

Doing Business in Malaysia



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Incorporation of Company in Malaysia

In Malaysia, the registration process for all businesses, including foreign entities, is overseen by the Companies Commission of Malaysia, commonly referred to as Suruhanjaya Syarikat Malaysia (SSM).

Why Start a Business in Malaysia?

Starting a business in Malaysia can be highly advantageous due to its strategic location in Southeast Asia, providing easy access to the ASEAN markets without the high costs of other developed countries in the region. Malaysia offers a unique "ground floor opportunity" with its GDP expected to grow significantly from around US\$400 billion in 2022 to US\$780 billion by 2032.

The country's dynamic economy, rich in natural resources like palm oil, rubber, and timber, along with its skilled workforce and advancements in technology, create an ideal setting for businesses to thrive. Additionally, government support for investors through initiatives such as the Malaysia Digital Economy Corporation (MDEC) and various funding and grant programs make Malaysia an attractive destination for starting a business.

Incorporation Options:

- 1. Private Limited Company (Sendirian Berhad - SDN BHD) or Public Limited Company (Berhad - BHD):** These are companies limited by shares, requiring at least one shareholder and one director, along with a company secretary. Necessary documents for registration include a company constitution, statutory declarations by the director(s) regarding bankruptcy or convictions, and identity documents of all directors and the company secretary. SDN BHD cannot have more than 50 shareholders and its shares are not publicly traded, unlike BHD. Additionally, there is an option to incorporate an unlimited company, which follows the same procedure as a limited company but with unlimited member liability.
- 2. Sole Proprietorship or Partnership:** These forms encompass various profit-oriented activities, excluding those specified in the Registration of Businesses Act 1956. Sole proprietorship is when an individual owns the business entirely, whereas partnership involves ownership by two or more individuals, not exceeding 20. Registration can be done either at the SSM counter or online through the Ezbiz portal within 30 days of commencing business.
- 3. Limited Liability Partnership (LLP):** This is an alternative business structure regulated under the Limited Liability Partnerships Act 2012, commonly formed

by professionals like Lawyers, Chartered Accountants, and Company Secretaries. LLP offers flexibility in formation, maintenance, and termination, with limited liability protection to partners and the legal status of a body corporate.

Streamlined Registration Process:

SSM has made significant strides in transforming and streamlining business registration processes online, depending on the chosen business type. The initial step involves selecting a name and reserving it via the SSM's Malaysia Corporate Identity ("MyCoID") portal.

Registration Requirements:

To register any of these companies in Malaysia, the following information is required:

- Proposed Company Name
- Type of Company (Private or Public)
- Proposed Business Type
- Registered Office Address
- Business Address
- Paid-Up Capital (minimum RM1)
- Details of Directors(s) and Promoter(s)
- Declarations from Directors(s) and Promoter(s)
- Declaration of Compliance from Individuals Responsible for Incorporation
- Additional Documents (if any)

Upon completion of all steps, SSM issues a certificate of registration. Additionally, all companies must appoint a company secretary within 30 days of incorporation, who must be licensed by SSM or a member of a prescribed professional organization.

Visa Requirements for Foreigners Starting a Business in Malaysia

Foreign entrepreneurs looking to establish a business in Malaysia should familiarize themselves with the visa requirements. Here's a concise overview:

Malaysia Tech Entrepreneur Program (MTEP):

Launched by MDEC in 2017, the MTEP, in partnership with Malaysia Digital Hub (MDH), aims to support the tech startup ecosystem by providing work visas to foreign tech entrepreneurs.

Two types of work visas available:

- Professional Visit Pass (PVP-MTE): Valid for one year.
- Residence Pass (RP-MTE): Valid for up to five years, catering to both new and established foreign entrepreneurs.

The program allows entrepreneurs to secure a visa even before incorporating a company, but it is specifically for those in the tech industry.

Hiring a Country Manager:

Entrepreneurs not planning to relocate immediately but who have a business in another country might consider hiring a country manager in Malaysia. This individual can assist in establishing a business presence and lay the groundwork for future Malaysian visa applications.

Once trust is established, company incorporation in Malaysia can proceed with the country manager as a director.

When ready to apply for a visa, it is necessary to inject a certain amount of paid-up capital into the company to qualify for a work visa. There are two types of visas available:

- Employment Pass (Category II) Expatriate: Valid for up to two years.
- Employment Pass (Category I) Expatriate: Valid for up to five years.

Employment via an Employer on Record (EoR):

To establish residency in Malaysia, which is a prerequisite for company incorporation, collaboration with an EoR to be employed as the business's country manager is recommended.

The EoR applies for an employment pass on behalf of the entrepreneur. Once settled in Malaysia, company incorporation can proceed.

After a few months of successful operation and good financial records, the company can apply for an Employment Pass for the entrepreneur.

It's important not to appoint a nominee director without a stake in the business, as they carry the same responsibilities as any other director.

