqualified from being a director under the MCA.

Private limited companies can have between 1 to 50 shareholders, while public companies must have at least 2 shareholders. There are no nationality or residency requirements for shareholders under the MCA. However, note that there are statutes, sector regulations or policies issued by the relevant Ministry or governmental departments which may require or impose certain foreign equity restriction or Bumiputera equity requirements when granting or renewing licences for the specific regulated activity.

LLPs

An LLP must be formed by at least 2 persons, who may be individuals or bodies corporate. There are generally no limitations as to whether the partners of an LLP must be

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of local or foreign origin. However, an LLP must appoint at least 1 compliance officer, who must be a citizen or permanent resident of Malaysia and ordinarily reside in Malaysia.

Branches of Foreign Companies and Representative/Regional Offices

A Malaysian branch or a representative/regional office does not have a board of directors or shareholders separate from its principal company.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

As discussed under Question 3, a foreign entity is required to establish a legal presence (whether a local subsidiary or a branch office) in Malaysia before carrying on business in Malaysia. Under the MCA, a foreign company will not be regarded as carrying on business in Malaysia for the reason only that it effects any sale through an independent contractor. Nonetheless, the question of whether or not a foreign entity is deemed to be carrying on business in Malaysia is largely a question of fact, taken as a whole on a case-by-case basis.

Where a foreign entity engages local companies to act as their agents and resellers to sell or provide goods or services in Malaysia, the risk of being considered as "carrying on business in Malaysia" will be lower, especially if such agents or resellers have no authority to represent or to bind the client. However, the foreign entity will need to ensure that the agents or resellers are both contractually and substantively treated as independent contractors.

In addition, there may be tax implications arising from such arrangements. A foreign entity may be regarded as having a permanent establishment in Malaysia if the independent contractor acts on behalf of the foreign entity in Malaysia and has the authority to conclude contracts on its behalf and habitually does so, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification, or has repeatedly exercised that authority.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

To promote better corporate governance in Malaysia, the Securities Commission Malaysia issues the Malaysian Code on Corporate Governance ("**MCCG**"), which introduces best practices and guidance to improve board policies and processes, including those related to director selection, nomination and appointment, and to strengthen board oversight and the integration of sustainability considerations in the strategy and operations of companies. Additionally, the MCCG provides that:

a. effective board leadership and oversight require the integration of sustainability considerations in corporate strategy, governance and decision-making as sustainability and its underlying environmental, social and governance (ESG) issues become increasingly material;
b. the Chairman of a board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee;
c. the Nomination Committee should ensure that the composition of the board is refreshed periodically;
d. all boards are required to have at least 30% women directors, and the board should disclose in its annual report the company's policy on gender diversity for the board and senior management; and
e. the general meetings conducted by the company (be they physical, hybrid or fully virtual) must support meaningful engagement between board, senior management and shareholders. Minutes of the general meeting should be circulated to shareholders no later than 30 business days after the general meeting.

The MCCG applies to listed companies in Malaysia on an "apply or explain an alternative basis". If the board of the listed company determines that it is unable to implement any of the corporate governance practices contained in the MCCG, it should apply a suitable alternative practice to meet the intended outcome. The MCCG also adopts a proportionate application to companies depending on size, complexity and suitability. While the MCCG applies to all listed companies in Malaysia, certain practices are only applicable to large companies (i.e., companies on the FTSE Bursa Malaysia Top 100 Index or companies with market capitalisation of RM2 billion and above at the start of their financial year). Further, the MCCG now specifically encourages non-listed entities to embrace the MCCG to enhance accountability and transparency.

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In addition, there are sector regulations or policies issued by the relevant Ministry or governmental departments which may impose corporate governance standards and practices to be adopted by the industry players. For instance, Bank Negara Malaysia ("**BNM**", i.e. the Central Bank of Malaysia), being the regulator of financial service providers in Malaysia, issues a Policy Document on Corporate Governance ("**CGPD**") to ensure the adoption of sound corporate governance standards and practices by financial institutions. Under the CGPD, a financial institution, as a holding company, is responsible for exercising adequate oversight over its subsidiaries and ensuring the establishment and operation of a clear governance structure appropriate to the nature, size and complexity of the group and its entities, and as a subsidiary, must discharge its own legal and governance responsibilities as a separate entity even if it is a subsidiary of another financial institution or of a foreign entity which is subject to prudential regulation. The CGPD also requires the directors of a financial institution to adhere to the following:

