

A lawyer's guide to

Doing Business In Malaysia

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1 Malaysia – In Brief

1.1 General

Malaysia, comprising Peninsular Malaysia, Sabah and Sarawak is strategically located in the heart of South East Asia. Malaysia borders Thailand, Indonesian Kalimantan and Brunei, and has sea boundaries with Indonesian Sumatra (Straits of Malacca), Singapore (Straits of Johor) and, in the South China Sea, the Philippines and the Spratly Islands.

Peninsular Malaysia (area 131,794 sq km), Sabah and Sarawak (198 000 sq km) consist of rugged forested mountainous interiors descending to coastal plains. The country's highest peak, the highest in South East Asia, is Mount Kinabalu at 4100 metres in Sabah.

Malaysia lies in the equatorial zone where no seasons mark the passing of the months. The days are generally warm and sunny with temperatures averaging 26°C. The wet north-east and south-west monsoons which blow from October until March and from May until September respectively, bring much rain, especially along the coastal areas.

1.2 Government

Malaysia is a federal constitutional monarchy with a bicameral federal legislature and unicameral state legislatures. Nine of her thirteen states have hereditary rulers (eight Sultans and one Rajah) who share the position of King (Yang Di-Pertuan Agong) on a five-year rotation. The King's functions are now purely ceremonial.

The country has a centralised system of government. Parliament consists of the Yang Di-Pertuan Agong, the House of Representatives and the Senate. The House of Representatives comprises 193 Members of Parliament ('MPs') elected by universal adult suffrage, with each member representing a geographical constituency. MPs are elected at general elections every five years or through by-elections. The Yang Di-Pertuan Agong and the State Legislatures appoint the 69 members of the Senate.

1.3 People

In Malaysia, Malays form about 58 per cent, Chinese

about 26 per cent, Indians 7 per cent and others 9 per cent of the population of around 22.8 million.

The national language is Bahasa Malaysia, and English is widely used in commerce and industry. Other major languages spoken include Chinese dialects and Tamil. Though Islam is the official religion, the people are free to practice religions of their own choice.

1.4 Source of Law

Parliament and the State Legislative Assemblies legislate written laws which typically consist of Federal Acts of Parliament, State Enactments and subsidiary legislation made by Ministers or other bodies under powers conferred by Federal Acts or State Enactments. Malaysia's pre-independence colonial link with British India also resulted in the adoption of a number of Indian statutes, for example the Contracts Act, which is modelled on the Indian Contracts Act 1872.

Where there is a lacuna of the law, section 3 of the Civil Law Act 1956 (Revised 1972) enables reference to the rules of English law and the application in Peninsular Malaysia of English common law and the rules of equity as administered in England on 7 April 1956 so far as the circumstances of the States and their inhabitants permit. In Sabah and Sarawak, English statutes of general application are also included; in this case their respective dates of application are 1 December 1951 and 12 December 1949. Where applicable, English cases are binding authority in Malaysia insofar as they are consistent with the local circumstances, and in the absence of any contrary provisions in the local statutes.

Judicial decisions of the Superior Courts of Malaysia (i.e., the Federal Court, the Court of Appeal and the High Court), together with applicable principles of English law and customs and practices of the local inhabitants accepted by the courts as law, make up the unwritten laws of Malaysia.

1.5 Currency

The currency in Malaysia is decimal, with the Ringgit Malaysia (RM) as the basic unit and 100 cents (Sen) to a ringgit.

2 Regulation of business

Malaysian and foreign business entities are subject to control by a number of authorities responsible for the regulation of financial and securities markets, taxation, and incorporation and business operations.

2.1 Bank Negara Malaysia

Bank Negara Malaysia is the Central Bank for Malaysia. It was established on 26 January 1959, under the Central Bank of Malaya Ordinance 1958. The functions of the Bank are carried out within the context of the broader goals of promoting economic growth, a high level of employment, maintaining price stability and a reasonable balance in the country's international payments position, eradicating poverty and restructuring society. In particular, the Bank ensures that the availability and cost of money and credit in the economy are consonant with national macroeconomic objectives. In this respect, the Bank acts as the banker for currency issue, keeper of international reserves and safeguarding the value of the ringgit, banker and financial adviser to the Government, and is the agency responsible for monetary policy and management of the financial system and banker to the banks.

2.2 Securities Commission

As at 1 March 1993, with the coming into force of the Securities Commission Act 1993, the functions of the Capital Issues Committee and panel of Takeovers and Mergers had been integrated under the Securities Commission. The Securities Commission Act has since been superseded by the Capital Market and Services Act 2007.

The Securities Commission (SC) was established to oversee the securities and futures industries. Its functions include regulating, monitoring and developing the securities industry, as well as advising the Government and Bank Negara Malaysia (BNM) on policy matters. As far as submission of proposals for issues of securities to the public are concerned, the SC also acts as the liaison agency for Foreign Investment Committee, Ministry of International Trade and Industry and BNM, where the approval of these bodies are required.

2.3 Companies Commission of Malaysia

The Companies Commission of Malaysia (CCM) serves to ensure that the provisions of this Act and laws specified below are administered, enforced, carried out and complied with:

1. Companies Act 1965
2. Trust Companies Act 1949
3. Kootu Funds (Prohibition) Act 1971
4. Registration of Businesses Act 1956
5. Any subsidiary legislation made under the Acts specified above.

The CCM also exists to enhance and promote the supply of business and corporate information, act as agent of the Government and to provide services in collecting and enforcing payment of prescribed fees. The CCM regulates matters relating to corporations, companies and businesses, and encourages and promotes proper conduct amongst directors, secretaries and other officers of a corporation. Additionally, it carries out research and commissions studies on any matter relating to corporate and business activities. The CCM also advises the minister generally on matters relating to corporations, companies and businesses, and carries out all such activities and does all such things as are necessary or advantageous and proper for the administration of the CCM.

2.4 Inland Revenue Board of Malaysia

The Inland Revenue Malaysia is one of the main revenue collecting agencies of the Ministry of Finance. The Department of Inland Revenue Malaysia became a statutory board on 1 March 1996, and is now formally known as The Inland Revenue Board of Malaysia (the "Board").

Functions of the Board:

- (a) To act as agent of the Government and to provide services in administering, assessing, collecting and enforcing payment of income tax, petroleum income tax, real property gains tax, estate duty, stamp duties and such other taxes as may be agreed between the Government and the Board;
- (b) To advise the Government on matters relating to taxation and to liaise with the appropriate Ministries and statutory bodies;

- (c) To participate in or outside Malaysia in respect of matters relating to taxation;
- (d) To perform such other functions as are conferred on the Board by any other written law;
- (e) May act as a collection agent for and or behalf of any body for the recovery of loans due for repayment to that body under any written law.

