MAH-KAMARIYAH & PHILIP KOH
ADVOCATES & SOLICITORS

Memo

Laws Relevant to Investments in Malaysia

April 2026

BUSINESS FORMATION: COMPANY & BRANCH OF FOREIGN COMPANY

Company

Effective 31 January 2017, companies are governed by the new Companies Act 2016, which provides for three types of companies:

1. Company limited by shares.

2. Company limited by guarantee.

3. Unlimited company.

Company limited by shares

In practical terms, almost all companies will be companies limited by shares, i.e., companies with limited liability, the maximum liability of a member being limited to the value of share capital.

A private company is one which is prohibited to issue any invitation to the public to subscribe for shares or debentures of the company or to deposit money with the company. Shareholders / members of a private company shall not be more than fifty and are also restricted in their right to transfer their shares in the company. A public company is employed where it is intended to invite the public to subscribe for shares or debentures in the company or to deposit money with the company.

Company limited by guarantee

A company limited by guarantee limits its member's liability to the amount the member undertakes to contribute to the company in the event the company is wound up as provided under the constitution of the company. A company limited by guarantee is typically used for non-profit purposes.

Unlimited Company

An unlimited company is a company where the members' liability for its debts is unlimited. It can be either a private or a public company.

<u>Procedure for Incorporation (Locally Incorporated Company)</u>

(1) Application - Name Search

(2) Lodgement of Incorporation Documents

A. Branch of foreign company

A foreign company, being a company incorporated outside Malaysia, can carry on business in Malaysia by either -

(a) incorporating a local company with Companies Commission Malaysia ("**CCM**"); or

(b) registering the foreign company in Malaysia with CCM as a foreign company (see Section 561 of the Companies Act 2016).

A foreign company that desires to establish a place of business or to carry on business within Malaysia, may establish a branch by filing the required returns to CCM. The establishment of a branch is not encouraged for a foreign company engaged in wholesale or retail trade.

A foreign company or organization that does not have the intention to undertake commercial activities in Malaysia and only represents its head office / principal to undertake designated functions only, may apply to the appropriate Government Authority to set up a Representative / Regional Office in Malaysia.

Representative/Regional Office

Foreign investors can consider setting up a representative or a regional office in Malaysia to have a presence for a minimum of two years to allow investors to decide if Malaysia is a right place for them to operate a business.

- The representative/regional office does not undertake any commercial activities and only represents its head office/principal to undertake designated functions.
- The representative/regional office's operation is completely funded from sources outside Malaysia.
- A representative or a regional office is not a permanent business set-up and therefore it is not governed by the Registration of Businesses Act 1956 (ROBA 1956) or the Companies Act 2016. Instead, the set-up of a representative/regional office requires the approval of the Malaysian Government.
- A representative office or regional office must also confine its activities to promotion and liaison carried out on behalf of its parent company.
- The Ministry of International Trade and Industry ("**MITI**") is responsible for the registration of regional and representative office from the manufacturing, service, logistics and trading sectors.

There are differences between a representative office and a regional office.

A representative office is usually set up to collect relevant information on investment opportunities especially in the manufacturing and services sector. A representative office is also set up to enhance bilateral trade relations, promote the export of Malaysian goods and services or to carry out research and development (R&D).

A regional office is typically set up as the coordination centre for the company/organisation's affiliates, subsidiaries and agents in Southeast Asia and the Asia Pacific. The regional office is responsible for the designated activities of the company/organisation within the region it operates.

There are a few activities that are not permitted to be undertaken by a representative office or regional office, for example, any trading activities (including import and export) or any commercial activities. They are also not permitted to enter into business contracts on behalf of the foreign corporation or provide services for a fee.

MITI encourages foreign businesses wishing to conduct businesses in Malaysia to incorporate local subsidiaries. Local subsidiaries incorporated by their foreign parent companies may be permitted to carry on manufacturing activities in Malaysia for a limited time, after which the undertaking would be transferred to a Malaysian company.

Registration of Branch of Foreign Companies

Prior to commencing business in Malaysia, a foreign company intending to set up branch office in Malaysia must -

1. obtain the approval of MITI; and
2. register itself with the CCM.

Application of Name Search

A foreign company shall be registered under the name as registered in its place of origin. However, this is subject to whether the name is available.

Lodgement of Registration Documents

Registration documents must be submitted to CCM within the stipulated period upon the approval of the company's name by CCM, failing which a fresh application for a name search must be done.

Comparison of the relative advantages of a corporation and branch of foreign companies

A. Incorporation

Foreign ownership of shares – equity conditions

The Malaysian government is adopting a holistic approach to implement a new economic model (NEM) that will foster competition in all sectors of the economy. Malaysia's NEM is a significant departure from the previous approach on Bumiputra equity participation. There have been measures taken to open up the Malaysian capital market.

Founder shareholders

- Only one founder shareholder is required, individual or body corporate, who need not be Malaysian.
- One resident director is required, who need not be Malaysian but must have valid work permits and a principal residential address within Malaysia.

Advantages of incorporating a local company

- Limited liability.
- Relatively low corporate tax rate.
- Benefits from tax treaties.
- Better public image.
- Preferred by authorities for compliance with equity ownership.

Availability of local funding

- Funds may be obtained from the domestic capital market through a public issue for a public listed company.
- Working capital requirements can be met by local financial institutions.

Formation requirements

- Practising and qualified company secretaries, public accountants or lawyers who are registered with the Companies Commission of Malaysia ("**CCM**") can provide assistance with the incorporation and other requirements.
- Incorporation must be submitted to the CCM through an online portal.
- Registration fee is payable, depending on the type of company incorporated.

• With the deregulation of the Foreign Investment Committee (FIC) guidelines announced by the Prime Minister on 30 June 2009, the FIC no longer imposes any equity conditions on such transactions.

B. Branch of Foreign Companies

Limitations on foreign participation

• In general, CCM does allow the registration of foreign branches except for establishments involved in wholesale and retail trade.

Advantages

• Cessation of business is more straightforward than liquidation of a company.

• Capital and profits can be freely repatriated. However for amounts exceeding RM10,000 or its equivalent in foreign currency, Form P has to be completed by remitting banks, on behalf of their clients.

Formation and registration requirements

• Resident agent and registered office in Malaysia is required.

• Non-refundable registration fee is payable depending on the amount of share capital of the foreign corporation which will be converted to the equivalent of local currency to determine the registration fee.

• A maximum registration fee of RM70,000 is payable.

• Documentation of the foreign company in the country of origin similar to those for a locally incorporated company must be filed annually.

Licences/Registration

Companies seeking to commence business in Malaysia must consider the licences/registration required for the business. The following is a non-exhaustive list of general licenses/registration required for doing business in Malaysia.