a. duty to exercise sound and independent judgment at all times;
b. duty to only exercise powers conferred on him for the purposes of which such powers are conferred;
c. duty to devote sufficient time to prepare for and attend board meetings, and maintain a sound understanding of the business of the financial institution as well as the relevant market and regulatory developments; and
d. duty to disclose to the board of directors any change in his circumstances that may affect his status as an independent director.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The most common options to provide working capital to a company include:

a. capital injection from the existing shareholders or external investors by way of subscription for new shares in the company; and
b. loans or other financing instruments from the shareholders, another entity within the same group of companies, banks or third party financiers.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Generally, a company may, subject to the applicable requirements under the MCA (and the listing requirements, if applicable) and the company's constitution, repatriate or return proceeds to its shareholders through the following methods:

a. **Dividends:** This is the most common mechanism for returning proceeds to shareholders. Under the MCA, a company can only distribute dividends to its shareholders out of the profits of the company and if the company is solvent. A company is regarded as solvent if the company is able to pay its debts as and when the debts become due within 12 months immediately after the dividend distribution is made.
b. **Capital Reduction:** A company may reduce the amount of its share capital and repays the reduced amount to its shareholders. Under the MCA, capital reduction can be undertaken by way of solvency statement or by obtaining a court order. Due to the cost and time involved in obtaining a court order, as well as the uncertainty as to whether the capital reduction will be approved by the court, a company has the option of effecting a capital reduction by way of a declaration of solvency. Briefly, capital reduction by way of solvency statement will require:
    i. all directors of the company to make a solvency statement in relation to the capital reduction, confirming that they believe the company satisfies the solvency test set out below:
        a. the assets of the company are more than the liabilities of the company at the date of the capital reduction;
        b. immediately after the capital reduction there is no ground for finding that the company is unable to pay its debts; and
        c. either the company will be able to pay its debts as they become due within the 12 months immediately following the date of the capital reduction or the company intends to commence the winding up proceedings within 12 months after the date of the share capital reduction and it will be able to pay its debts in full within 12 months after the commencement of the winding up;
    ii. a special resolution passed by the shareholders of the company;
    iii. a notification to the Director General of Inland Revenue and the CCM within 7 days of the date of the resolution;
    iv. advertisement of a notice of capital reduction in a widely circulated newspaper in the national language and a widely circulated newspaper in the English language within 7 days of the date of the resolution, to enable creditors to submit an

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   objection to the capital reduction; and
   v. the company makes the solvency statement available for inspection at its registered office for 6 weeks from the date of the resolution.

c. **Redemption of Preference Shares:** Where a shareholder holds redeemable preference shares that are redeemable at the option of the shareholder, it may require the company to redeem the preference shares and repay cash to the shareholder based on the terms of the redeemable preference shares under the constitution of the company. The MCA provides that a company may only redeem preference shares out of profits, a fresh issue of shares, or capital of the company. Where the preference shares are redeemed:
   i. out of profits, a sum equal to the number of shares redeemed must be transferred into the share capital account of the company; and
   ii. out of capital of the company, the preference shares can only be redeemed when all directors have made a solvency statement (as discussed above) in relation to the redemption.
d. **Share buyback (limited to public listed companies)**: Share buybacks are generally prohibited for non-listed companies, while listed companies are allowed to purchase its own shares if so authorised by its constitution and the following requirements are satisfied:
   i. the company is solvent at the date of the purchase and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased;
   ii. the purchase is made through the stock exchange on which the shares of the company are quoted and in accordance with the relevant rules of the stock exchange; and
   iii. the purchase is made in good faith and in the interests of the company.
e. **Repayment of shareholder loan:** A company may repatriate cash to its shareholder via a repayment of any existing shareholder loan. Note however that certain types of shareholder loans from a non-resident shareholder to a resident subsidiary are regulated under the exchange control regulations.
f. **Winding up**: A company may distribute and repatriate cash in the company through winding up the company. Note, however, that the distribution of cash and property of a company in the winding up process shall be made in accordance with the ranking, priorities and preferences set out under the MCA.

12. Are specific voting requirements / percentages required for specific decisions?

Matters that are not specified to require a special resolution under the MCA can be passed by way of an ordinary resolution, unless the company's constitution requires otherwise. An ordinary resolution is a resolution which is passed by a simple majority (i.e., 50% + 1 vote) of the members, while a special resolution is a resolution which is passed by a majority of at least 75% of the members, who are present and voting in person or by proxy at a meeting of members or entitled to vote on a written resolution.