2.5 Bursa Malaysia Securities Berhad

Bursa Malaysia Securities Berhad (Bursa Malaysia) is a self-regulatory organisation that governs the conduct of its members and member stockbroking companies in securities dealings and enforces the listing requirements that spell out the listing and disclosure standards to be maintained by public listed companies. It is also responsible for the surveillance of the market place.

A sound regulatory framework exists to govern the Bursa Malaysia, and the Malaysian securities industry, to maintain investors' confidence in a market that promotes fair and open price formations, provides for investor protection and ensures prompt and reliable information disclosure and dissemination. The regulatory framework continuously reviewed and enhanced to be reflective of the environment in which the industry operates.

Companies on the Bursa Malaysia are listed either on the Main Market or the ACE Market, and are classified into several sectors reflecting their core businesses. With the increasing emphasis on corporate governance, Bursa Malaysia has implemented a disclosure-based system in order to inculcate higher standards of disclosure and accountability by listed companies and to ensure that small investors are better protected.

2.6 Malaysian Communications and Multimedia Commission

The Malaysian Communications and Multimedia Commission regulates the converging communications and multimedia industry. It regulates the communications and multimedia industry based on powers provided for in the Malaysian Communications and Multimedia Commission Act 1998 and the Communications and Multimedia Act 1998. Pursuant to these Acts, the role of the Malaysian Communications

and Multimedia Commission is to implement and promote the Government's national policy objectives for the communications and multimedia sector. The Malaysian Communications and Multimedia Commission also oversees the new regulatory framework for the converging industries of telecommunications, broadcasting and on-line activities.

On 1 November 2001, the Malaysian Communications and Multimedia Commission took over regulation of the Postal Industry and was appointed the Certifying Agency pursuant to the Digital Signature Act 1997.

3 Business Structures

In Malaysia, any business for commercial purposes may take one of three forms:

1. Sole Proprietorship and Partnership;
2. Locally Incorporated Company; or
3. Branch of Foreign Company.

3.1 Sole Proprietorship and Partnership

(a) Definitions

The sole proprietor, or partner of a business, remains personally liable for the debts incurred in the course of conducting the business.

The Partnership Act 1961 defines a partnership as a relation that subsists between persons carrying on a business in common with a view of profit. Where the partnership is a professional partnership, the partners of the business may constitute their venture with a partnership agreement or be governed by the Partnership Act. In the absence of formal agreement, the provisions of the Partnership Act shall apply. Partnerships in Malaysia may be ordinary partnerships with the partners jointly and severally liable for all debts of the firm. Alternatively, there may be limited partnerships with at least one partner responsible for all the debts of the firm. Partnerships must be registered with the Registrar of Businesses.

(b) Registrations

A sole proprietor, or partner of a business, may trade under a name approved by and registered with the Registrar of Businesses.

Non-Malaysians are required to obtain the approval of the Ministry of Domestic Trade and Consumer Affairs.

3.2 Corporations

(a) Definitions

A minimum of two persons is required to incorporate a company locally, which may be of three types:

- (1) Company limited by shares;
- (2) Company limited by guarantee; or
- (3) Company having a share capital.

Incorporation establishes the company as a legal person, a separate entity to its members.

A limited company may be either:

- (1) a private limited company, with the description “Sendirian Berhad” (or “Private Limited”) following its name; or
- (2) a public limited company, with the description “Berhad” (or “Limited”) following its name. A public company applying for permission to have its shares quoted on the Main Market must satisfy the Main Market Listing Requirements and obtain the approval of the Securities Commission. A public company applying for permission to have its shares quoted on the ACE Market must satisfy the ACE Market Listing Requirements and obtain the approval of Bursa Malaysia.

The restrictions imposed on the commencement of business, which require the presentation of certain documents, makes it rare for companies limited by shares to be formed as public companies. Instead, it is more common to convert an existing private company to a public company and to subsequently make a public offering of shares.

(b) Formation and Registration

Promoters who wish to form a company must apply to the Registrar of Companies (ROC) to reserve a name for the company. They must then lodge with the ROC a copy of the Memorandum of Association describing the company’s objects and the Articles of Association describing its regulatory framework, together with a Statutory Declaration of Compliance.

Two natural persons must subscribe their names to the Memorandum and Articles.

(c) Shareholders

A share is a fractional part of the capital of a company, and is movable property transferable in the manner provided for by the articles of association. A company may have different classes of shares and the shares may be issued as preference, ordinary or deferred shares.

(d) Termination and Winding Up

A company may be wound-up on several grounds.

(e) Management

A company incorporated under the Companies Act is an independent legal entity separate and distinct from the members who constitute it. A company may act through the agency of natural persons and will be bound insofar as the act was within the actual or ostensible authority of that person.

The articles of association typically entrusts a body of director to manage the business of the company. The board of directors and the members comprise the two main organs of the company. The directors owe fiduciary duties to the following:

1. The company;
2. Individual shareholders;
3. Creditors; and
4. Employees.

(f) Profit and Loss

The Companies Act requires directors to send to the members audited profit and loss accounts and balance sheets 14 days before the annual general meeting. Unless the company is a private exempt company, a certified copy of the audited profit and loss accounts and balance sheets must be lodged at the Registrar of Companies.

3.3 Branch of Foreign Company

(a) Definitions

A foreign company may choose to operate a branch in Malaysia rather than incorporate a local company.

(b) **Registration**

It must, prior to commencing business in Malaysia:

1. Obtain the approval of the Domestic Trade Division of Ministry of International Trade and Industry (MITI); and
2. Register itself with the Registrar of Companies.

MITI encourages foreign businesses wishing to conduct businesses in Malaysia to incorporate local subsidiaries. MITI does not permit companies to register branches in Malaysia unless these companies have been awarded government or quasi-governmental contracts. 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.

4 Foreign Investment in Malaysia – Regulation

The main sources of rules relating to Foreign Direct Investments (FDI) in Malaysia are:

1. Ministerial and other governmental guidelines and policies, in addition to those proposed by the FIC, on foreign equity ownership of businesses and assets in Malaysia;
2. Exchange control regulations; and
3. Legislative enactments restricting acquisition of land by foreigners.

4.2 Specific Industry Sectors

(a) **Telecommunications**

The government has indicated that it is prepared to consider applications to raise foreign equity holdings in licensed local telecommunications companies up to a maximum of 61%, provided that all funds required for the purchase or acquisition are sourced from outside and are brought into Malaysia.