(1) Business Premise Licence and Signage Licence

Generally, companies doing business in Malaysia at physical premises are required to apply for business premise licenses and signboard licenses from the relevant municipal council.

(2) Income Tax Registration

Companies are required to register for an income tax reference number with the Inland Revenue Board (IRB) upon commencement of business.

(3) Sales and Services Tax Registration

With effect from 1 September 2018, the Sales Tax Act 2018 and Service Tax Act 2018 came into operation in Malaysia.

The Sales Tax Act 2018 introduced a single-stage tax (i.e. a tax which is only imposed at one stage in the supply chain at the import or manufacturer level) charged and levied on (i) taxable goods manufactured in Malaysia by a taxable person and sold by such taxable person (including used or disposed off); and (ii) taxable goods imported into Malaysia. Manufactured goods exported are not subject to sales tax.

A "taxable person" (being a person who manufactures taxable goods) is liable to be registered if its annual turnover exceeds RM500,000. Sales tax is charged and levied at fixed rates of 5% or 10% or at a specific rate, depending on the type of taxable goods. Certain goods which are listed under the Sales Tax (Goods Exempted From Tax) Order 2018 are exempt from sales tax.

Notwithstanding the above, the Sales Tax Act 2018 stipulates that sales tax does not apply to certain designated areas and special areas such as Labuan, Langkawi, Tioman, Pangkor and Pulau 1 and any free zone, licensed warehouse, licensed manufacturing warehouse, joint development area and a petroleum supply base licensed under section 77B of the Customs Act 1967. Furthermore, sales tax shall not apply to taxable goods manufactured in designated areas other than petroleum. However, where taxable goods are transported from designated areas to Malaysia or from Malaysia to designated areas, sales tax shall apply as if such goods were imported into, or exported from, Malaysia from or to a place outside Malaysia.

The Services Tax Act 2018 is a form of indirect tax imposed on the provision of specific prescribed taxable services provided in Malaysia by a registered person in carrying on business. Service providers who provide taxable services in excess of RM500,000 per annum are liable to be registered. Service tax is charged and levied at a fixed rate of 6%.

"Taxable persons" and "taxable services" are provided in the Service Tax Regulations 2018 to include persons operating business in the industry of (i) accommodation; (ii) food and beverage; (iii) night-clubs, dance halls, cabarets, karaoke centre, wellness centre, massage parlours, public houses and beer houses; (iv) private club; (v) golf club and golf driving range; (vi) betting and gaming; (vii) professionals or skills; (viii) finance; (ix) other service providers; (x) logistic services; (xi) rental or leasing; (xii) construction works; and (xiii) education.

The Services Tax Act 2018 stipulates that sales tax does not apply to certain designated areas and special areas such as Labuan, Langkawi, Tioman, Pangkor and Pulau 1 and any free zone, licensed warehouse, licensed manufacturing warehouse, joint development area and a petroleum supply base licensed under section 77B of the Customs Act 1967. Furthermore, no service tax shall be charged and levied on any taxable service provided within or between designated areas or between designated areas and special areas unless otherwise prescribed.

ENVIRONMENTAL LAWS

Environmental protection falls under the purview of the Malaysian Department of Environment ("**DOE**") which is under the jurisdiction of the Ministry of Natural Resources and Environment ("**MONRE**").

In Malaysia, Environmental Impact Assessment ("**EIA**") is required for activities prescribed under the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015. Those industrial activities that are not subject to the mandatory EIA requirements are nevertheless subject to various regulations under the Environmental Quality Act, 1974, as mandated by S34A of the Environmental Quality Act 1974 ("**EQA**").

A. Environmental Requirements

Under the EQA and the regulations, industrial activities require the following approvals from the Director General of Environmental Quality prior to project implementation:

(a) EIA reports - under Section 34A of the EQA (for prescribed activities).

(b) Site suitability evaluation (for non-prescribed activities).

(c) Written permission to construct - under Section 19 of the EQA (for prescribed premises-scheduled wastes treatment and disposal facilities, crude palm oil mills and raw natural rubber processing mills).

(d) Written notification for installation of incinerator, fuel burning equipment and chimney, and compliance with prescribed emission limit values and technical standards - under Environmental Quality (Clean Air) Regulation, 2014.

(e) Licence to use and occupy prescribed premises and prescribed conveyances - under Section 18 of the EQA.

B. Environmental Impact Assessment for Prescribed Activities

(i) Prescribed Activities

(a) All prescribed activities must necessarily obtain EIA approval from the Director General of Environment prior to attaining the approval of the relevant Federal or State Government authority for the implementation of the project.

(b) If the proposed activity is categorised as a "prescribed activity" under the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, an EIA study needs to be conducted and thereafter, the EIA report has to be submitted to the Director General of Environmental Quality for approval.

(ii) EIA Study and Report

An EIA Study has to be conducted by competent individuals who are registered with the Department of Environment ("**DOE**") under the EIA Consultant Registration Scheme. The DOE will reject EIA reports which are conducted by individuals who are not registered with the DOE.

The list of prescribed activities can be found under the First and Second Schedules of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015.

DOE also requires that a Detailed Environmental Impact Assessment ("**DEIA"**) be conducted for certain activities, which include the following:

(a) Iron and steel industry

(b) Pulp and paper mills

(c) Cement plant

(d) Construction of coal-fired power plant

(e) Construction of dams for water supply and hydroelectric power schemes

(f) Land reclamation

(g) Incineration plant for schedule wastes and solid wastes

(h) Construction of municipal solid wastes landfill facility

Notwithstanding the list of activities prescribed by the DOE which requires a DEIA, the Director General of Environment has the prerogative to request a detailed assessment of a project which has significant impacts to the environment of projects which are located in or adjacent to environmentally sensitive areas.

C. Site Suitability Evaluation for Non-Prescribed Activities

All potential industrial sites for the establishment of new industrial activities which are not subject to EIA Order, particularly the small and medium scale industries ("**SMI**"), are also advised to refer to the DOE for consideration and advice on site suitability.

D. Written Permission

Any person shall obtain the prior written permission of the Director General of Environmental Quality pursuant to Section 19 of the Environmental Quality Act before:

(a) carrying out any work on any vehicle, ship or premises that would cause such vehicle, ship or premises to become a prescribed conveyance or prescribed premises; or

(b) constructing on any land any building designed for or used for a purpose that would cause the land or building to become prescribed premises, including but not limited to the following prescribed premises:

(i) crude palm oil mills;

(ii) raw natural rubber processing mills; and

(iii) treatment and disposal facilities of scheduled wastes.