For instance, matters that require the passing of a special resolution under the MCA include, among others:

a. change of company's name;
b. adoption, alteration or amendment of the company's constitution;
c. conversion from a private company to a public company and vice versa;
d. reduction of share capital (unless otherwise provided for in the company's constitution);
e. variation of the rights attached to a class of shares in a company (unless otherwise provided for in the company's constitution); and
f. voluntary winding up.

On the other hand, subject to the company's constitution, matters that can be passed by an ordinary resolution include, among others:

a. issuance of new shares;
b. alteration of share capital;
c. conversion of paid-up shares into stock and vice versa;
d. appointment and removal of directors; and
e. acquisition and disposal of substantial portion of company's undertaking of property.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

No, shareholders are not authorised to issue binding instructions, directly or indirectly, to the management. Management are bound to take instructions from the board of directors. Shareholders however have certain residual powers such as the following:

a. the power to remove directors by passing an ordinary resolution in a general meeting of the company;
b. shareholders holding at least 10% of the issued share capital of a company or a lower percentage as specified in the company's constitution, may require the directors to convene a meeting of members of the

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company to pass resolutions they consider appropriate including to cause the company to do or not do something; and

c. the right to make recommendations to the management of a company including to review management decisions by passing a special resolution in general meeting provided that the recommendation is in the best interest of the company.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The Malaysian Employment Act 1955 ("**EA**") is the main legislation governing matters of employment in the private sector in West Malaysia and Labuan. The EA prescribes minimum standards for all employees, including those on fixed-term contracts, probationers, and foreign employees. However, certain entitlements under the EA (i.e., overtime pay, special rates for work done on holidays and rest days, and termination benefits) are limited to the following categories of employees only (collectively, "**Identified Employees**"):

a. employees who earn monthly wages not exceeding RM4,000 irrespective of occupation; or
b. selected categories of blue-collar employees, specifically manual labour, supervisors of manual labour and drivers of commercial vehicles, regardless of the amount of wages earned.

The equivalent pieces of legislation in East Malaysia are the Sabah and Sarawak Labour Ordinances, which apply to employees who earn below RM2,500 per month ("**Ordinance Employees**"). There is a statutory minimum wage requirement as prescribed in the Minimum Wages Order 2024 for employees. Beginning from 1 August 2025, the minimum monthly wage for all employees is to be RM1,700, while employees who earn an hourly rate must be paid a minimum rate of RM8.72 per hour.

Under the EA, employers are restricted from terminating pregnant employees unless there is misconduct, a breach of employment contract, or there is a closure of the employer's business. If the employee is on maternity leave, she cannot be terminated unless there is closure of the employer's business.

Save for the abovementioned, Malaysia currently does not have other anti-discrimination laws that are enforceable against private sector employers. Article 8(2) of the Federal Constitution of Malaysia prohibits discrimination on the grounds of religion, race, descent, place of birth or gender, in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to establishing or carrying on any trade, business, profession, vocation or employment except where it is expressly authorized by the FC. That said, the Malaysian Federal Court has held that Article 8(2) only deals with contravention of individual rights by public authorities and does not govern private contracts between individuals or private treaties.

Note, however, that under the Industrial Relations Act 1976, employers are prohibited from discriminating against any person regarding employment, promotion, any condition of employment or working conditions on the grounds that he/she is not a member or officer of a trade union. In addition, the Director General of Labour is empowered to enquire into disputes between employers and employees in respect of matters related to discrimination and issue orders based on their findings. Employees who consider themselves discriminated may also lodge a complaint of constructive dismissal.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Malaysia does not recognise "at will" employment, i.e. employers cannot terminate an employee for any reason. All dismissals must be for "just cause or excuse", otherwise the employee would have the right to file an unfair dismissal claim against the former employer. In a successful unfair dismissal claim, the dismissed employee may be reinstated together with back wages of a maximum of 24 months' last drawn salary. If the dismissed employee is not reinstated, they may be awarded (i) back wages; and (ii) additional compensation in lieu of reinstatement (of 1 month's salary for each year of service).

