Country Guide
Malaysia

Prepared by

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SKRINE

Doing Business in Malaysia 2023

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In Malaysia, any business enterprise must take one of the following forms:

(a) a sole proprietorship;

(b) a partnership;

(c) a locally incorporated company; or

(d) a branch of a foreign company.

A) Sole Proprietorship

A sole proprietor is personally liable for all the debts and obligations of the business and the sole proprietorship must be registered with the Companies Commission of Malaysia ("CCM") under the *Registration of Businesses Act 1956*.

B) Partnership

Two types of partnership can be established in Malaysia – (i) a limited liability partnership ("LLP") or (ii) a conventional partnership.

An LLP combines the characteristics of a private company and a conventional partnership and as such, provides the protection of limited liability for its partners and the flexibility of a partnership arrangement for the internal management of its business. An LLP is regulated under the *Limited Liability Partnerships Act 2012*. Although an LLP must be formed by at least two persons, there is no limitation to the maximum number of its partners. An LLP may be registered with CCM.

In the case of a conventional partnership, all partners have unlimited liability, and are therefore jointly and severally liable for all the debts and obligations of the partnership. A conventional partnership may be formed by a party numbering from two to 20 persons. A formal partnership agreement may be drawn up to govern the rights and obligations of each partner, but this is not obligatory. In the absence of a formal partnership agreement, the provisions of the *Partnership Act 1961* shall apply.

C) Locally Incorporated Company

Under the *Companies Act 2016* ("CA2016"), any person may incorporate a company. Although there are three types of companies that may be formed, namely, a company limited by shares, a company limited by guarantee and an unlimited company, the most popular choice is a company limited by shares where the liability of its member(s) is limited to the amount if any, unpaid on their shares. A company limited by shares may be either a private or a public company.

A private company is one which restricts the right of its members to transfer their shares, restricts its membership to no more than 50 members and has share capital. A public company must be formed if the objective is to raise capital from the public. Such companies typically go on to seek listing of their shares on Bursa Malaysia Securities Berhad ("Bursa Malaysia"), the Malaysian stock exchange.

D) Branch of a Foreign Company

A foreign company may operate a branch in Malaysia instead of incorporating a local company.

The branch must register itself with CCM first before commencing business or establishing a place of business within Malaysia in accordance with the CA2016.

A foreign company seeking to establish a branch in Malaysia must appoint an agent in Malaysia who must be a resident in Malaysia. The agent is answerable for acts, matters and things that are required to be done by the foreign company under the CA2016 and is personally liable for all penalties imposed on the foreign company in respect of any contravention of the CA2016 unless the agent satisfies the Malaysian court hearing the matter that the agent should not be held liable.

E) Typical Foreign Business Ventures

In practical terms, a foreign investor seeking to carry on a business in Malaysia has the following options:

(a) register a branch office if the investor is a foreign company;

(b) incorporate a Malaysian company as its subsidiary;

(c) acquire all or a majority of the shares of an existing Malaysian company; or

(d) enter into a joint venture with a Malaysian company or individual typically through holding shares in a newly-incorporated joint venture company.

II. THE INVESTMENT REGULATORY FRAMEWORK

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A) Foreign Direct Investment (FDI) in Malaysia

The Malaysian Government has always encouraged foreign investment in the country, introducing and implementing investor-friendly policies over the years. However, restrictions on foreign investments still remain in certain economic sectors and sub-sectors and these take the form of Bumiputera / local equity requirements and/or foreign equity restrictions. In certain economic sectors and sub-sectors, foreign investment remains prohibited although the Malaysian Government has been taking progressive steps towards liberalisation of these sectors.

Malaysia does not have a single, consolidated legislative framework that specifically regulates foreign investment in the country. Instead, regulations and requirements affecting foreign investors are specific to economic sectors and administered by the relevant government agencies or regulators. For instance, equity conditions and thresholds are typically imposed as conditions for approvals, licenses or registrations.