(b) **Manufacturing**

On 31 July 1998, MITI announced a relaxation of their existing foreign equity policy for the manufacturing industry. With the exception of specifically excluded activities and products, all other new projects in manufacturing, including

for expansion and diversification, may be owned 100% by foreign interests irrespective of their export requirements.

(c) **Wholesale and retail trade**

Generally, foreigners may only hold up to a 30% interest in companies involved in wholesale and retail trade. The government may allow foreign equity holdings above 30% for the first few years of operations, on the condition that the companies concerned must reduce their foreign equity holdings to 30% or below thereafter.

(d) **Multimedia companies**

Companies set up in the Multimedia Super Corridor (MSC) with MSC status can be wholly owned by foreign legal entities. Companies seeking MSC status must meet the following three criteria:

- (1) They must be providers or heavy users of multimedia products and services;
- (2) They must employ a substantial number of knowledge workers; and
- (3) They must be able to transfer technology or knowledge to Malaysia or otherwise contribute to the development of the MSC and the Malaysian economy.

4.3 Exchange Control Regulations

For the purposes of exchange control, FDIs are considered to be an investment made by a non-resident in:

- (a) A company where the non-resident is entitled to exercise or control the exercise of not less than 10% of the votes attached to the voting shares of the company;
- (b) A company where the directors are accustomed, or are under the obligation to act in accordance with the directions, instructions or wishes of the non-resident; or
- (c) A body where the management is accustomed, or is under an obligation to act in accordance with the directions or wishes of the non-resident.

4.4 Restrictions on Foreign Acquisition of Land

The National Land Code 1965 requires a non-citizen or a foreign company to obtain the prior approval of the State Authority before acquiring either land or an interest in land. Such approval is not required

for any acquisition of industrial land or interest in industrial land.

5 Foreign Investment in Malaysia – 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, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972 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.

5.1 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.

The Malaysian Industrial Development Authority (MIDA) is the body appointed to receive applications for Pioneer Status or Investment Tax Allowance.

(a) Pioneer Status

A company granted Pioneer Status enjoys partial exemption from the payment of income tax for 5 years, commencing from the Production Day as determined by MITI.

(b) Investment Tax Allowance (ITA)

As an alternative to Pioneer Status, a company may apply for ITA. A company granted ITA would be given an allowance of 60% in respect of qualifying capital expenditure incurred within 5 years from the date on which the first qualifying capital expenditure is incurred.

(c) Reinvestment Allowance (RA)

Reinvestment Allowance (RA) is granted to manufacturing companies that have been in operation for at least 12 months and incur qualifying capital expenditure for the expansion

of production capacity, modernisation and upgrading of production facilities, and diversification into related products and automation of production facilities.

The RA is in the form of an allowance of 60% of capital expenditure incurred by the companies. RA will be given for a period of five (5) years beginning from the year the first reinvestment is made. The RA can only be claimed on completion of the qualifying project

(d) Incentives for Industrial Adjustment

Companies in operation before 31 December 1990 in the wood-based, textile, machinery and engineering sectors are eligible for certain incentives when undertaking or participating in approved industrial adjustment programmes.

Companies undertaking approved industrial adjustment programmes are eligible for the Industrial Adjustment Allowance (IAA), which provides for an allowance of up to 100% in respect of qualifying capital expenditure incurred by a manufacturing company in its efforts at undertaking industrial adjustment.

(e) Incentives for Small-Scale Companies

Small-scale manufacturing companies incorporated in Malaysia with shareholders' funds not exceeding RM500,000 and having Malaysian equity of at least 70% are eligible for pioneer status incentive under the Promotion of Investments Act 1986, provided they meet specified criteria.

(f) Incentives to Strengthen the Industrial Linkages Scheme

(1) Incentive for Large Companies

Expenditure incurred for the training of employees, product development and testing and factory auditing to ensure the quality of vendors' products will be allowed as a deduction in the computation of income tax.

(2) Incentives for the Vendor

Vendors including SMIs that produce intermediate goods in an approved industrial linkages scheme will be eligible for either Pioneer Status or ITA.

(g) **Incentives for Export**

Manufacturers producing for the export market are eligible to apply for:

- (A) Double Deduction for Promotion of Exports.
- (B) Double Deduction on Freight Charges - for Rattan and Wood-based Products.
- (C) Double Deduction of Export Credit Insurance Premiums.
- (D) Tax Exemption on the Value of Increased Exports.
- (E) Industrial Building Allowance.

(h) **Export Credit Refinancing Scheme**

Malaysian exporters can avail themselves of export credit refinancing (ECR) which provides short-term credit at preferential rates of interest. This facility is operated by the commercial banks, while the Export - Import Bank of Malaysia (EXIM Bank) will refinance those commercial banks which have extended export credit to eligible exporters.

(i) **Incentives for Promoting Malaysian Brand Names**

As a tool to promote the marketing of local branded products, effective from Year of Assessment 1998, expenditure incurred in advertising locally is eligible for double deduction when it satisfies certain criteria.

(j) **Training Incentives**

(1) Pre-employment Training

Training expenses incurred by companies prior to the commencement of business, are eligible for a single deduction.

(2) Double Deduction for Expenses Incurred for Approved Training

Double deduction for expenses incurred on approved training is given to manufacturing and non-manufacturing companies. This incentive is available only to those companies that do not contribute to the Human Resources Development Fund (HRDF).

(3) Human Resource Development Fund (HRDF)

(k) **Special Building Allowance for Accommodation and Child Care Facilities of Employees**

A special industrial building allowance of 10% of the expenditure incurred on the construction/purchase of a building is given if the building

is used for accommodation of employees or is used for providing child care facilities to employees in the manufacturing and hotel or tourism sectors.

(l) **Infrastructure Allowance**

Companies which are engaged in the manufacturing, agricultural, hotel or tourism or other industrial/commercial activities in the States of Sabah and Sarawak and the designated Eastern Corridor of Peninsular Malaysia and which incur qualifying capital expenditure on infrastructure are eligible for an infrastructure allowance of 100%.

5.2 Incentives for High Companies

High technology companies are eligible for Pioneer Status and ITA.

5.3 Incentives for Strategic Projects

Strategic projects are generally defined as projects involving products/activities of national importance. They involve heavy capital investments with long gestation periods; have high levels of technology and are integrated; generate extensive linkages; and generally have significant impact on the economy. Such projects are eligible for Pioneer Status and ITA.

5.4 Incentives for the Agriculture Sector

Companies producing promoted products or engaged in promoted activities are eligible to apply for Pioneer Status, ITA, RA and Agricultural Allowance.