There are 3 broad categories of just cause and excuse, namely:

a. **Misconduct:** where the employee commits misconduct, the employee should be notified of the exact nature of the allegations and be given a genuine and meaningful opportunity to provide an explanation. Issuing a show cause letter to the employee, reviewing the response and holding a domestic inquiry, will help the employer to discharge these natural justice requirements. Note that even where the employee's misconduct may have been sufficiently made out by the employer, the punishment imposed must be

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proportionate to the gravity of the offence proven to have been committed.

b. **Poor performance:** where the employee has performance issues, the employer must establish that the employee: (i) was informed of the poor performance and that failure to improve could result in termination; (ii) was accorded sufficient opportunity to improve; and (iii) failed to sufficiently improve. A proper and thorough implementation of a performance improvement plan is crucial to establishing the employer's case.
c. **Redundancies:** Generally, retrenchment is justifiable, provided that: (i) there are business grounds for the redundancy and the retrenchment is not done in bad faith, and (ii) the retrenchment exercise is implemented in a manner consistent with the generally accepted Malaysian industrial practice standards (i.e., based on fair selection criteria). Under the EA, foreign employees must be retrenched first before retrenching Malaysian employees. Malaysian law generally recommends compliance with the last-in-first-out principle under the Code of Conduct for Industrial Harmony (i.e., the employee with the shortest length of service should be retrenched first) with regard to employees of the same category.

For a collective dismissal, it is recommended that the employer gives warning as early as practicable. Where the employees are represented by a trade union, the employer is advised to consult with the union and ensure that it complies with any applicable collective bargaining agreement ("**CBA**"). The employer may also consider negotiating a mutual or voluntary separation arrangement with the employees for amicable departure of the employees.

Subject to the specific grounds for termination, all employees in West Malaysia and Labuan are entitled to the EA-prescribed minimum termination notice period which correspond to their length of service in retrenchment exercises, transfers of business and business closures. Identified Employees are generally entitled to the EA-prescribed minimum termination benefits, unless terminated on grounds of misconduct (after due inquiry). The entitlements of non-Identified Employees to severance are generally determined by the provisions of their employment contract. While not required under the EA, it is common market practice to pay termination benefits to non-Identified Employees to minimise the risks of unfair dismissal liability especially in situations of termination for redundancy.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

In Malaysia, both employees and employers have the right to form, join or be represented by unions, subject restrictions imposed in the interest of security, public order or morality. Malaysian legislations such as the Industrial Relations Act 1976, the Trade Unions Act 1959 ("**TUA**") and (to the extent where West Malaysia and Labuan are concerned) the Employment Act 1955 expressly recognize an individual's right to organize and the right to collectively bargain.

There are 2 types of trade unions in Malaysia, namely (i) national unions (generally representing employees in the same or similar sector) and (ii) in-house unions (representing employees hired by the same employer). Trade unions are more common in certain industries such as manufacturing, logistics and plantations.

Whilst the Malaysian Federal Constitution recognises all Malaysian citizens' right to form associations, the TUA restricts public officers including members of the Royal Malaysian Police, members of any prison service, members of the armed forces and public officers engaged in a confidential or secuirty capacity from joining or being a member of any trade union.

Prior to 15 September 2024, membership of trade unions was confined solely to those who are employees of a particular industry, establishment, trade or occupation. This position has since been amended. Currently, a single trade union may have members from different workplaces, trades, occupations and industries, and more than one trade union of employees can be recognised in a single workplace.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

The primary legislation governing anti-bribery and anti-corruption in Malaysia is the Malaysian Anti-Corruption Commission Act 2009 ("**MACC Act**"). This legislation has extraterritorial reach in respect of offences committed outside Malaysia by Malaysian citizens and permanent residents.

Section 17A of the MACC Act introduces corporate

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liability, which applies to (i) companies and partnerships incorporated in Malaysia that conduct business in Malaysia or abroad, and (ii) foreign companies and partnerships that have business operations in Malaysia.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

Economic crimes in Malaysia are primarily governed by two statutes, namely (i) the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") and (ii) the MACC Act.

The AMLA mandates that reporting institutions promptly notify the Financial Intelligence and Enforcement Department of BNM whenever they suspect or have reasonable grounds to suspect that a transaction (including any attempted transaction or proposed transaction) may involve, among others, proceeds from unlawful activities or be linked to terrorist acts.

In addition, the MACC Act imposes a duty to report bribery transactions on: (i) any person to whom any gratification is given, promised or offered, and (ii) any person from whom any gratification has been solicited, obtained or attempted to be obtained, to the relevant authority.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

The primary legislation governing money laundering and terrorist financing in Malaysia is the AMLA. This legislation not only imposes obligations on the reporting institutions to report suspicious transactions but also grants law enforcement agencies extensive powers to investigate these activities.