Conclusion:

In summary, registering a company in Malaysia involves careful consideration of the appropriate business structure and adherence to regulatory requirements.

Embarking on a business journey in Malaysia is an exciting venture, but it's essential to navigate the complexities with precision and expertise.

Exploring Investment Opportunities in Malaysia

Malaysia has emerged as a premier investment destination among Asia's emerging and developing nations, as revealed by the Global Opportunity Index (GOI) 2024 by the US-based Milken Institute. With an impressive global ranking of 27, Malaysia surpasses nations like Thailand (37) and China (39).

Economic Corridors and Investment Climate:

Malaysia's economic corridors offer a wide array of investment prospects across various sectors, cementing its position as a leading economic powerhouse in Southeast Asia. Backed by a highly skilled workforce, robust infrastructure, and favourable business policies, Malaysia has solidified its status as a reliable investment hub over the years.

Key Investment Sectors in Malaysia:

1. Manufacturing:

Constituting approximately 23% of GDP, Malaysia's manufacturing sector serves as a cornerstone of its economy, particularly in areas such as electrical and electronics (E&E), chemicals, and rubber products. The government actively promotes Industry 4.0 adoption, providing incentives like tax breaks to businesses embracing automation and data informatics, thus fostering high-value manufacturing.

2. Electronics and Semiconductors:

As a significant player in the E&E sector, Malaysia accounts for 13% of global chip production and 7% of semiconductor output. With surging global demand, Malaysia presents ample opportunities for businesses to enhance their production capacities, aligning with the nation's ambition to become a high-technology hub by 2030.

3. Medical Devices and Tourism:

Malaysia has emerged as a prominent hub for medical device manufacturing, with over 90% of its products being exported. The flourishing medical tourism sector, supported by the Malaysia Healthcare Travel Council, attracts a substantial number of medical tourists seeking specialized treatments such as cardiology and fertility.

4. Halal Industry:

Contributing around 10% of GDP, Malaysia's Halal industry is poised for remarkable growth, with exports exceeding US\$12.8 billion in 2022. The nation's rigorous Halal standards and robust certification system position it as a global leader in Halal manufacturing and certification, complemented by a thriving Islamic finance ecosystem.

5. Digital Economy:

Malaysia's digital economy, accounting for 22% of GDP in 2022, is set for further expansion, driven by sectors like e-commerce, online travel, and digital services. The government's emphasis on digital transformation across priority sectors, coupled with incentives for data centre investments, underscores Malaysia's commitment to nurturing a vibrant digital ecosystem.

Suitable Investment Areas for Foreigners in Malaysia

Foreign investors may choose to invest in various sectors in Malaysia, including the stock market. A common approach for many international investors is utilizing exchange-traded funds (ETFs) due to their ease of buying and selling on global exchanges and the diversification they offer.

Real estate is another lucrative investment sector in Malaysia, as the market has experienced significant growth recently. This has led to an increase in foreign investment in the real estate sector. However, investors should be cautious of potential risks, such as property oversupply due to government efforts to lower housing costs. Additionally, there are limited options for publicly traded real estate trusts.

Malaysia's wealth of natural resources, such as wood, natural gas, palm oil, and rubber, presents further investment opportunities. Around 60% of Malaysia's land is covered by forest, contributing to its natural resource base.

Nevertheless, certain sectors have limited opportunities for foreign investors due to government restrictions. These restrictions apply to industries the government deems essential for national development, such as the automobile industry. Additionally, foreign investors face constraints in sectors like professional and financial services.

Protection of Foreign Investment in Malaysia

Foreign direct investment in Malaysia can be safeguarded through various measures. One of these includes the 71 bilateral investment agreements that Malaysia has signed, offering legal protections for international investors. Additionally, investors benefit from the support of the International Centre for Settlement of Investment Disputes (ICSID), Malaysia's membership in the Multilateral Investment Guarantee Agency, and the services of the Kuala Lumpur Regional Centre for Arbitration (KLRCA).

These organizations and entities play a significant role in ensuring that all foreign direct investment in Malaysia adheres to legal standards and is adequately protected by the law.

Conclusion:

With its diverse investment opportunities spanning manufacturing, technology, healthcare, and Halal industries, Malaysia offers a dynamic landscape for investors seeking growth and innovation. Supported by favourable government policies and an enabling business environment, Malaysia remains a strategic investment destination in the Asia-Pacific region.

Employment Law in Malaysia

Employers operating in Malaysia are obligated to adhere to a comprehensive set of employment and labour regulations governing various aspects of the employment lifecycle, encompassing recruitment, management, and termination procedures. These regulations cover a range of essential areas, including securing approval for hiring foreign workers, providing statutory leave entitlements, defining working hours, enrolling in the Employees Provident Fund (EPF), formulating employment contracts, and offering severance packages.