Deduction for Capital Expenditure on Approved Agricultural Projects has been provided for under Schedule 4A of the Income Tax Act 1967.

5.5 Incentives for Research and Development (R & D)

R & D is defined in the Promotion of Investments Act 1986 to mean any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes.

To further strengthen the foundation for a more integrated R&D in the future, companies which carry out designing or prototyping as an independent activity are eligible for incentives.

(a) Contract R & D Companies

A company that provides R & D services in Malaysia only to companies other than its related companies is called a contract R & D company. It is eligible to apply for either Pioneer Status or ITA.

(b) R & D Company

An R & D company is one that provides R & D services in Malaysia to its related companies or to any other companies. It is eligible to apply for an ITA of 100% on qualifying capital expenditure incurred within 10 years.

(c) Eligibility

Contract R & D and R & D companies are eligible to apply for the various incentives provided they certain criteria.

(d) In-house Research

Companies that carry out in-house research in Malaysia (i.e. R & D carried out within a company for the purpose of its own business) are eligible to apply for ITA of 50% on qualifying capital expenditure incurred within 10 years.

(e) Double Deduction for Research & Development

Double deduction is allowed on revenue expenditure incurred by a person on research directly undertaken by him or on his behalf, which is approved by the Minister of Finance, as well as on payment for the use of services of approved research institutes, R & D companies or contract R & D companies, and on cash contributions made to approved research institutes.

5.6 Incentives for Software Development

In line with the Government's objective to encourage the development of computer software, companies which develop both original software and/or undertake major modifications of existing software other than those deemed established, are eligible to apply for Pioneer Status incentive for a period of 5 years under the Promotion of Investments Act.

5.7 Incentives for Computers and Information Technology Assets

Computers and information technology assets are given an initial allowance of 20% and an annual allowance of 40%.

5.8 Incentives for the Multimedia Super Corridor

The Multimedia Super Corridor (MSC) is a 15-by-50 kilometre zone extending south from Malaysia's present national capital and business hub, Kuala Lumpur. The MSC aims to provide an environment for companies wanting to create, distribute, and employ multimedia products and services.

Companies with MSC Status are entitled to operate tax free for up to 10 years or receive a 100 percent investment tax allowance, and enjoy other incentives and benefits backed by the Malaysian Government's Bill of Guarantees.

5.9 Incentives for Acquiring Property Rights

Expenditure incurred on acquiring patents, designs, models, plans, trade marks or brands and other similar rights from foreigners is allowed as deduction in the computation of income tax if the right is used without involving the transfer of ownership and results in payment of royalty.

5.10 Incentives for the Storage, Treatment and Disposal of Toxic and Hazardous Wastes

Incentives are granted to encourage the setting up of proper facilities for the storage, treatment and disposal of toxic and hazardous wastes. Companies directly involved in the storage, treatment and disposal of toxic and hazardous wastes in an integrated manner are eligible for the Pioneer Status incentive for five years.

Those companies which are themselves waste generators and wish to establish facilities to store, treat and dispose of their wastes, either on-site or off-site, would be eligible for a special allowance at an initial rate of 40% and an annual rate of 20% for all capital expenditure.

5.11 Incentives for International Procurement Centres

'International Procurement Centre' (IPC) refers to a locally incorporated company, whether local or foreign-owned, which carries on a business in Malaysia to undertake procurement and sale of raw materials, components and finished products for its group of related and unrelated companies in Malaysia and abroad.

Companies with a network of well established companies outside Malaysia which are sizeable in terms of assets and employees and which have a substantial number of qualified professionals, technical and other supporting personnel, can apply for an IPC status.

5.12 Incentives for Approved Service Projects (ASP)

Projects in the transportation, communications and utilities sub-sectors of the service sector, approved by the Minister of Finance are eligible for tax incentives.

5.13 Tariff Related Incentives

(a) Tariff Protection

The Malaysian Government aims to adopt a trade liberalisation approach to reflect its policy of an open economy. Malaysia continuously reviews downwards the country's tariff structure except in certain cases where tariff protection is considered for deserving infant industries.

Tariff protection granted will be reviewed from time to time, consistent with the needs of the industry and the welfare of consumers.

(b) Exemption from Import Duty on Direct Raw Materials/Components

Effective from 1 January 1999, full exemption from import duty can be considered on raw materials/components.

(c) Exemption of Import Duty and Sales Tax on Machinery and Equipment

Most machinery and equipment not produced locally are not subject to import duty and sales tax. However, machinery and equipment with

import duty and sales tax may be considered for exemption.

(d) Drawback of Excise Duty on Parts, Ingredients or Packaging Materials

Under section 19(1) of the Excise Act, a drawback of excise duty in respect of parts, ingredients or packaging materials of any goods manufactured, may be claimed by the manufacturer if such parts, ingredients or packaging materials on which excise duty has been paid, are used in the manufacture of goods which are exported.

(e) Drawback of Sales Tax on Materials Used in Manufacture

Under section 29 of the Sales Tax Act, all duty-paid goods used as materials for the manufacture of other goods that are subsequently exported, are eligible for drawback of the sales tax in full.

(f) Drawback of Import Duty

All duty-paid goods used as parts or ingredients or as packaging materials in the manufacture of other goods which are subsequently exported, are eligible for drawback of import duty in full.

The conditions for duty drawback are stipulated under section 99 of the Customs Act.

6 Contract Law

Parties may, by agreement, contract out of the provisions of the Contracts Act 1950 of Malaysia, except for those types of agreement voided by the Contracts Act for contravening its specific provisions. Generally, however, the Contracts Act governs contracts. The Contracts Act applies to all the states of Peninsular Malaysia. The common law of England continues to apply by virtue of the Civil Law Ordinance 1938 in Sabah, and the Law of Sarawak Ordinance 1928 in Sarawak.

Where a particular issue is not covered by the Contracts Act or if that issue is not covered exhaustively, section 5 of the Civil Law Act 1956 allows the application of English law as administered in England in like cases as of 7 April 1956.

6.1 Formation of Contract

There 6 essential elements or requirements before which a contract can come into existence under Malaysian law are as follows:-

(a) Offer

An offer is made when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other party to the act of abstinence.

(b) Acceptance

When the person to whom the proposal or offer is made signifies his assent, the proposal is said to have been accepted.

(c) Intention to create legal relations

Although the Contracts Act is silent on intention to create legal relations, cases clearly dictate the necessity of such intent.

(d) Consideration

As a general rule in Malaysia, as in England, an agreement without consideration is void. A contract can exist notwithstanding that the consideration is inadequate.

(e) Certainty

Any term of an agreement which is uncertain, or not capable of being made certain, is void.