Further, whilst there is no centralised FDI license or approval in Malaysia, sector-specific ministries, government agencies and regulators may require approvals for foreign investments or mergers and acquisitions. Typically, these approval requirements are specified as conditions under the approvals, licenses or registrations, or are outlined in sector-specific regulations or policies issued by the relevant ministries or government agencies from time to time.

B) Foreign ownership of real property in Malaysia

Foreign ownership of real property in Malaysia is subject to the requirements under the National Land Code (Revised 2020) ("NLC"), the Economic Planning Unit ("EPU")'s *Guideline on the Acquisition of Properties* and the relevant rules and regulations that may be imposed by the relevant state authority.

Under section 433B of the NLC, any acquisition of property (including industrial lands) by a non-citizen or a foreign company requires the prior approval of the relevant state authority. The application process and fees involved would differ from state to state. Further, each state imposes its own minimum purchase price for different types of property which may be acquired by a non-citizen or a foreign company.

The EPU, which was established in 1961, was the principal government agency responsible for the preparation of development plans for Malaysia and its main mission was to manage the country's socio-economic development in a strategic and sustainable manner. However, following the change of government after the 15th general election in November 2022, the EPU was dissolved, and its roles and responsibilities have been taken over by the Ministry of Economy.

Under the *Guideline on the Acquisition of Properties* issued by the EPU, approvals for property transactions (except for residential properties) are required to be obtained from the EPU where it involves:

(a) a direct acquisition of property valued at RM20 million and above, resulting in a dilution in the ownership of property held by Bumiputera interest and/or government agency; and

(b) 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 constituting more than 50% of its total assets, and where such property is valued at more than RM20 million.

The conditions for the acquisition of property as described in the preceding paragraph are subject to certain equity and paid-up capital conditions. In terms of equity, companies making the acquisition must have at least 30% Bumiputera shareholding. In terms of paid-up capital, local companies owned by local shareholders are to have at least RM100,000 in paid-up capital while local companies owned by foreign shareholders are to have at least RM250,000 in paid-up capital.

Notwithstanding the above, foreign interest is not allowed to acquire the following:

(a) properties valued less than RM1 million per unit;

(b) residential units under the category of low and low-medium cost as determined by the relevant state authority;

(c) properties built on Malay reserved land; and

(d) properties allocated to Bumiputera interest in any property development project as determined by the state authority.

C) Regulatory Bodies

(i) MIDA

With the aim of reducing red tape, the Malaysian Government has set up the Malaysian Investment Development Authority ("MIDA") which is an agency for the promotion of cross-border investments in the manufacturing and services sector in Malaysia. Its role as a one stop centre is to receive, process and convey decisions on projects, including tax and investment incentives, exemptions from import and customs duty, expatriate posts and other matters affecting investors.

Senior officers from certain Ministries, the Royal Malaysian Customs Department, the Department of Environment, the Department of Occupational Safety and Health, Tenaga Nasional Berhad (the main provider of electricity in Malaysia) and Telekom Malaysia Berhad (a provider of information communication technologies in Malaysia) are stationed at MIDA to help answer queries from investors.

(ii) MITI

The Ministry of International Trade and Industry ("MITI") spearheads the development of industrial activities to further enhance Malaysia's economic growth.

D) Manufacturing

(i) The Industrial Co-ordination Act 1975

The *Industrial Co-ordination Act 1975* ("ICA") requires persons involved in any manufacturing activity to obtain a manufacturing license from MITI.

A manufacturing license is required if the manufacturing company:

(a) has shareholders' funds of RM2.5 million and above; or

(b) employs 75 or more full time employees.

If the manufacturing company does not come within the requirements of the *ICA*, it is required to submit an application to MIDA to be exempted from the requirement of applying for a manufacturing license. However, if the manufacturing company does exceed RM2.5 million in shareholders' funds or employs 75 or more full time employees at any time in the future, it would then be required to apply for a manufacturing license.