E. Written Notification

Any person intending to carry out activities that may result in air emission is not required to obtain prior written approval from the Director-General of Environment Quality. Instead, under Environmental Quality (Clean Air) Regulations 2014, it laid down that:

(a) An owner or occupier of premises is required to provide prior written notification to the Director General at least 30 days before undertaking any activity, including any change in operations, any work or construction that may give rise to a new source of emissions, or any modification to any plant, machinery, equipment, or air pollution control system that may materially affect emissions.

(b) Any control of fuel burning equipment, incinerator and crematoria shall comply with the limit values and technical standards under Regulation 13 and item I(1) of the Second Schedule, by meeting the required fuel quality standards.

(c) Any fuel burning equipment that is rated to consume pulverised or solid fuel at 30 kilograms or more per hour, or liquid or gaseous fuel at 15 kilograms or more per hour, shall comply with the limit values and technical standards prescribed under Regulation 13 of and the item I(2) of the Second Schedule, including applicable emission limits, fuel quality requirements and monitoring obligations.

F. Licence to Occupy Prescribed Premises and Prescribed Conveyances

(a) A licence is required to occupy and operate prescribed premises namely as below:

(i) crude palm oil mills,

(ii) raw natural rubber processing mills, and

(iii) treatment and disposal facilities of scheduled wastes

(b) From 15 August 2005 onwards, a licence is required to use prescribed conveyances as stipulated in the Environmental Quality (Prescribed Conveyance) (Scheduled Wastes) Order 2005. A conveyance is categorised as prescribed conveyance namely, any vehicle or ship of any description which are -

(i) propelled by a mechanism contained within itself;

(ii) constructed or adapted to be used on land or water; and

(iii) used for the movement, transfer, placement or deposit of scheduled wastes.

G. Environmental Requirements on Scheduled Wastes

(a) Section 34(B) of the EQA states that the DOE's prior written approval is required for a person to place, deposit or dispose of Scheduled Wastes, except at prescribed premises approved by the DOE. Any person who contravenes this section shall be punishable with imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding RM10,000,000.

(b) The list of Scheduled Wastes can be found in the First Schedule of the Environmental Quality (Schedules Wastes) Regulations 2005.

H. Non-Compliance with the EQA

Investors should be aware of possible two-fold consequences when they infringe provisions of the EQA. A wrongdoer who infringes provision(s) of the EQA may be held liable not only for his breach but also for the non-compliance of the notice to remedy such committed breach.

I. Incentives for Environmental Management

With a view to encouraging investments on the environmental sector into Malaysia, various tax incentives have been allocated pursuant to the Promotion of Investments Act 1986 and the Income Tax Act 1967 for companies actively engaging in the following activities:

(a) Forest plantation projects.

(b) Waste recycling activities.

(c) Energy conservation services.

(d) Energy generation using renewable energy resources.

(e) Generation of renewable energy for own consumption.

Depending on the activity and subject to the terms and conditions imposed by Malaysian Investment Development Authority (MIDA), the incentives that these companies are entitled to may include the following:

(a) Pioneer Status – income tax exemption at varying percentages of statutory income within a specified period.

(b) Investment Tax Allowance – on the qualifying capital expenditure incurred within a specified period.

FOREIGN INVESTMENT IN REAL PROPERTY

A. Background to Malaysian Land Law

(1) Torrens System in Malaysia

(a) The Torrens system is a system of registration of titles to land (as distinct from registration of deeds). The Torrens system is basically a system of recognition of titles to and dealings in land to improve efficiency and effectiveness of land administration.

(b) The main characteristics of the Torrens system are the following:

(i) It confers indefeasible title upon registration. However, section 340(2) of the National Land Code 1965 ("**NLC**") stipulates that indefeasibility can be defeated where the transferee himself is guilty of fraud, forgery or misrepresentation or on grounds of mistake, a void instrument or title being unlawfully acquired.

(ii) Any dealing in respect of an alienated land or interest in land must be registered with the relevant land registry in order to confer title or interest on the new proprietor or interest holder.

(2) Indefeasibility of title

According to section 340(1) of the NLC, upon registration, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land. However, being a general principle, the concept of indefeasibility is not absolute because under certain circumstances a registered title or interest may be set aside or defeated by a person who has a better claim.

B. Foreign Investment in Real Property

(1) Who is considered a "foreigner" or "foreign interest" in Malaysia?

Under the Guideline on the Acquisition of Properties issued by the Economic Planning Unit ("**EPU**") of the Prime Minister's Department ("**EPU Guideline**"), foreign interest means any interest, associated group of interest, or parties acting in concert that comprises of: (a) individual who is not a Malaysian citizen; and/or (b) individual who is a Permanent Resident; and/or (c) a foreign company or institution; and/or local company or local institution whereby the parties as stated in item (a) and/or (b) and/or (c) hold more than 50% of the voting rights in that local company or local institution.

(2) Conditions and restrictions on acquisition of properties by a foreign interest

Before a foreign interest is allowed to acquire any property, the EPU Guideline must be taken into consideration. Apart from that, the acquisition of the property by the foreign interest must be approved by the State Authority.

C. EPU Guideline

Under the EPU Guideline, there are only two situations that would require EPU's approval for the acquisition of property. First, when there is a direct acquisition of property valued at RM20 million and above which results in the dilution in the ownership of property held by Bumiputera interest and/or government agency. Second, when there is an indirect acquisition of property by other than Bumiputera interest through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, having property more than 50 percent of its total assets, and the said property is valued more than RM20 million. In order to acquire a property as mentioned in the two situations above, a company needs to satisfy the equity and paid-up capital conditions as listed in the EPU Guideline.

Other than the above, a foreign interest is only allowed to acquire a residential unit valued at RM 1 million and above. This acquisition however does not require the approval of the EPU but falls under the purview of the State Authority.

Apart from that, there are also a number of transactions that do not require the approval from the EPU such as the acquisition of residential unit under the "Malaysia My Second Home" Programme, acquisition of industrial land by manufacturing company and acquisition of properties by a company that has obtained the endorsement from the Secretariat of the Malaysian International Islamic Centre, among others.

A foreign interest is also allowed to purchase all types of properties in Malaysia except for properties valued less than RM1 million per unit, residential units under the category of low and low-medium cost, properties built on Malay reserved land and properties allocated to Bumiputera interest in any property development project ("**Bumiputera Lot**") as determined by the State Authority.

It must be noted however that since land matter falls under the jurisdiction of the state government, each state authority has the discretion to vary the EPU Guideline on the acquisition of property by a foreign interest based on the location and type of property.

D. Approval from the State Authority under section 433B of the National Land Code 1965

Besides obtaining EPU approval, foreign interests are required to obtain State Authority approval for the acquisition of properties in Malaysia. The application process could take about three to six months to complete. However, the State Authority approval is not required for the acquisition of industrial land.