These powers include, among others, the authority to freeze and seize properties suspected of being involved in money laundering and terrorism financing offences. For instance, BNM is responsible for implementing and enforcing the AMLA within the financial sector. Meanwhile, other agencies such as the Malaysian Anti-Corruption Commission focus on corruption-related money laundering, and the Royal Malaysia Police handle investigations and prosecutions of money laundering and terrorist financing crimes. The Securities Commission of Malaysia may also take enforcement action against reporting institutions under its supervision for non-compliances with the AMLA requirements.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

In Malaysia, Article 6 of the Federal Constitution explicitly provides that no person shall be held in slavery and all forms of forced labour are prohibited. This principle is reinforced by several key pieces of legislation in Malaysia.

From an employment perspective, both the Employment Act 1955 and the Children and Young Persons (Employment) Act 1966 ("**CYPA**") prohibit forced labour and safeguard child labour rights. For instance, section 2 of the CYPA prohibits children under the age of 15 from engaging in hazardous work, which involves tasks with high risks due to machinery, extreme environments, physical, chemical, or biological hazards, and specific industries such as construction and offshore work.

From a criminal law perspective, the Penal Code of Malaysia criminalises the buying or disposing of any person as slaves and the habitual dealing in slaves. In addition, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 criminalises all forms of trafficking (including children and persons who are unable to fully take care of or protect themselves due to physical or mental disability or condition) and provides protection to victims.

Together, these laws create a robust framework to prevent and address issues related to slavery, forced labour and human trafficking in Malaysia.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Companies incorporated in Malaysia must comply with the reporting requirements imposed by the MCA, which include:

a. circulating audited financial statements and reports for each financial year to relevant persons, including the shareholders, within six months of the financial year end in the case of a private company or 21 days before the annual general meeting in the case of a public company; and
b. lodging audited financial statements and reports with the CCM within 30 days of their circulation to the shareholders in the case of a private company or 30 days from the annual general meeting in the case of a

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public company.

22. Please detail any corporate / company secretarial annual compliance requirements?

Companies incorporated in Malaysia are required to comply with the annual reporting requirements imposed by the MCA, which include:

a. circulating audited financial statements and reports for each financial year to relevant persons, including the shareholders, within 6 months of the financial year end in the case of a private company or 21 days before the annual general meeting in the case of a public company;
b. lodging audited financial statements and reports with the CCM within 30 days of their circulation to the shareholders in the case of a private company or 30 days from the annual general meeting in the case of a public company; and
c. lodging an annual return with the CCM within 30 days of the anniversary of the incorporation of the company.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Under the old companies act regime, both public and private companies were required to hold annual general meetings ("**AGMs**"). However, since the coming into force of the MCA on 31 January 2017, private companies are no longer required to hold an AGM, unless otherwise provided for in the company's constitution.

Public companies are required to conduct an AGM within 6 months of the company's financial year end and not more than 15 months after the last preceding AGM to transact the following business:

a. the laying of audited financial statements and the reports of directors and auditors;
b. the election of directors in place of those retiring;
c. the appointment and the fixing of the fees for directors; and
d. any resolution or other business of which notice is given in accordance with the MCA and the company's constitution.

Notwithstanding the above, a newly incorporated company will not be required to hold an AGM in the year of its incorporation or in the following year if it held its first AGM within 18 months of incorporation.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

"Beneficial owner" is defined under the MCA as: (i) in relation to shares, the ultimate owner of the shares and does not include a nominee of any description; and (b) in relation to a company, a natural person who ultimately owns or controls a company and includes a person who exercises ultimate effective control over a company. In respect of companies limited by shares, the Guidelines for the Reporting Framework for Beneficial Ownership of Companies issued by the CCM provides that a beneficial owner ("**BO**") of a company is an individual who satisfies any of the following criteria:

Ultimately owns or controls

a. holds directly or indirectly 20% or more of the company's shares;
b. holds directly or indirectly 20% or more of the company's voting shares;

Ultimate effective control

c. has the right to exercise "ultimate effective control" whether formal or informal over the company, directors or the management of the company;
d. has the right or power to directly or indirectly appoint or remove a director(s) who holds the majority of the voting rights at the meeting of directors;
e. is a member of the company and, under an agreement with another member of the company, controls alone a majority of the voting rights in the company; or
f. has less than 20% of shares or voting shares but exercises significant control or influence over the company.