(f) Capacity

The parties must have legal capacity to contract.

6.2 Terms of a Contract

The terms of the contract may be expressly stated or included by implication. There are essentially three methods by which terms may be implied into a contract:

1. By specific provisions in the statute - the most relevant being the Sale of Goods Act.
2. By the courts, based on the intention of the parties.
3. By custom or usage in a particular type or trade or transaction.

6.3 Contracts for the Sales of Goods

One of the more common commercial transactions, a contract for the sale of goods is governed by the Sale of Goods Act and the Contracts Act . The Act

applies to all states of Malaysia, except Sabah and Sarawak. Malaysia is not at this time a signatory to the United Nations Convention on Contracts for the International Sale of Goods.

6.4 Exculpatory and Exclusion Clauses

Malaysian courts are likely to follow English common law when considering the validity of exculpatory clauses in contracts by which the party relying on the clause seeks to exclude or limit its liability. The position in common law is to construe the clause strictly against the party seeking to rely on it. Malaysian courts also take into account the nature of the transaction when construing exculpatory clauses.

Courts normally favour the weaker party to the contract and render exculpatory clauses inoperative by holding them not to be part of the contract.

6.5 Free Consent

The Contracts Act clearly provides that all agreements are binding contracts when made with the free consent of the parties. Without free consent, the agreement would either be void or voidable at the option of the innocent party.

6.6 Void Agreements

Generally, an agreement is void under the Contracts Act where:

- (a) The consideration or the object of the agreement is forbidden by a law;
- (b) The contract is of such nature that:
 - (i) It would defeat any law, or
 - (ii) It is fraudulent;
- (c) It involves or implies injury to the person or property of another; or
- (d) The courts regard it as immoral or opposed to public policy.

In addition, provisions in the Act declare void certain specific agreements. The courts will not enforce an illegal contract.

6.7 Frustration and Force Majeure

When it is legally or physically impossible for the contracting parties to carry out the contract because of changes in circumstances, the contract

is frustrated. The contract becomes void at the time its performance becomes impossible or unlawful. However, it does not follow that because only one term of the contract becomes impossible to perform, the whole of the contract becomes void.

6.8 Repudiation of Contract

A breach of contract by the defaulting party may entitle the aggrieved party to repudiate the contract and to sue for damages, specific performance, injunction and so forth.

6.9 Remedies

In general, where there is a breach of contract, and the breach does not entitle the innocent party to terminate the contract, or where the breach gives him the option to terminate but he does not exercise that option, the remedies available for breach of such a contract can be classified as follows:

(a) Damages

The innocent party is awarded damages for breach of contract to fulfill its contractual expectations.

(b) Specific Performance

A court may exercise its discretion to compel a party to specifically perform the contract.

(c) Injunctions

An injunction can be varied or dissolved at the discretion of the court.

6.10 Liquidated Damages and Penalty Clauses

Under the Contracts Act any stipulated sum in a contract that is meant to be liquidated damages in the event of a breach of contract cannot be recovered unless it is a reasonable sum. The English common law distinction between “penalty clauses” (which are void), and liquidated damages (which are valid) is not recognised in Malaysia.

7 Protection of Intellectual Property and Technology

7.1 Copyright

Copyright in Malaysia is governed by the Copyright

Act 1987, which protects original works in their material form. There is no provision for copyright registration or deposit system in Malaysia and as such, copyright accrues once the work is made or published in Malaysia.

For a work to qualify for copyright protection, the author must be a “qualified person” i.e., a citizen or permanent resident of Malaysia or a Berne Convention country or the work was made or first published in such a country (or if first published elsewhere, the work must be brought in and published in Malaysia or any Berne Convention countries within 30 days from its first publication). Malaysia has been a member of the Berne Convention since 1 October 1990.

For literary, musical and artistic work, copyright will subsist in the work during the life of the author plus 50 years after his death. For a photograph, sound recording, film and published edition, copyright will subsist in the work until 50 years from the beginning of the calendar year in which the work was first published. For a broadcast, copyright will subsist until 50 years from the beginning of the calendar year in which the work was first broadcasted.

7.2 Trade Marks

The Malaysian trade mark system, which provides for the registration of trade marks, is governed by the Trade Marks Act 1976. A Central Trade Mark Registry was created in Kuala Lumpur to administer a unified trade mark system for the whole of Malaysia.

Registration of a trade mark is prima facie proof of ownership of the mark that entitles the owner to bring trade mark infringement action.

Common law protects the reputation and goodwill of an unregistered trade mark in the form of a “passing-off” action.

Once a mark is registered, it will be valid initially for 10 years from the date of application and thereafter, renewable for consecutive periods of 10 years.

7.3 Trade Secrets

The law of confidence protects confidential information i.e., information that is not in the

public domain and trade secrets are confidential information of a commercial or industrial nature.

An employer can prevent an employee from disclosing or utilising trade secrets or confidential information during or after the termination of the contract of employment, but the employer cannot prevent an employee from using the general skill and knowledge acquired in the course of his employment.

Anyone who receives information that he knows or ought to have known that the information was obtained through a breach of confidence has a duty not to use or disclose it

7.4 Patents

A patent is a grant issued by the Malaysian Government which gives the owner exclusive rights to exploit the invention in Malaysia for a maximum period of 20 years from the date of the application subject to the payment of annual renewal fees each year.

Malaysia became a member of the Paris Convention on 1 January 1989. An applicant may therefore claim the filing date of the earliest application in another Paris Convention member country made within the previous 12 months. Consent has to be obtained from the Registrar to file a patent overseas unless a period of 2 months has elapsed since filing of the Malaysian application.

The owner of the patent has the right to institute court proceedings against any person intending to infringe (imminent infringement), has infringed or is infringing the patent. The remedies available include interim and permanent injunctions, delivery-up for destruction, damages and/or account of profits.

7.5 Industrial Designs

The Industrial Designs Act 1996, which came into force on 1 September 1999, allows applicants to apply for registration of industrial designs in Malaysia. The Copyright Act was also amended to take into account the coming into force of the Industrial Designs Act to remove any overlap in the protection of designs.

The term of protection conferred by registration

is initially for a period of 5 years from the date of filing date of the application and extendable for two further consecutive terms of five years each giving a maximum term of protection of 15 years.

8 Electronic Commerce

Malaysia has embraced electronic commerce (e-commerce), and has formulated both a masterplan and the National E-Commerce Framework to encourage more business transactions to be conducted over private and public computer networks.