(ii) Equity Policy for New, Expansion or Diversification Projects

To enhance Malaysia's investment climate, equity holdings in all manufacturing projects were fully liberalised effective from 17 June 2003. Foreign investors can now hold 100% of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, irrespective of the level of exports and without any product/activity being excluded.

The new equity policy also applies to:

(a) Companies previously exempted from obtaining a manufacturing license but whose shareholders' funds have now reached RM2.5 million or have now employed 75 or more full-time employees and are thus required to be licensed under the ICA; and

(b) Existing licensed companies previously exempted from complying with equity conditions but are now required to comply due to their shareholders' funds having reached RM2.5 million.

(iii) Equity Policy Applicable to Existing Companies

Equity and export conditions imposed on companies prior to 17 June 2003 were maintained. However, companies can request for these conditions to be removed. The Malaysian Government will be flexible in considering such requests and approval will be given based on the merits of each case.

H) Petroleum Industry

The primary legislation which shapes the foundation of the oil and gas industry in Malaysia is the *Petroleum Development Act 1974* ("PDA"). The PDA governs all activities in the value chain of the oil and gas industry save for the supply of gas through pipelines to consumers. Petroliam Nasional Berhad ("PETRONAS") was formed under the PDA with exclusive rights, powers, liberties and privileges of exploring and exploiting petroleum resources in Malaysia. PETRONAS is also the authority responsible for licensing goods and service providers operating in the upstream sector as well as licensing any third party contractors participating in upstream petroleum activities. Petronas Carigali Sdn. Bhd., PETRONAS' wholly-owned subsidiary, functions as its exploration and production arm.

Aside from PETRONAS, MITI has the authority under the PDA to issue permits for the processing of natural gas, manufacture of petroleum and petrochemical products and refining of crude oil.

Further, the Ministry of Domestic Trade and Costs of Living ("MDTCL") is vested with the power to issue licenses for the marketing and distribution of petroleum and petrochemical products under the PDA.

Besides the PDA, the following legislation (which are by no means exhaustive) are applicable to the oil and gas industry:

- Atomic Energy Licensing Act, 1984;
- Communications and Multimedia Act, 1998;

- Continental Shelf Act, 1966;
- Customs Act, 1967;
- Environmental Quality Act, 1974;
- Excise Act, 1976;
- Exclusive Economic Zone Act 1984;
- Factories and Machinery Act, 1967;
- Gas Supply Act, 1993;
- Merchant Shipping Ordinance, 1952;
- Occupational Safety and Health Act, 1994;
- Petroleum (Income Tax) Act, 1967;
- Petroleum (Safety Measures) Act, 1984;
- Petroleum and Electricity Control of Supplies Act 1974.

The legislation abovementioned also require compliance with the subsidiary legislation made thereunder each of the primary legislation. The subsidiary legislation details the practicalities of complying with the laws, and include regulations on, *inter alia*, licensing, safety, management of supply, transport, technical and operational requirements and exemptions. The laws typically also empower the relevant ministers or regulatory authorities to produce further guidelines, rules or directives in respect of their regulatory realm.

The commercial settlement agreement between PETRONAS and Sarawak on 7 December 2020 imparted more active involvement to Sarawak whereby Sarawak maintains regulatory oversight through Petroleum Sarawak Berhad (“PETROS”) over onshore oil and gas exploration and production as well as the importation, distribution, and retail of gas.

To this end, licensing of contractors remains within the purview of PETRONAS however any company wanting to provide services to PETROS will require an additional license granted by PETROS.

Familiarity with the oil and gas regulatory landscape is essential to any party interested in entering the Malaysian oil and gas market.

F) <u>Malaysia Digital status</u>

For investors keen on developing or using multimedia technologies to provide value, the Malaysian Government offers several incentives to those who intend to set up companies that qualify for Malaysia Digital ("MD") status. MD status, which was launched in July 2022, replaces the 26-year-old Multimedia Super Corridor (MSC) and seeks to enhance Malaysia's digital capabilities and boost the national digital economy.