Commencing from 1 April 2024, it is mandatory for a company to:

i. identify and verify its BO;
ii. issue written notices to the following persons to require disclosure of the BO information:
    a. its shareholders; or
    b. any person whom the company knows or has reasonable grounds to believe that that person is a BO of the company or knows the identity of the BO of the company;
iii. keep and maintain a register of BO at the registered office of the company or any other place in Malaysia, as notified to the CCM; and
iv. notify the CCM of the BO information and any changes thereto.

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The MCA also imposes a duty on a BO to notify a company of his/her status as a BO of the company and any changes to his/her status or particulars. If a company is unable to determine its BO after taking all reasonable measures to do the same, the company shall provide the name and particulars of a natural person who holds the position of senior management in place of the BO.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

Malaysia has a comprehensive direct and indirect tax system and adopts a territorial principle of taxation in that only income accruing in or derived from Malaysia, or received in Malaysia from outside Malaysia, is subject to income tax in Malaysia and the main taxes are as follows:

a. **Income Tax**: The rate of income tax for resident and non-resident companies is 24% on chargeable profits accruing in or derived from Malaysia. Malaysian income tax is imposed on resident persons in Malaysia on income derived from foreign sources and received in Malaysia with effect from 1 January 2022.
b. **Capital Gains Tax**: Effective from 1 January 2024, chargeable gains and profits from disposal of certain capital assets may be subject to capital gains tax in Malaysia at the rate of 10%, unless exempted. If the capital assets were acquired prior to 1 January 2024, the disposer may elect to pay capital gains tax at 2% on the gross disposal price.
c. **Real Property Gains Tax**: The rate of real property gains tax for companies ranges from 10% to 30%, depending on the number of years since the date of acquisition of the real property, subject to certain exemptions.
d. **Sales Tax**: Sales tax is charged on taxable goods manufactured in Malaysia by a registered manufacturer and sold, used or disposed by them, or imported into Malaysia by any person, at a rate of 5%, 10% or a specified rate depending on the category of taxable goods.
e. **Service Tax**: Service tax is generally charged at 6-8% on certain taxable services, provided in Malaysia by a service tax registered person in business and on imported taxable services.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Malaysia has a specific incentive regime, and there are specific tax incentives for certain promoted products, promoted activities in promoted locations.

Generally, the incentives comprise of Pioneer Status and the Investment Tax Allowance. Pioneer Status is an income tax exemption on 70% to 100% of statutory income for five to ten years. The Investment Tax Allowance is an allowance of 60% to 100% of qualifying capital expenditure for five years. Pioneer Status and the Investment Tax Allowance are mutually exclusive (i.e. a company can only benefit from one of the incentives at a time). Companies in the manufacturing, agricultural and tourism sector or any sector that comprises a promoted activity or produces a promoted product may be eligible for Pioneer Status or the Investment Tax Allowance if the qualifying conditions are met.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

There is a Malaysian withholding tax regime applicable to certain payments made by residents to non-residents, including royalties, technical fees, installation fees and rental of movable property. The rate of withholding tax is generally between 10% and 15% unless there is a double-taxation agreement between Malaysia and the country of the non-resident, in which case the withholding tax rate may be reduced.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

There is an extensive stamp duty regime in place that applies to instruments of transfers of land and shares as well as loan, leases, tenancies, service agreements.

29. Are there any public takeover rules?

Yes, public takeovers in Malaysia are primarily regulated under the Malaysian Code on Take-overs and Mergers 2016 and the Rules on Take-overs, Mergers and Compulsory Acquisitions 2016.

30. Is there a merger control regime and is it

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mandatory / how does it broadly work?

There is currently no merger control regime of general application in Malaysia, except in (i) civil aviation and (ii) communications and multimedia industries, where there are sectoral merger control regimes in place.

However, amendments to the Competition Act to introduce a merger control regime are expected to be tabled in Parliament in 2025. The regime will have mandatory notification obligations once the prescribed thresholds are exceeded, and we expect that there would be a grace period before the regime comes into force.

31. Is there an obligation to negotiate in good faith?

The Malaysian Contracts Act 1950 does not impose a general duty requiring parties to negotiate with each other in good faith in the formation of a contract or a general overarching general duty for parties to perform a contract in good faith. The Malaysian case law also held that there is no general implied duty of good faith in commercial contracts and the courts should be slow to imply such a duty.

However, the duty of good faith has been recognised in cases of employment contracts, partnerships, joint ventures and insurance contracts.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

In the case of a share sale transaction, there would not normally be significant employment law issues as the employment contract between the company (being the employer) and the employees will remain unaffected by the acquisition of shares.