8.1 Multimedia Super Corridor

Malaysia has created the Multimedia Super Corridor (MSC). Physically, the MSC is a length of greenfield "corridor", 15 kilometres wide and 50 kilometres long, that starts from the Kuala Lumpur City Centre and continues south to the Kuala Lumpur International Airport. Part of this development includes Putrajaya, the new seat of government and administrative capital of Malaysia where the concept of electronic government will be introduced and Cyberjaya, an intelligent city with multimedia industries, R & D centres, a Multimedia University and operational headquarters for multinationals wishing to direct their worldwide manufacturing and trading activities using multimedia technology. The Government expects the MSC will attract leading edge Information Technology and multimedia industry participants who will use the MSC as the test-bed for experiment and innovation of new products and services.

8.2 Multimedia Development Corporation

The Multimedia Development Corporation (MDC) is a unique, performance-oriented, client-focused corporation charged with the responsibility of making the MSC a success. It is expected to cut through red tape to expedite permit and licence approvals, provide information and advice on the MSC, and introduce companies to potential local partners and financiers. The MDC will also market the MSC globally, shape MSC-specific laws and policies by advising the Malaysian Government, and set standards for the MSC's information infrastructure and urban developments.

8.3 MSC Flagship Applications

Through the Flagship Applications, the Government of Malaysia extends an open invitation to the multimedia community in Malaysia and throughout the world to participate in the MSC. Flagship Applications aim to attract the global community by offering unprecedented and attractive opportunities to local and international business to create value for themselves and their shareholders in an environment uniquely suited to their needs, and at the same time have the opportunity to help transform Malaysia and the region.

Driving the development of the Flagship Applications are government ministries and agencies that report directly to the MSC Implementation Council, chaired by the Prime Minister of Malaysia and his Deputy. These agencies work in close partnership with leading international and Malaysian multimedia companies to clarify the concepts and create detailed implementation plans.

Joint government-private sector teams have developed concrete proposals for each Flagship Application between December 1996 and June 1997 and these have now entered the implementation phase since July 1997.

The MSC Flagship Applications are divided into two distinct categories, Multimedia Development and Multimedia Environment.

8.4 Cyberlaws

Malaysia has drafted and is in the process of implementing a set of 'Cyberlaws'. The Cyberlaws comprise:

1. Computer Crimes Act 1997

The Act aims to provide for offences relating to the misuse of computers.

The Act has a wide territorial scope for it covers offences committed, by anyone regardless of his or her nationality, within or outside Malaysia, if the computer, program or data which is being accessed is in Malaysia or if the computer, program or data which is being accessed is capable of being connected to or sent to or used by or with a computer in Malaysia at the material time.

2. Digital Signature Act 1997

Enforced on the 1 October 1998, this Act is an enabling law that allows for the development of, amongst others, e-commerce by providing an avenue for secure on-line transactions through the use of digital signatures.

The Act provides a framework for the licensing and regulation of Certification Authorities, and the recognition of digital signatures. The Controller of Certification Authority who has authority to monitor and license recognised Certification Authorities was appointed on 1 October 1998.

3. Telemedicine Act 1997

When enforced, this Act enables fully registered medical practitioner holding a valid practising certificate to practice telemedicine on patients who have given written informed consent.

4. Copyright (Amendment) Act 1997

The Amendment Act, which amended the Copyright Act, came into force on the 1 April 1999. It reinforces the point that multimedia works are protected works under the Copyright Act regime in Malaysia. These provisions are aimed at ensuring adequate protection of intellectual property rights for companies investing in the IT and multimedia environment.

5. Communications and Multimedia Act 1998

From 1 April 1999, the Communications and Multimedia Act replaces both the Telecommunications Act and the Broadcasting Act. It provides a regulatory framework to cater for the convergence of the telecommunications, broadcasting and computing industries, with the objective of, amongst other things, making Malaysia a major global hub for communications and multimedia information and content services.

8.5 Privacy

Currently, there is no legislation to protect the privacy of individuals in Malaysia but the Malaysian Parliament is debating the Data Protection Bill, which aims to deal with this issue. Until the passing of this Bill, the privacy of individuals would only be protected by the common law.

8.6 Consumer Protection

The Communications and Multimedia Act introduces an element of economic and consumer protection in Malaysia. It prohibits anti-competitive conduct that has the purpose of substantially lessening competition in the communications market like collusive agreements and tying or linking arrangements.

9 Employment and Industrial Relations

The Malaysian Government's objective is to promote cordial employer-employee relations, and industrial peace based on social justice, equity and good conscience to bring about a productive, contented labour force and to ensure a favourable climate for investment and sustained economic growth.

As of 1997, the Employment Act regulates the minimum terms and conditions of service of an employee earning RM1,500 per month and below. The Act also provides for payment of compensation to workmen not covered by the Employees' Social Security Act for injuries caused by accidents arising in the course of employment.

All companies, with one or more employees whose wages do not exceed RM2,000 a month, are required to insure their employees under the two schemes administered by the Social Security Organisation (SOCSO) namely, the Employment Injury Insurance Scheme and the Invalidity Pension Scheme. Under these schemes, employers and employees are required to contribute based on the employees' gross salary.

Companies employing manual foreign workers must insure their workers with a local insurance company as required by the Workmen Compensation Act.

The Trade Unions Act provides for the registration and administration of trade unions in line with the policy of the Government to encourage the growth of democratic, healthy and responsible trade unionism, within the context of public and national interests. The Industrial Relations Act provides for the regulation of relations between employers and workmen and their trade unions, and the prevention and settlement of labour disputes.

10 Immigration Laws

10.1 Passport requirements

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry into Malaysia.

Those who are in possession of passports not recognised by Malaysia must apply for a document in lieu of a passport and visa which is issued by Malaysian missions abroad.

10.2 Visa Requirements

Commonwealth citizens (except India, Bangladesh, Pakistan and Sri Lanka), British protected persons or citizens of the Republic of Ireland and citizens of Switzerland, Netherlands, San Marino and Liechtenstein do not need a visa to enter Malaysia.

Citizens of Austria, Belgium, Denmark, Finland, Germany, Iceland, Japan, Republic of Korea, Luxembourg, Norway, Sweden, Tunisia, Italy, France and U.S.A. do not require a visa for a visit not exceeding three months.

Citizens of ASEAN countries, Argentina, Czechoslovakia, Hungary, Poland and South Africa do not need a visa for a visit not exceeding one month.

Citizens of Afghanistan, Albania, Bulgaria, Commonwealth of Independent States, Iran, Iraq, Libya, Romania, Syria and South Yemen do not need a visa for a visit not exceeding two weeks.