The Malaysian Government has issued the Malaysia Digital Bill of Guarantees ("MD-BoGs") setting out the incentives, rights and privileges that are available to an MD status company. The incentives, rights and privileges under the MD-BoGs are as follows:

(a) BoG1: To provide a world-class physical and information infrastructure;

(b) BoG2: To allow employment of local and foreign knowledge workers;

(c) BoG3: To ensure freedom of ownership by exempting MD status companies from local ownership requirements;

(d) BoG4: To give the freedom to source capital globally for MD infrastructure, and the right to borrow funds globally;

(e) BoG5: To provide competitive financial incentives, namely income tax exemption or investment tax allowance and exempt imported multimedia equipment from duties;

(f) BoG6: To become a regional leader in Intellectual Property Protection and Cyber laws;

(g) BoG7: To ensure no censorship of the Internet;

(h) BoG8: To provide globally competitive telecommunications tariffs;

(i) BoG9: To tender key MD infrastructure contracts to leading companies willing to use Malaysia as their regional hub; and

(j) BoG10: To appoint the Malaysia Digital Economy Corporation (which is a governmental agency under the purview of the Ministry of Communications and Digital) ("MDEC") as a high-powered implementation agency to act as an effective one-stop super shop.

An MD status company is eligible to access, or where applicable, apply for, the incentives, rights and privileges under the MD-BoGs.

Subject to fulfilling the applicable eligibility criteria, an MD status company is also eligible to access facilitation of other benefits such as access to local and international market and ecosystem, business matching and partnership, grant and funding facilitation and participation in MD catalytic programmes.

To be eligible to apply for MD status, a company must:

(i) be incorporated under the CA2016 and resident in Malaysia; and

(ii) propose to carry on, or is presently carrying out one or more activities set out in Appendix 1 of the *Guidelines on Malaysia Digital Status* issued by MDEC ("MD Approved Activities").

The MD Approved Activities are research, development and commercialisation of solution and/or provision of services in relation to any of the following technologies or areas:

- big data analytics (BDA);

- artificial intelligence (AI);

- financial technology (Fintech);
- internet of things (IoT);
- cybersecurity (technology/software/design and support);
- data centre and cloud;
- blockchain;
- creative media technology;
- sharing economy platform;
- user interface and user experience (UI/UX);
- integrated circuit (IC) design and embedded software;
- 3D printing (technology/software/design and support);
- robotics (technology/software/design);
- autonomous technologies;
- systems/network architecture design and support;
- global business services or knowledge process outsourcing;
- virtual, augmented and/or extended reality;
- drone technology;
- advance telecommunication technology; and
- other emerging technologies deemed significant for the digital ecosystem subject to approval by an approval committee comprising representatives from the Malaysian Government.

An MD status company is required to comply with the following main conditions within 12 months from the date of award of its MD status:

a. commence the operation or undertaking of its MD Approved Activities in Malaysia;

b. employ a minimum of two full-time knowledge workers, with a minimum average monthly base salary of RM5,000 per month for the MD Approved Activities;

c. incur a minimum annual operating expenditure of RM50,000 for the MD Approved Activities; and

d. have a minimum paid-up capital of RM1,000.

The MD status company must also ensure that it complies with all other laws and regulations of Malaysia, including all applicable permits and licensing requirements.

G) Securities Commission Malaysia

The Securities Commission Malaysia is a statutory body established pursuant to the *Securities Commission Malaysia Act 1993*. In exercise of the powers conferred by section 217 of the *Capital Markets and Services Act 2007*, the Minister of Finance, on the recommendation of the Securities Commission Malaysia, has prescribed a code on take-overs and mergers known as the *Malaysian Code on Take-Overs and Mergers 2016* together with the Rules on Take-Overs, Mergers and Compulsory Acquisitions (collectively, "Take-over Code 2016").

The Take-over Code 2016 applies to public companies listed on the stock exchange, unlisted public companies with more than 50 shareholders and net assets of RM15 million or more, real estate investment trusts, and business trusts listed in Malaysia (each, a "Company").