In the event of an asset sale transaction which involves migration of employees, the employees must either resign or be terminated by the seller and be offered new employment by the buyer. There is no automatic transfer of employees in a business or asset sale in Malaysia, and an employer cannot unilaterally transfer an employee to another employer without the consent of the employee.

While this is the case, the buyer is not obliged to offer employment to the seller's employees. The provision of such offer, and the nature and timing of such offer, will determine whether the employee is entitled to any termination benefits (i.e., severance).

Identified Employees:

The Employment (Termination and Lay-Off Benefits) Regulations 1980 ("**Regulations**") prescribes that where there is a change of ownership of the business (or part thereof) for the purposes of which an Identified Employee is employed, whether by virtue of a sale or other disposition or by operation of law ("**Ownership Change**"), the Identified Employee is deemed terminated and is automatically entitled to EA-prescribed termination benefits, which are calculated based on the length of service and pro-rated to the nearest month in respect of an incomplete year, as follows:

a. 10 days' wages multiplied by each year of service, for employees with more than 12 months but less than 2 years of service;
b. 15 days' wages multiplied by each year of service, for employees with 2 years or more but less than 5 years of service; and
c. 20 days wages multiplied by each year of service, for employees with 5 or more years of service.

The statutory termination benefits cannot be contractually waived by the Identified Employees. The EA-prescribed termination benefits will not, however, be payable where (i) a Regulations-compliant offer is made and (ii) the employee unreasonably refuses the offer. A "Regulations-compliant offer" refers to an employment offer from the buyer to the migrating employee that:

i. is made within 7 days of the Ownership Change (i.e., the closing of the transaction);
ii. is with terms and conditions of employment no less favourable overall than the migrating employee's existing employment terms with the seller; and
iii. recognises the migrating employee's previous years of service with the

Non-Identified Employees

For Non-Identified Employees, their entitlements are subject to the terms of their employment agreement or CBA. In the absence of a contractual entitlement, they are not legally entitled to the payment of termination benefits and any entitlement to it would therefore be a matter of negotiation. The contractual entitlement (if any) maybe waived with the consent of the migrating employees or their union, if they are unionised.

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Consultation obligations

There is no legal requirement to consult with the migrating employees (or their union, if they are unionised) in respect of the migration, unless this is contractually prescribed within their employment agreements / CBA. Nonetheless, regardless of whether such obligation exists, consultation with the migrating employees and/or union is usually recommended as a measure of good industrial practice, as the Industrial Court places a strong emphasis on transparency and on providing as much information as possible to enable employees to come to an informed as possible decision.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

There is no blanket or overriding legislation, policy or regulatory body specifically regulating foreign investment in Malaysia. Restrictions vary on an industry-by-industry basis and therefore, whether approval or notification is required depends on the nature of the particular investment. Generally, it is government policy (rather than statute) that limits foreign acquisitions in specific industries, although certain Malaysian legislation sets caps on foreign equity participation in Malaysian companies operating in particular industries.

Background

The Malaysian government previously administered national policies aimed generally at securing the involvement of the Bumiputeras (i.e., the indigenous population of Malaysia) in the economic life of the nation. A Malaysian body known as the Foreign Investment Committee ("**FIC**") implemented guidelines limiting, among others, foreign participation in acquisitions of equity interests, mergers and takeovers ("**FIC Guidelines**"). However, as part of the Malaysian government's efforts to liberalise foreign investments in Malaysia, the FIC was abolished and the FIC Guidelines were repealed in June 2009. Nevertheless, various government ministries and agencies continue to restrict foreign acquisitions.

Examples

For example, to obtain a Petronas licence to carry out upstream oil activities, applicants must comply with certain equity participation requirements depending on the category of upstream activity. It is common for upstream activities to fall under a category that imposes either a 30% or a 51% Bumiputera equity shareholding requirement (depending on the mode of operation – e.g., self-operator, manufacturer, dealer, agent, etc.) in addition to requirements such as the obligation to maintain a corresponding percentage of Bumiputera directors, management and employees.

Under the Guidelines on Foreign Participation in Distributive Trade Services in Malaysia 2020, proposals for foreign involvement in distributive trade in Malaysia require approval from the Ministry of Domestic Trade and Costs of Living. The foreign equity restrictions vary according to the distributive format (eg, a minimum of 30% Bumiputera ownership for hypermarkets and no foreign involvement allowed for mini markets and fuel stations). Similarly, the Malaysian Communications and Multimedia Commission restricts foreign equity participation in the telecommunications sector (permitted foreign equity ownership ranges from 30% to 100%, depending on the type of licence required).