Employment Contracts

In Malaysia, it is a legal requirement for every employment lasting more than a month to be formalized through a written contract. These contracts, which must adhere to the guidelines outlined in the Employment Act of 1955, should encompass critical elements such as the location of employment, job responsibilities, remuneration, leave entitlements, benefits, and provisions ensuring employee health and safety. Employers are mandated to retain copies of these contracts for a minimum of seven years following their expiration.

Hiring Foreign Employees

Companies planning to recruit foreign nationals must obtain prior approval for foreign worker quotas from the Ministry of Home Affairs. The employment of foreign workers is typically restricted to specific sectors, primarily those necessitating specialized skills or expertise that are not readily available among local candidates.

Some of the positions include:

- Top managerial positions for foreign companies in Malaysia
- Professional or mid-managerial positions
- Highly skilled, technical positions that require experience

Upon satisfying the requisite criteria, employers must submit the necessary documentation to the Immigration Department as discussed below, to obtain approval for employment passes.

Prior Approval Requirement for Hiring Foreign Employees

Employers in Malaysia are now required by law to obtain prior approval from the Director-General of Labour (DGL) to hire foreign employees ("Prior Approval Requirement"). This requirement applies to all non-Malaysian and non-permanent residents who need immigration passes to work in Malaysia, including:

- Expatriates working under an Employment Pass
- Professionals visiting on a Professional Visit Pass
- Foreign workers under a Visitor's Pass (Temporary Employment)
- Resident pass-holders and participants in the Malaysia My Second Home (MM2H) programme

To seek approval, employers must submit the relevant forms to the Labour Department, available on their website. Approval is contingent on the employer meeting conditions set out in the Amended Employment Act, such as having no outstanding issues or violations related to employment laws, social security, housing standards, minimum wages, and anti-trafficking or forced labour.

The Labour Department will issue an approval letter for each successful application. DGL approval is also required before employers can start the application process with other relevant agencies, such as the Immigration Department, to obtain work passes for foreign employees. Further clarifications on the implementation of this requirement from other agencies are still pending.

Working Hours and Overtime Pay

Starting from September 2023, the normal working hours are 8 hours per day or 45 hours per week. The sections relating to overtime pay in the Employment Act 1955 only applicable to employees earning a monthly salary of less than RM4,000. The provisions for overtime pay are quite structured.

On a regular day, overtime shall be paid at 1.5 times the standard hourly wage. However, on rest days or public holidays, the calculations may vary, ranging from half the standard rate to even three times the hourly wage.

Leave Entitlements

Annual leave	The number of annual leave days depends on the employee's length of service. New employees receive 8 days of leave, while those employed for over 5 years receive 16 days.
Sick leave	Employees who have been with the company for less than 2 years are entitled to 14 days of sick leave. For those who have worked for 5 years or more, the entitlement increases to 22 days.

Maternity leave	98 days
Paternity leave	7 days (at least 12 months in employment)

Employees Provident Fund (EPF):

Employers are mandated to register with the EPF within seven days of hiring their initial employee and subsequently enroll each employee as an EPF member. Contributions to the EPF, comprising both employer and employee contributions, are subject to varying rates based on factors such as the employee's salary and residency status.

Monthly salary	RM 5,000 and below		More than RM 5,000	
	Employer's contribution rate	Employee's contribution rate	Employer's contribution rate	Employee's contribution rate
Residents ages below 60	13%	11%	12%	11%
Residents ages 60 and above	4%	0%	4%	0%
Permanent residents ages below 60	13%	11%	12%	11%
Permanent residents ages 60 and above	6.5%	5.5%	6%	5.5%
Non-residents ages below 60	RM 5.00	11%	RM 5.00	11%
Non-residents ages 60 and above	RM 5.00	5.5%	RM 5.00	5.5%

Termination of Employment

The termination of employment is governed by specified notice periods based on the duration of an employee's service, as delineated in the Employment Act 1955.

Employers are authorized to terminate contracts under justifiable circumstances, including:

- Major misconduct, such as theft, sexual harassment and failure to follow safety protocols
- Negligence in performing duties
- Poor performance
- Redundancy and closing the business
- Retirement
- Death of employees
- Breach of the contract
- Termination at the end of the probation period
- Expiration of fixed-term contract
- Mental disorders
- Bankruptcy
- Criminal offence
- Absent from work for more than two days consecutively without leave and/or reasonable excuse

Severance payments are stipulated based on the duration of an employee's service, except in cases involving misconduct, voluntary resignation, or retirement.

Conclusion:

Malaysia's Employment Act 1955 provides a thorough framework that supports a fair and balanced working environment for both employers and employees. Complying with these rules not only meets legal requirements but also promotes an efficient and harmonious workplace. Understanding and adhering to employment law in Malaysia helps create a positive and productive work environment. This knowledge is essential for the sustainable growth and success of local and foreign businesses.