Citizens of North Korea, Cuba, Socialist Republic of Vietnam, the People's Republic of China and holders of Hong Kong Certificate of Identity are allowed to enter Malaysia subject to their application for a visa being approved.

10.3 Application For Visas

Application for visas for the purpose of entry into Malaysia should be made at the nearest Malaysian mission abroad. In countries where Malaysian missions have not been established, applications

should be made to the nearest British High Commission or Embassy.

10.4 Entry into Malaysia

- (a) Passes to be obtained at point of entry
A visit pass for the purpose of a social or tourist visit or business may be issued at the point of entry if the visitor can satisfy the immigration authority at the point of entry that he has a valid passport and visa (wherever applicable).
- (b) Passes to be obtained upon arrival in Malaysia
Other than applications for entry for the purpose of tourist, social or business visits, all applications for passes of the types mentioned below must be made upon arrival in the country.

All such applications must have sponsorship in Malaysia. The sponsors must agree to be responsible for the maintenance and repatriation of the visitors from Malaysia if should become necessary.

The types of passes issued are: (1) Visit pass (temporary employment); (2) Employment pass; (3) Visit pass (professional); (4) Dependant's pass; and (5) Student's pass.

10.5 Employment Of Expatriate Personnel

It is the Government's policy to see that Malaysians are eventually trained and employed at all levels of employment. Notwithstanding this, foreign companies are allowed to bring the required personnel in areas where there is a shortage of trained Malaysians to do the job. In addition to this, foreign companies are also allowed certain 'key posts' to, be permanently filled by foreigners.

Companies should make every effort to train more Malaysians so that the employment pattern at all levels of the organisation will reflect the multi-racial composition of the country.

10.6 Guidelines on employment of expatriate personnel

- (a) Any company with foreign paid-up capital of US\$2 million and above will automatically be

allowed five expatriate posts including key posts. Additional expatriate posts will be given when necessary upon request.

- (b) Any company with foreign paid-up capital of less than US\$2 million will be considered for expatriate posts on the basis of the following:
 1. Key posts can be considered where the foreign paid-up capital is at least RM500,000.
 2. For executive posts that require professional qualifications and practical experience, expatriates may be employed up to a maximum period of 10 years subject to the condition that Malaysians are trained to eventually take over the posts.
 3. For non-executive posts that require technical skills and experience, expatriates may be employed up to a maximum period of five years subject to the condition that Malaysians are trained to eventually take over the posts.

There are several other conditions relating to expatriate employment.

10.7 Applications for expatriate posts

Applications for expatriate posts can be submitted to the Malaysian Industrial Development Authority (MIDA) at the same time as the company's application for approval of its project.

11 Takeover Laws

One of the most important considerations in any merger or acquisition is the rules and regulations to which the transactions are subject. The laws dictate not only whether a deal can take place, but also the structure, the process of implementing the transaction, and the parties entitled to participate in the transaction. The law sets the boundaries of the parties' conduct. To some extent, the laws dictates even the price at which a merger or acquisition takes place.

11.1 The regulators

The relevant regulatory bodies insofar as a merger or acquisition of an insurance company is concerned

are as follows:

- (a) Bank Negara Malaysia/ Ministry of Finance
- (b) Securities Commission
- (c) Bursa Malaysia Securities Berhad

11.2 Laws governing mergers and acquisitions

- (a) Capital Market and Services Act 2007
- (b) Malaysian Code on Takeovers and Mergers 2010

Pursuant to the Malaysian Code on Takeovers and Mergers 2010, a takeover offer whether voluntary or mandatory must be conducted in accordance with the provisions of the Code and any rulings made by the Securities Commission.

11.3 Listing Requirements

The Main Market and ACE Market Listing Requirements apply to companies listed on the Maim Market and ACE Market of Bursa Malaysia. The specific requirements vary based on the size of the transaction.

Generally, requirement is to notify Bursa Malaysia and/ or its shareholders (by way circulars) of the transaction in question and/ or to obtain the approval of the shareholders, depending on the size of the transaction or subject matter.

12 Taxation

12.1 Capital Gains Tax

Unless otherwise subject to the levy imposed under exchange control regulations described above, or real property gains tax, gains on foreign direct investments which are of a capital nature to a foreigner will not normally be subject to tax.

12.2 Real Property Gains Tax

Real property gains tax is imposed on chargeable gains on disposal of real property and on shares in real property companies.

- (a) Where company disposes of real property or shares of a property company or both, the rate of tax is as follows:

Disposal	Rate
Disposal within 2 years after the acquisition of the property	10%
Disposal after 2 years and up to 5 years after the acquisition of the property	5%
Disposal after 5 years after the acquisition of the chargeable property	0%

- (b) Income Tax

Gains from FDI such as dividends and interest which are derived from Malaysia are subject to tax in Malaysia. Where a company that is resident for a basis year pays, credits or distributes a dividend in that basis year, the dividend shall be deemed to be derived from Malaysia.

Where dividend is paid or credited by a company to any of its shareholders, then if the dividend is deemed to be derived from Malaysia, the company shall be entitled to deduct tax therefrom at the rate applicable to the company for the year of assessment in which the dividend is paid or credited, or where there is no chargeable income of the company for that year, at the rate which would be so applicable if there were such chargeable income.

Where any person is liable to pay interest derived in Malaysia to a any other not known to him to be resident in Malaysia, other than interest attributable to a business carried on by such other person in Malaysia, he shall upon paying or crediting the interest deduct therefrom tax at 15%.

12.3 Direct Tax

The primary tax levies on foreign trade are imposed by the Customs department pursuant to the Customs Act), and would include import and export duties as well as surtax.

12.4 Indirect Tax

Certain imported and locally manufactured goods are liable to indirect taxes like sales and service tax which are levied either at the time of importation or at the time the local manufacturers sell the goods.

12.5 Import Duty

There exist certain exemptions from import duty on direct raw materials or components. The level of exemption from import duty granted on raw materials/components depends on whether the finished products are sold in the domestic market or are exported.

12.6 Company Tax

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is not subject to tax, except in the case of banking and insurance business and sea and air transport undertakings.

12.7 Tax Exemptions for an International Trading Company

A company granted "International Trading Company" (ITC) status would be given income tax exemption amounting to 70% of the statutory income arising from its incremental export sales. To qualify as an ITC, a company must satisfy the following criteria:

- (a) It is incorporated in Malaysia;
- (b) It achieves an annual sales turnover of more than RM 25 million;
- (c) Malaysians own at least 70% of its equity;
- (d) It markets manufactured goods, especially those from small and medium scale industry; and
- (e) It is registered with Malaysian External Trade Development Corporation (MATRADE).