However, as regulations and policies on foreign equity investments are subject to policy changes, foreign investment restrictions do change from time to time and, in certain cases, require clarification.

34. Does your jurisdiction have any exchange control requirements?

The exchange control regime in Malaysia is governed by the Financial Services Act 2013 ("**FSA**") and the Islamic Financial Services Act 2013 ("**IFSA**"), and is supplemented by the Foreign Exchange Policy Notices ("**FEP Notices**") issued by BNM.

Under the FSA, the IFSA and the FEP Notices, certain transactions can only be carried out by residents and non-residents to remit funds to and from Malaysia if BNM's prior approval is obtained or such transactions are expressly permitted under the FEP Notices. The FEP Notices set out the requirements, restrictions and conditions of a list of transactions permitted by BNM, including those relating to the following:

a. dealing in currency, gold and other precious metals;
b. borrowing, lending and guarantee;
c. investment in foreign currency asset;
d. payment and receipt;
e. securities and financial instruments;
f. import and export of currency; and
g. export of goods.

A "resident" is defined as (i) a citizen of Malaysia

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(excluding a person who is a permanent resident of a foreign country and is residing outside Malaysia), (ii) a non-citizen of Malaysia who has obtained permanent resident status in Malaysia and is ordinarily residing in Malaysia, or (iii) a person (whether body corporate or unincorporated) incorporated or registered with or approved by any authority in Malaysia, and includes the Government or any State Government.

A "non-resident" is defined as (i) any person other than a resident, (ii) an overseas branch, a subsidiary, regional office, sales office, or representative office of a resident company, (iii) embassies, consulates, high commissions, supranational or international organizations, or (iv) a Malaysian citizen who has obtained permanent resident status of a territory outside Malaysia and is residing outside Malaysia.

BNM maintains a liberal foreign exchange policy as part of its broad prudential toolkit to maintain monetary and financial stability. Generally, Malaysian Ringgit is not tradable outside of Malaysia, and as such payments offshore will need to be made in foreign currency (save for the currency of Israel). There are no repatriation restrictions applicable to non-residents provided that the repatriation is made in foreign currency. Residents are allowed to make payments to non-residents in foreign currency for any purpose save for certain limited circumstances.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

In Malaysia, the Companies Act 2016 provides two primary ways for dissolving a company, namely: (i) by striking the company off from the register of the Companies Commission of Malaysia ("**CCM**"); or (ii) by winding up the company. Striking off is typically suitable for dormant companies and is usually initiated by the CCM, while winding up is used for more complex situations involving creditors and assets.

There are two types or modes of winding up, including:

a. voluntary winding up which can be by way of a:
    i. members' voluntary winding up ("**MVWU**");
    ii. creditors' voluntary winding up ("**CVWU**"); or
    iii. voluntary winding up in accordance with the company's constitution; and
b. compulsory winding up, which commences upon the grant of a court order for the company to be wound up.

Generally, the most common way for liquidating a company is through the MVWU. This process requires the members to pass a special resolution to voluntarily wind up the company. Additionally, the majority of the directors must make a declaration of solvency, which must be lodged with the CCM before the notice to hold a members' meeting is sent out. At this meeting, a liquidator is appointed to manage the winding up of the company's affairs and the distribution of its assets. The MVWU process begins immediately upon the passing of the winding-up resolution, and the company ceases operations unless the liquidator deems it necessary to continue for the beneficial winding up.

It is important to note that in order to proceed with an MVWU, the company must be solvent. If the liquidator determines that the company cannot settle its debts within the period specified in the directors' declaration, a creditors' meeting will be called. During this meeting, creditors may appoint the existing liquidator or another person to take on the role. If a creditors' meeting is convened, the winding up process will continue as a creditors' voluntary winding up.

Contributors

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Munir Abdul Aziz
Partner, Corporate, Commercial and Securities Practice Group
munir.abdulaziz@wongpartners.com

Eddie Chuah
Partner, Dispute Resolution Practice Group
eddie.chuah@wongpartners.com

Krystal Ng
Partner, Tax, Trade and Wealth Management Practice Group
krystal.ng@wongpartners.com

Lydia Kong
Partner, Corporate, Commercial and Securities Practice Group
lydia.kong@wongpartners.com

Nico Ho
Associate, Corporate, Commercial and Securities
nico.ho@wongpartners.com

Justin Lew
Legal Assistant, Corporate, Commercial and Securities
justin.lew@wongpartners.com

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