Lease

Under the National Land Code, a lease for a period in excess of 3 years must be registered before the lease-holder obtains an effective statutory interest in the land. A lessee and sub-lessee are also empowered to grant sub-leases of the whole or part of the land for a minimum of three years and a maximum of thirty years, where the lease is over a part of any alienated land.

Tenancy

A lease for a period of three years or less is known as a tenancy. Tenancies are exempt from registration under the National Land Code and are valid whether effected by way of writing or by word of mouth. Such tenancies can be endorsed on the register document of title to the land concerned, and a failure to endorse would result in the tenancy being defeated by a subsequent registered dealing, a statutory lien and even a subsequent tenancy, which is not registrable, whether or not the subsequent tenant has knowledge, actual or constructive, of the earlier tenancy.

INTERNATIONAL TRADE AND FOREIGN INVESTMENT

Malaysia welcomes and actively invites foreign investments. It offers a combination of incentives for foreign investors, without restrictions on the repatriation of capital and profits.

Special incentives are also given to promote manufacturing related, regional operations and services-based industries, industries that are technology-intensive and involve high technology.

Manufacturing sector

Liberalizations initiated by the Malaysian government apply particularly to the manufacturing sector.

Equity holdings in manufacturing companies licensed by MITI are allowed 100% foreign participation.

Incentives

The government is keen to promote and develop foreign investment. Tax incentives for both direct and indirect investments in the manufacturing, agriculture and tourism sectors are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 2018 and Excise Act 1976. These incentives grant partial or total relief from the payment of income tax for a limited period of time. Indirect tax incentives are given in the form of exemptions from import duty, sales tax and excise duty.

Manufacturing Sector Incentives

The major incentives for companies in the manufacturing sector are the Pioneer Status and Investment Tax Allowance and Reinvestment Allowance. Eligibility for either Pioneer Status or Investment Tax Allowance will be determined according to priorities termed as promoted activities or promoted products as determined by MITI.

For more information, please refer to the following link to the websites of MITI and The Malaysian Investment Development Authority (MIDA).

http://www.miti.gov.my

http://www.mida.gov.my

Imports and Exports

Malaysia's import and export policy is to encourage free trade, and generally most imports and exports do not require import / export licences. However for economic, social and political reasons certain goods may be prohibited from import or export. An import/export licence has to be obtained for the importation / exportation of prohibited goods.

There is a tariff of varying rates covering most imports. Raw materials, machinery, essential food stuffs and pharmaceutical products are generally non-dutiable or subject to duties at lower rates. For machinery and equipment and raw materials that are dutiable, application for duty exemption may be considered if they are not available locally and are used directly in the manufacturing process.

A resident is freely permitted to make payment in Ringgit for international trade in goods and services provided payments are made or receipts are received through the non-resident's external account. Prior permission of the Controller of Foreign Exchange is required if such settlement is not through the non-resident's external account.

PERSONAL DATA PROTECTION

The Personal Data Protection Act 2010 ("**PDPA**") came into force on 15 November 2013. The objective of the PDPA is to regulate the processing of personal data in commercial transactions, and to safeguard the rights and interests of individuals. Under the PDPA, anyone who processes personal data of an individual in commercial transactions, be it online or offline, must comply with the PDPA.

(1) Definition of Personal Data

Personal Data is defined under the PDPA as any information in respect of commercial transactions that relates directly or indirectly to a data subject/individual, who is identified or identifiable from the information or from that and other information in the possession of a data user, including any sensitive personal data and expression of opinion about the data subject/individual.

(2) 7 Principles under the PDPA

A data user must comply with the seven personal data protection principles, which form the fundamental backbone of the PDPA, as well as other relevant provisions of the PDPA:

(a) General principle – a data user must only process personal data with the consent of an individual, for a lawful purpose and the personal data collected must not be excessive or beyond what is required for the purpose it was collected.

(b) Notice and choice principle – a data user must inform the individual that his personal data is being processed and provide a description of the personal data, purpose of collection and choice for him to decide whether he wants to provide his data.

(c) Disclosure principle – a data user may only disclose personal data for purposes, or to other third parties to which the individual has, consented to.

(d) Security principle – a data user must take practical steps to protect personal data from loss, misuse, modification, unauthorised or accidental access or disclosure.

(e) Retention principle – a data user must not retain personal data longer than it is necessary to fulfil the purpose for which it was collected.

(f) Data integrity principle – a data user must take reasonable steps to ensure that all personal data is accurate, complete, not misleading and kept-up-to-date.

(g) Access principle – a data user must allow an individual to have access to his own personal data and to correct it if it is inaccurate, incomplete, misleading or outdated.

(3) Minimum Personal Data Protection Standards

The Standards are the "minimum standards" to be observed by data users. The Standards apply to both physical and electronic personal data. A contravention of any of the Standards may attract a fine of up to RM1,000,000 or imprisonment for a term not exceeding 3 years or both.

(4) Rights of an Individual

The PDPA also confers a number of rights on an individual/data subject:

(a) An individual is entitled to be informed by the data user whether his personal data is being processed by or on behalf of data user.

(b) An individual is entitled to correct his personal data it if it is inaccurate, incomplete, misleading or outdated.

(c) An individual is entitled to withdraw his consent to the processing of personal data.

(d) An individual is entitled to request the data user to cease or not begin the processing of his personal data based on the reason that the processing of personal data will cause or is likely to cause substantial damage or substantial distress to him or to another; and the damage or distress is or would be unwarranted.

(e) An individual is entitled to request the data user to cease or not begin processing his personal data for purposes of direct marketing.

(5) Transfer of Personal Data outside Malaysia

As a general rule, the data user should not transfer personal data to a place outside Malaysia unless to such place as specifically permitted by the Minister and in accordance with the requirements prescribed under the PDPA, unless such transfer of personal data falls within one of the exceptions under the PDPA (e.g. performance of contract, legal proceedings etc.).

(6) Working with Data Processor

Under the PDPA, a data processor is any person, other than an employee of the data user, who processes personal data solely on behalf of the data user and does not process the personal data for any of his own purposes.

Where a data processor (e.g. contractor of the data user) is given personal data by the data user and the data processor processes the personal data on behalf of the data user, the data user must obtain sufficient guarantees from the data processor in respect of the security measures governing the processing of such personal data and ensure that the data processor takes reasonable steps to comply with these security measures.

(7) Non-application

The PDPA will not apply to -

(a) the Malaysian Federal and State Government;

(b) information processed for the purpose of a credit reporting business carried on by a credit reporting agency under the Credit Reporting Agencies Act 2010; and

(c) to any personal data processed outside Malaysia unless that personal data is intended to be further processed in Malaysia.