13 Anti-Trust and Competition Regulation

The Malaysian Competition Act 2010 comes into force on 1 January 2012. The Act borrows heavily from the European competition law.

The objective of this Act is to promote economic development by promoting and protecting the process of competition and thereby promoting the interests of consumers.

The Malaysian Competition Commission ("MyCC" or "the Commission") is the body tasked with the administration and enforcement of the Act. The Act is under the purview of the Ministry of

Domestic Trade, Cooperatives and Consumerism ("MDTCC").

The role of the MyCC is:

1. To implement and enforce competition law in Malaysia;
2. To advise the government or other public or regulatory authorities on matters concerning competition law;
3. To conduct market review on competition issues in any market and make recommendations to the government;
4. To educate the public on competition law; and
5. To publish guidelines to clarify and supplement the Act.

All business entities in Malaysia which are involved in commercial activity, including government linked businesses (GLC), statutory bodies, government agencies or public authority if they are involved in commercial activity, whether within or outside Malaysia.

Under the Act, commercial activity means any activity of a commercial nature but does not include:-

- any activity, directly or indirectly in the exercise of governmental authority;
- any activity conducted based on the principle of solidarity;
- any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity.

The Act applies to any business activity within and outside of Malaysia which has an effect on competition in any industry in Malaysia. This means that if parties outside Malaysia enter into an agreement which affects the Malaysian market, they will be subject to the Act.

The main prohibitions under the Act are:

- Prohibition 1: Chapter 1 of the Act: Agreements which distort competition.
- Prohibition 2: Chapter 2 of the Act: Abuse of dominant position.

The Act does not expressly regulate mergers and acquisitions.

The Act does not have retrospective application, therefore any anti-competitive activities committed

prior to 1 January 2012 will not be caught unless if such activities continue after the coming into force of the Act on 1 January 2012.

14 Consumer Product Regulation

Two statutes of great significance in consumer purchases are the Contracts Act and the Sale of Goods Act.

Malaysian law does not regulate unfair contracts. Exclusion clauses are a feature of almost all consumer contracts. Statutes have now been introduced to govern the contracts of sale of houses developed by private housing developers, to regulate direct selling and hire-purchase. Each of these, to a different degree, regulates the contract of sale involved and in some instances provides significant protection. This essentially piecemeal approach meant that the protection was not uniform. The Consumer Protection Act has largely cured this. The Consumer Protection Act 1999 has provided a general law on products safety aimed at those areas not already covered by the other statutes. The Act, comprising 14 parts and a total of 150 sections, deals with selected areas of the law not yet provided for in other statutes; it does not seek to repeal or replace existing law

The principal Act governing trade descriptions and advertising is the Trade Descriptions Act. The Act does not apply to immovable property including houses and is limited in its application to statements made in the course of a trade or business and does not include statements made by professionals. It is a penal statute seeking to discourage false and misleading descriptions of goods and services by imposing criminal sanctions. The Moneylenders Act, the Hire Purchase Act, and the Pawnbrokers Act govern consumer credit.

Malaysia has an effective national body, the Standards and Industrial Research Institute of Malaysia (SIRIM), to do product testing and certification and develop product standards.

15 Property Laws

15.1 Forms of Ownership of Land

The Torrens system of land registration adopted by Malaysia (except Sabah), also known as a system of title by registration, resembles the Torrens system practised in the Australian states. The National Land Code, which came into force on 1 January 1966 together with the National Land Code (Penang and Malacca Titles) Act, provides a uniform code of land law for all states of Peninsular Malaysia. The states of Sabah and Sarawak have their own codes, namely the Sarawak Land Code and the Sabah Land Ordinance. The Sabah Land Ordinance uses a non-Torrens system of registration of titles.

The National Land Code covers all the matters dealing with land, uses of the land and land planning save in Peninsular Malaysia, except for expressly excluded matters. Under the provisions of the National Land Code, all land is owned by the individual states. Accordingly, the relevant State Authority is empowered to alienate lands designated as State lands and dispose of the same to permitted parties under the National Land Code. All alienation by way of a disposal by the State Authority shall be either for a term not exceeding 99 years or in perpetuity.

15.2 Legal Registrable Interests

The 3 major characteristics of the Torrens system reflected by the National Land Code are:

- (a) Legal or statutory title, estate or interest vest and divests only on registration of a dealing recognised under the National Land Code. Such registration must be effected by an instrument complying with the requirements set out in the National Land Code.
- (b) On registration the party in whose favour registration was effected obtains an indefeasible title or interest.
- (c) An interest which can be registered can be protected prior to registration by way of a caveat on the title to the land.

15.3 Equitable Interests

It is also possible to take beneficial ownership to land without the legal ownership. As such interest

is not registered, the beneficial owner concerned would not have an indefeasible title to the land. However, it is possible to protect this interest, if such an interest is ultimately registrable, by way of a caveat over the land or where the interest is over a portion of the land, a caveat over the whole of the land but limited to the interest.

15.4 Transfer of land

A transfer of land, as with all other registrable dealings under the National Land Code, must be in the prescribed form. The form may be varied, adapted, altered or added to, so long as these variations are not substantial. Land titles may carry various restrictions in interest.

Where a non-citizen or a foreign company wishes to purchase land, the National Land Code imposes an added requirement. The approval of the State Authority is required before the land can be transferred into the name of the foreigner. Failure to obtain this approval nullifies and voids the transaction.

A transfer of a beneficial owner's rights, title and interest in and to the land can be effected by an absolute assignment in favour of the assignee.

15.5 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.

Once the lease or sub-lease is registered, the interest of any lessee or sub-lessee (which includes the benefit of all registered interests then enjoyed with the land to which it relates) vests in the lease-holder or sub-lease-holder, whether or not the lease-holder or sub-lease-holder takes effect in possession of the lease-hold.

15.6 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.

16 Environmental Laws

Malaysia has had environmentally related legislation since the early 1920s. But the legislation is limited in scope and inadequate for handling complex emerging environmental problems. So through the Environmental Quality Act (EQA), a more comprehensive form of legislation and an agency to control pollution was established.

EQA is an enabling piece of legislation for preventing, abating and controlling pollution, and enhancing the environment, or for other related purposes. Pollution, as declared in EQA, includes the direct or indirect alteration of any quality of the environment or any part of it by means of a positive act or act of omission.

Pollution is 'controlled' through the mechanism of licences issued by the Department of Environment. Currently, 16 sets of regulations and orders are enforced by the Department of Environment under EQA.

One of the three strategies embodied in EQA 1974, is for the regulation of pollution. The other two strategies are for preventing and abating any form of pollution.



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