However, the PDPA does apply to person/entity not established in Malaysia but uses equipment in Malaysia for processing the personal data otherwise than for the purposes of transit through Malaysia.

(8) Non-compliance

Aside from the negative publicity, penalties for non-compliance of the PDPA can be very severe, with the Personal Data Protection Commissioner being empowered to impose financial penalties of up to RM500,000 and/or imprisonment of up to 3 years for non-compliance with the PDPA.

(9) Compoundable Offences

The Commissioner may offer data users an opportunity to pay a monetary penalty (which penalty can be up to half of the maximum fine stipulated in the PDPA) within the time period stipulated in the offer. If no payment is received within the stipulated period, prosecution for the offence will be instituted against the data user.

EMPLOYMENT LAW

In Malaysia, there is a wealth of employment related legislation that provides a framework for the employer-employee relationship. The principal statutory laws are set out below.

A. Employment Act 1955

The Employment Act 1955 ("**EA 55**") applies throughout West Malaysia and the Federal Territory of Labuan. It applies only to employees whose wages do not exceed RM4,000 a month and certain categories of employees irrespective of their wages such as manual labourers, supervisors of manual labourers, drivers, domestic servants, etc. For those who do not fall under this category, their rights are dependent on their contract of employment.

An employment contract may be in a form of a *contract of service* which is pre-condition for an employer-employee relationship or a *contract for service***.**

Summary of Material Provisions of the Employment Act 1955

Section	Subject	Provision
60	Work on a rest day	Employees are not required to work on a rest day unless he is engaged in work which is required to be carried on continuously by 2 or more shifts.
60A	Hours of work	Employees are not required to work for the periods below except with overtime payments: (a) More than 5 consecutive hours without a period of leisure of not less than 30 minutes duration. (b) More than 8 hours in a day. (c) In excess of a spread over period of 10 hours in a day. (d) More than 48 hours in a week. There is an exception in situations such as emergencies and urgent work to be done to machinery or plant. Also no employer shall require an employee under any circumstances to work for more than 12 hours in any one day.

60D	Holidays	Employees are entitled to a paid holiday at his ordinary rate of pay on 11 of the gazetted public holidays, 5 of which is pre-set with the other 6 to be selected by the employer at their discretion. If any of the public holiday falls on a rest day; or any other public holiday, the working day following the rest day or the other public holiday shall be a paid holiday in substitution of the first mentioned public holiday.
60(3) 60D(3)	Overtime	Employees shall be paid at a rate of 1.5 times his hourly rate for any overtime work. Employees shall not be required to work more than 104 hours a month on overtime. For any overtime work in excess of the normal hours of work on a paid public holiday, the employee shall be paid at a rate which is no less than 3 times his hourly rate of pay. For overtime work carried out by an employee on his rest day, he shall be paid at a rate which is no less than 2 times his hourly rate of pay. For overtime work carried out by an employee employed on piece rates in excess of the normal hours of work on any paid holiday, the employee shall be paid no less than 3 times the ordinary rate per piece.
60E	Annual Leave	An employee shall be entitled to paid annual leave of - (a) 8 days if employed for a period of less than 2 years; (b) 12 days if employed for a period of 2 years or more but less than 5

		years; or (c) 16 days if employed for a period of 5 years or more, For employees who have not completed 12 months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service.
60F	Sick Leave	An employee shall be entitled to paid sick leave where no hospitalisation is necessary, of - (a) 14 days if employed for less than 2 years; (b) 18 if employed for 2 years or more but less than 5 years; or (c) 22 days if employed for 5 years or more. If hospitalisation is necessary, entitlement is 60 days each calendar year.
37	Maternity Allowance	Female employees are entitled to 98 consecutive days for each confinement. A female employee shall not be entitled to any maternity allowance if at the time of her confinement she has 5 or more surviving children. To be entitled for maternity allowance the employee must have been employed by the employer for a period of, or periods amounting in the aggregate to, not less than 90 days during the 9 months immediately before her confinement; and she has been employed by the employer at any time in the four months immediately before

		her confinement.
19 & 24	Wages	Every employer shall pay to each of his employees not later than the 7th day after the last day of any wage period the wages, less any lawful deductions.
61 & 60K	Registration	Every employer shall prepare and keep one or more registers containing such information of each employee. For the employment of foreign employees, the employer is required to furnish particulars of such employee with the Director General of Labour within 14 days of the employment.

B. Occupational Safety and Health Act 1994 ("OSHA 94")

The OHSA 94 provides the framework to secure the safety, health and welfare among workforce and to protect others against risks to safety or health in connection with the activities of persons at work. Employers with more than 5 employees are required to formulate a written Safety and Health Policy. Pursuant to Section 30 of the OSHA 94, every employer shall establish a Safety and Health Committee at workplace if there are 40 or more persons employed at the place of work.

C. Employees' Social Security Act, 1969

Employers and employees are also obligated to contribute to this insurance fund. The contribution rate is set out in the Third Schedule of the Employees' Social Security Act 1969 and is dependent on the monthly salary of the employee. As the ceiling rate for contribution is RM6,000 a month, employees who earn more than the ceiling rate are deemed to be earning RM6,000 a month for the purposes of contribution to this insurance fund.

D. Workmen's Compensation Act 1952

Similarly, this is an insurance fund whereby the employer has to make mandatory contributions which would enable the employees to claim compensation in the event of injuries sustained in the course of their employment. It is to be noted that employees in the context of this Act means foreign employees only whose monthly earning does not exceed RM500 or manual workers irrespective of wages

E. Trade Unions Act 1959

While the Industrial Relations Act 67 governs the relationship between trade unions and employers, the Trade Unions Act 1959 deals with the creation of the trade union, its procedures and requirements it has to adhere to. Employers also have a statutory right to form a trade union.

Pursuant to Section 10 of the Trade Unions Act 1959 ("**TUA 1959**"), any group of seven or more workers may form a trade union. Once a decision is made to form a union, the application for registration with the Director General of Trade Unions must be made within a month.

F. Immigration Requirements

For employers who are desirous of hiring expatriates, an employment pass would have to be applied from the Immigration Department. The expatriate must receive a minimum salary in accordance with the applicable employment pass category (i.e. category I: minimum RM20,000; category II: RM10,000 – RM19,999; category III: RM5,000 – RM9,999 (or RM7,000 – RM9,999 for specific manufacturing sectors)) and be subject to the prescribed tenure limits (i.e. up to 10 years for categories I and II, and up to 5 years for category III, with replacement plan requirements applicable to categories II and III). On a side note, there is a list of positions that are not allowed/encouraged to be applied for expatriate posts for example, certain posts in the sector of geoscience and engineering amongst others. Further to that, there are minimum paid up capital and equity requirements to be adhered to which is updated from time to time by the Immigration Department.

G. Industrial Relations Act 1967

The Industrial Relations Act 1967 ("**IRA 67**"), unlike the EA 55, applies throughout Malaysia. It deals with trade union matters, trade disputes (amongst employers, employees and trade unions) and collective agreements amongst others. The matters in regards to trade disputes may be referred by the Minister of Human Resources to the Industrial Court. The IRA 67 further provides that an employee may only be dismissed by his employer with just cause and excuse. The concept of termination at will only to employment contracts does not apply in Malaysia.

H. Employees Provident Fund Act 1991

Every employer is required to contribute to this fund at the specified rates. The contribution rates are as prescribed under the Third Schedule and are based on the employee's monthly wages as follows:

Category of Employees	**Employer's Rate**	**Employee's Rate**
Monthly salary of RM5,000 or below	13%	11%
Monthly salary of above RM5,000 up to RM20,000	12%	11%

Monthly salary of above RM20,000	12%	11%

Note: For employees aged 60 years and above the rate is reduced as prescribed under the Third Schedule.

Contribution to this fund is not mandatory for foreigners working in Malaysia. However, a foreigner who is employed in Malaysia could opt to contribute to the fund voluntarily. Notwithstanding this, unlike the employer contribution rates enjoyed by Malaysian citizens as per the table above, an employer in Malaysia is only obliged to contribute a minimum of RM5.00 per month to the foreigner's fund regardless of how much the foreigner earns unless the contract of employment provides otherwise.

I. Termination of Employment

An employer may exercise their right to terminate an employee's employment contract for reasons such as a misconduct under Section 14 of the EA 55, in breach of contracts by the employee, retrenchment, retirement (60 years), end of a probation period (if performance is not satisfactory) or for fixed term contracts it ends when the contractual period comes to an end. Termination at will as mentioned is not allowed in Malaysia due to the 'just cause and excuse' provision in the IRA 67.

J. Termination on Grounds of Redundancy

In order to lawfully retrench its employees on grounds of redundancy, an employer must comply with each of the following requirements, failing which a retrenched employee could claim for unfair dismissal against the former employer:

(a) There must be a legal basis and justification and it must be genuine and bona fide.

(b) The services of the employee affected must be made redundant.

(c) The retrenchment carried out must comply with the law, the terms of employment and any collective bargaining agreement, the Code of Conduct for Industrial Harmony (the "Code") and other acceptable industrial practice.

A retrenchment exercise must be notified to the nearest Labour Office.

K. National Wages Consultative Council Act 2011

Pursuant to Section 23 of the National Wages Consultative Council Act 2011 ("NWCCA 2011"), the Minimum Wages Order 2024 (the "**Order**") was implemented. The Order applies across the board, covering both local and foreign employees, with the singular exclusion of those who are classified as domestic servants under the Employment Act 1955. With effect from 1 February 2025, the minimum wage is set at RM1,700 per month for employers with five or more employees, and for employers carrying out professional activities classified under MASCO. For employers with fewer than five employees (other

than those carrying out MASCO-classified professional activities), the minimum wage is set at RM1,500 per month for the period from 1 February 2025 to 31 July 2025, and subsequently increased to RM1,700 per month with effect from 1 August 2025.

L. Minimum Retirement Age Act 2012

This Minimum Retirement Age Act 2012 provides for the minimum retirement age of an employee at 60 years old.

Although the minimum retirement age has been fixed at 60 years, an employee may choose to retire earlier than 60 years of age provided that this has been agreed upon in their contract of service or collective agreement.

M. Foreign Employment

Where there is a shortage of trained Malaysians, companies are allowed to bring in expatriate personnel i.e. 'key post' or 'time post'. Key posts are high level managerial posts in foreign-owned private companies and firms operating in Malaysia.

Time posts are positions filled for a specified time. There are two types of time posts, being -

(a) Executive time posts; and

(b) Non-executive time posts

Restrictions on employment of foreign personnel

The government permits a company investing in Malaysia to bring in technical expertise or other executive personnel necessary for the functioning of the company. However, it is the government's policy that jobs should be filled by Malaysian eventually.

Approvals for Expatriate Posts

Approvals for expatriate posts are given by different authorized bodies or agencies depending on the type of core business of the company. The Malaysian Investment Development Authority (MIDA) approves expatriate posts in the following fields:

- Manufacturing
- Manufacturing related services

  – Regional Office; Operational Headquarters; Overseas Mission; International Procurement Centre, etc.
- Hotel and tourism industry
- Research and Development

The following minimum paid-up share capital requirements must be fulfilled before an application for an expatriate position can be processed by the expatriate committee:

- 100% Malaysian owned company: **RM250,000**

- Malaysian and foreign owned company: **RM350,000**

- 100% foreign owned company: **RM500,000**

- Company undertaking distributive trade and foreign owned restaurant: **RM1,000,000**

INTELLECTUAL PROPERTY RIGHTS

The laws and regulations enacted in Malaysia with respect to intellectual property generally conform to the international standards for its protection.

The Malaysian Intellectual Property Corporation ("**MyIPO**") is responsible for the registration of trade marks, patents, copyrights and industrial design. MyIPO's website can be found at the following address: www.myipo.gov.my

A. Trade Marks

A trade mark means any sign capable of being represented graphically which is capable of distinguishing the goods or services of one undertaking from those of other undertakings and it includes "any letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape of goods or their packaging, colour, sound, scent, hologram, positioning, sequence of motion or any combination thereof." Proprietors of trade marks may assert their rights to the trade marks either through the legal recourses made available to them for registration under the Trade Marks Act 2019, or for non-registered trade marks, through the tort of passing off.

(1) Unregistered Trade Marks

The tort of passing off is an action founded in common law which protects the goodwill of a person or business which may be damaged by usurpation of a trade mark. It provides protection for both unregistered and registered trade marks, but is the only recourse available for unregistered trade marks.

To bring a valid cause of action for passing off, the following elements must be established:

(a) There is goodwill and reputation of the business of the proprietor.

(b) Misrepresentation made by the infringer which leads the public to believe that the goods or services of the infringer are associated with the goods and services of the proprietor.

(c) The goodwill and reputation of the proprietor's business have suffered damage by reason of such misrepresentation.

An action in passing off is essentially an action seeking a remedy for damage caused to the goodwill and reputation of the plaintiff's business.

(2) Registered Trade Marks

Registration of trade marks under the Trade Marks Act 2019 grants a proprietor the exclusive right to use the trade mark in Malaysia. A certificate of registration provides easy prima facie evidence of ownership of the trade mark.

An applicant may be an individual, a sole proprietorship, a partnership, an association or a body corporate. If the applicant does not reside or carry on business in Malaysia, the applicant must appoint a trade mark agent to act on its behalf. Applications for registration of trade marks may be filed at MyIPO either manually or online.

A trade mark is valid for 10 years from the date of application and is renewable upon expiry.

B. Patents

A patent is a monopoly right over an invention for a limited period of time. The invention has to be technical in nature and must contribute to any field of technology. In Malaysia, patents are protected under the Patents Act 1983.

To qualify for patent protection, the invention must satisfy all of the following requirements:

(a) It must be novel and must not have been made known to the public anywhere in the world before the filing date or priority date of the application.

(b) It is non-obvious in that it would not have occurred to a person reasonably skilled in the particular field to come up with the same invention.

(c) It is capable of industrial application in any kind of industry.

An invention is not novel if there had been prior disclosure of essential elements of the invention anywhere in the world, including prior patent applications.

However, prior patent disclosures may be disregarded in the following circumstances:

(i) Where prior disclosure of the invention was made in confidence.

(ii) Where prior disclosure of the invention was made by the applicant of the patent himself or his predecessor in title and such disclosure occurred within one year preceding the date of the patent application.

A patent is valid for 20 years from the date of filing of the application.

C. Copyright

Copyright protection in Malaysia is automatic and is accorded by the Copyright Act 1987 without any requirement for registration or other action. Copyright gives the creator of an original work, for a limited period, exclusive rights to do certain acts with the work.

Copyright is granted to the following works:

(a) Musical works.

(b) Literary works.

(c) Artistic works.

(d) Dramatic works.

(e) Films.

(f) Sound recordings.

(g) Broadcasts.

(h) Published editions.

Copyright however may only subsist in a work if it complies with all of the following:

(a) It belongs to one of the categories of copyright-protected works as set out above.

(b) The work complies with the requirement as to form in that it has been written down, recorded or reduced to or in any other material form.

(c) The work is original. Originality here does not denote novelty. A work is original if it originates from the author who had made sufficient effort to produce such work. The amount of effort required is not defined and is a question of fact.

(d) The work complies with qualifications for copyright as follows:

(i) The author is a permanent resident of Malaysia or member country of the Berne Convention.

(ii) The work is first published in Malaysia or in any member country of the Berne Convention.

(iii) The work was created in Malaysia or in any member country of the Berne Convention.

D. Industrial Design

An industrial design is a novel visual appearance of an article which can be reproduced by industrial means and defined as the features of shape, configuration, pattern or ornament applied to an article by an industrial process or means, being features which in the finished article appeal to and are judged by the eye, though may be constituted by elements which are three-dimensional (*the shape of the article*) or two-dimensional (*pattern, ornament*). Industrial designs are protected by the Industrial Designs Act 1996.

Industrial design does not include the following:

(a) Method or principle of construction.

(b) Features of shape or configuration of an article which are dictated solely by the function which the article has to perform.

(c) Features of shape or configuration of an article which are dependent upon the appearance of another article of which the article is intended by the author of the design to form an integral part.

Registered industrial designs are protected in that it may not be lawfully copied or imitated without the registered owner's authorisation.

For an industrial design to be registrable, it has to be new and not disclosed anywhere in the world prior to application for registration.

The initial duration of registration for a Malaysian industrial design is 5 years from the date of filing the application for registration. An application can be renewed for 4 further 5-year periods, giving a maximum period of protection of 25 years

E. Geographical Indication

Protection of a geographical indication is accorded by the Geographical Indication Act 2022 and Geographical Indications Regulations 2022. A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

The geographical indication must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin.

A certificate of registration is valid for 10 years from the date of filing and is renewable upon the expiry of 10 years.

COMPETITION LAW

The Competition Act 2010 ("**Competition Act**") which came into force on 1 January 2012, has a significant impact on how businesses should carry out their daily activities so as not to infringe the various anti-competition prohibitions under the Competition Act.

The Competition Act applies to any commercial activity by any enterprise (including Government-linked companies) within and outside Malaysia which affects competition in any market in Malaysia; save for those commercial activities exempted by the Competition Act in Schedule 1 (namely the activities regulated under the Communications and Multimedia Act 1998, the Energy Commission Act 2001, the Petroleum Development Act 1974 as well as the Petroleum Regulations 1974, upstream activities only) and Malaysian Aviation Commission Act 2015.

Roles and Functions of the Malaysia Competition Commission

The regulator of the Competition Act is the Malaysia Competition Commission (MyCC). There is no merger regime in Malaysia yet. MyCC is an independent body established under the Competition Commission Act 2010 to enforce the Competition Act. Its main role is to protect the competitive process for the benefit of businesses, consumers and the economy. The Competition Commission Act 2010 empowers MyCC to carry out functions such as implement and enforce the provisions of the Competition Act 2010, issue guidelines in relation to the implementation and enforcement of the competition laws, act as advocate for competition matters; carry out general studies in relation to issues connected with competition in the Malaysian economy or particular sectors of the Malaysian economy; inform and educate the public regarding the ways in which competition may benefit consumers in, and the economy of, Malaysia.

A. Anti-Competitive Agreements

Section 4 of the Competition Act prohibits horizontal agreements (i.e. agreements between enterprises operating at the same level of the production or distribution chain, e.g. competitors in the same market) and vertical agreements (i.e. agreement between enterprises operating at different level of the production or distribution chain e.g. buyers and sellers, manufacturers and distributors) between enterprises where an agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

In general, "significant" means the agreements must have more than a trivial impact. It should be noted that impact would be assessed in relation to the identified relevant market. A good guide to the trivial impact of an anti-competitive agreement might be the combined market share of those participating in such an agreement. As a starting point and to provide greater certainty, MyCC may use the following basis in assessing whether an anti-competitive effect is "significant". This approach sets "safe harbours"

for otherwise anti-competitive agreements or association decisions. In general, anti-competitive agreements will not be considered "significant" if -

(a) the parties to the agreement are competitors who are in the same market and their combined market share of the relevant market does not exceed 20%; or

(b) the parties to the agreement are not competitors and all of the parties individually has less than 25% in any relevant market.

B. Types of Anti-Competitive Agreements

MyCC has in its guidelines (which are merely for illustration purposes and not a substitute for the law), set out a non-exhaustive list of the types of agreements that could potentially be anti-competitive. Horizontal agreements that facilitate information (price or non-price) sharing, that restrict advertising, that serve as a barrier to new entrants to the market and the standardisation of agreements to set new standards or to sell new products will be investigated and may potentially be found to be anti-competitive. It is important to note that the Competition Act treats certain "hard-core" cartel arrangements as anti-competitive. In these situations, the agreements are deemed to "have the object of significantly preventing, restricting or distorting competition in any market for goods or services". This means for these horizontal agreements, MyCC will not need to examine any anti- competitive effect at all. The agreements which are deemed to be anti-competitive include price fixing, fixing of trading conditions, market sharing or sharing of sources of supply, limiting or controlling production, market outlets or access, technical or technological development or investment or bid rigging.

Vertical agreements involving price restrictions such as setting minimum resale price, maximum price or even recommend retail price which serve as a focal point for downstream collusion, may be anti-competitive, and MyCC has made it clear that it will take a strong stance against these types of anti-competitive agreements. Other non-price vertical agreements such as tying and bundling agreements that require a buyer to buy all or most of its supplies from the seller, exclusive distribution agreements covering a geographic territory, exclusive customer allocation agreements as well as up-front access payments conditions may give rise to anti-competition concerns under Section 4 of the Competition Act.

C. Abuse of Dominant Position

Section 10 of the Competition Act addresses the conduct of dominant enterprises. An enterprise is in a dominant position if it has what is termed as "market power" or if it possesses "such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors".

In general, MyCC will consider a market share above 60% as indicative of dominance. The Competition Act does not penalise an enterprise because of its dominance. It only prohibits enterprises from engaging in any conduct which amounts to an abuse of a dominant position such as imposing an unfair purchase or selling price, limiting or controlling production, market outlets or market access, refusing to supply, applying discriminatory conditions that discourage new market entry, engaging in predatory behaviour towards competitors or buying up scarce supplies in excess of the dominant enterprise's own needs.

Market share shall not by itself be regarded as conclusive of dominance. Dominance shall be assessed in terms of the enterprise's ability to act without concern about competitors' responses or ability to dictate the terms of competition in a market in Malaysia. Other factors such as barriers to entry, countervailing buyer power, etc. may also be used in the assessment of dominance.

There are 2 main types of abuse:

(a) Exploitative conduct – setting a high price to exploit consumers knowing that there are no new entrants or competitors, in which the resulting excessive profits are not a reward for innovation.

(b) Exclusionary conduct – a conduct that prevents equally efficient competitors from competing. For example, predatory pricing, price discrimination, exclusive dealing, loyalty rebates and discounts, refusal to supply and sharing of essential facilities, buying up scarce intermediate goods or resources as well as bundling and tying.

D. Leniency Regime

MyCC has finalised and published the Guidelines on Leniency Regime which is based on the statutory framework of section 41 of the Competition Act. An enterprise that admits its involvement in a hard-core cartel arrangement and provides information or other form of co-operation to MyCC which significantly assists in the identification or investigation of any finding of an infringement of any prohibition by any other enterprises will enjoy a reduction of up to a maximum of 100% of any penalty which would otherwise have been imposed on it.

E. Consequences of Infringement

MyCC has also published its finalised Guidelines on Financial Penalties pursuant to section 17 and section 40(1) of the Competition Act. Enterprises which are found to have infringed the Competition Act may be ordered to stop the infringement immediately and to take steps to bring the infringement to an end. Additionally, it is liable to a fine of up to 10% of its worldwide turnover for the period during which the infringement occurred. The enterprise may also be required to change its business practices in a manner materially adverse to its present business model. Directors, CEOs, COOs and manager

may also be severally and jointly liable to pay hefty fines and subject to imprisonment for obstruction of investigations.

Any private individual who has suffered loss or damage as a result of the infringement may also bring a private action against the enterprise. A private action could potentially result in an award of damages that far exceeds the amount of the fines imposed by MyCC. It should also be noted that a private action can be taken even if MyCC does not investigate or prosecute the enterprise, or if MyCC finds in favour of the enterprise after its investigations. Aside from these potential sanctions, a breach of the Competition Act will also result in additional consequences for the business as it will take up a huge amount of management and staff time in assisting with the investigation which could take years to complete. It will also attract negative publicity for the enterprise and damage the enterprise's image and brand.

STATUTORY REQUIREMENTS FOR MALAYSIAN-INCORPORATED COMPANIES

Upon incorporation, the company or its agent is responsible for ensuring compliance of the CA 2016. Any change in the particulars of the company or in the company's name or authorised capital must be filed with CCM together with the appropriate fees.

Every company incorporated under the Companies Act 2016 is required to keep accounting and other records so as to sufficiently explain the transactions and financial position of the company and enable preparation of financial statements showing true and fair view to be conveniently and properly audited. All transactions must be recorded within 60 days of completion.

Accounting and other records are to be retained for seven years after the completion of the transactions or operations to which they relate.

The directors must present a set of financial statements in accordance with the approved accounting standards issued or adopted by Malaysian Accounting Standards Board (MASB) and the requirements of the Companies Act.

In addition, the Malaysian Income Tax Act provides that a company is required to retain sufficient records or documents for at least seven years from the end of the year to which the income of the business relates to for the purposes of tax assessments.

STATUTORY REQUIREMENTS FOR FOREIGN COMPANIES CARRYING ON BUSINESS WITHIN MALAYSIA

Accounting and other records

A foreign company desiring to establish a place of business or to carry on business within Malaysia is required by the Companies Act 2016 to register itself with the CCM. The Companies Act 2016 requires the accounting and other records of a foreign company's operations in Malaysia to be kept in Malaysia that will sufficiently explain the transactions and financial position of the foreign company arising out of its operations in Malaysia and shall cause these records to be kept in such a manner as to enable them to be conveniently and properly audited. All transactions must be recorded within 60 days of completion.

Filing Requirements

A foreign company with operations in Malaysia is required to lodge with the CCM within two months of its annual general meeting a copy of its financial statements and other documents required to be attached to its financial statements by the law applicable to the company in its place of incorporation or origin. Where the foreign company is not required to hold an annual general meeting and prepare a financial statements by the law of the place of its incorporation, the company is required to prepare a financial statements containing such particulars as if it were a public company incorporated in Malaysia.

In addition, a foreign company is required to lodge with the CCM a duly audited financial statements and other documents required to be attached with the financial statements and a duly audited statement showing its assets used in Malaysia and its liabilities arising out of its operations in Malaysia as at the date to which its financial statements was made up, so far as is practicable, complies with the applicable approved accounting standards and which gives a true and fair view of the foreign company's operations in Malaysia.

Financial Statements

The requirement of financial statements is similar to those companies incorporated in Malaysia.

In addition, foreign companies that are listed in Malaysia can apply the acceptable internationally recognised accounting standards or MASB approved accounting standards.