Any person who makes a take-over offer or acquires 33% or more of the voting shares of a Company or obtains control in a Company or triggers the creeping threshold (i.e., where the acquirer holding over 33% but not more than 50% of the voting shares acquires more than 2% of the voting shares of a Company in any six-months period) must comply with the provisions of the Take-over Code 2016. The Take-over Code 2016 provides that this obligation arises irrespective of how the control or acquisition is effected, including by way of a trust scheme, scheme of arrangement, compromise, amalgamation or selective capital reduction and repayment.

H) Guidelines on Foreign Participation in Distributive Trade Services in Malaysia

Under the *Guidelines on Foreign Participation in Distributive Trade Services in Malaysia* ("DTS Guidelines"), all proposals for foreign involvement in distributive trade within the meaning of the *DTS Guidelines* must obtain the prior approval of the MDTCL. These include:

- acquisitions of interest;
- mergers and/or takeovers by foreign participation;
- opening of new branches/ outlets/ chain stores;
- relocation of existing branches/ outlets/ chain stores;
- expansion of existing branches/ outlets/ chain stores;
- buying over/ taking over of outlets of other operators; and
- purchase and sale of properties to operate distributive trade activities prior to obtaining the approval/license from the local authorities and other agencies to operate distributive trade activities.

Distribution of products and services that are specifically governed by other legislation such as petroleum products, pharmaceutical, medicinal and orthopaedic products, toxic substances and explosives, arms, ammunitions, agricultural raw materials and live animals are subject to the requirements provided for in the said legislation.

Distributive trade comprises all linkage activities that channel goods and services from the supply chain to intermediaries for resale or to final buyers. The linkages may be in the following forms:

- direct or indirect between two parties (or levels) or more than two parties (or levels) within the chain;
- real physical processes or electronic transactions as defined under the relevant laws;
- in person or electronic transactions as defined under the relevant laws; or
- transactions that may or may not involve transfer of title of ownership to the goods and services.

Distributive traders under the *DTS Guidelines* include wholesalers, retailers, franchise practitioners, direct sellers, suppliers who channel their goods in the domestic market, online businesses and commission agents or other representatives including those of international trading companies. The *DTS Guidelines* do not apply to:

(a) manufacturing companies which only distribute products under the same production line; and

(b) companies which are granted the status of regional establishments by MIDA.

Under the *DTS Guidelines*, all distributive trade companies with foreign equity are required to adhere to the following recommendations:

(a) appoint Bumiputera or Malay director(s);

(b) hire Malaysian personnel at all levels particularly for the management positions and above;

(c) have only 15% of the total workforce of low skilled foreign workers;

(d) develop and provide transparent standard operating procedures for local suppliers to market their goods;

(e) encourage Bumiputera or Malay participation in the distributive trade sector;

(f) hire at least 1% of the total workforce from persons with disabilities in large formats;

(g) increase the utilisation of local airports and ports in the export and import of goods as well as local professional services;

(h) submit audited annual financial reports to MDTCL;

(i) support the initiatives and the agenda for sustainable development as provided under the Sustainable Development Goals by the Malaysian Government; and

(j) abide with all by-laws and regulations of the local authorities.

Wholesale trade is defined as *"the sale or resale of new and/or used goods and services to distributors* *who purchase such goods and services for the purpose of conducting businesses".*

Retail trade is defined as *"the sale or resale of new and/or used goods and services to the general public for final consumption. This may include sale and resale of fast consumable goods to organisational buyers who make the purchase for the purpose of conducting their organisation's business whereby there is no clear distinction between final and business consumption ".*

Under the *DTS Guidelines*, any foreign involvement in wholesale and retail trade would require the incorporation of a company under the CA2016.

Non-compliance with the *DTS Guidelines* may result in MDTCL rejecting an application to open a new business branch or revoking any existing approval given by MDTCL. In addition, although not expressly stated in the *DTS Guidelines*, non-compliance may also result in administrative sanctions/ consequences such as not being able to apply for an employment visa for foreign employees or a business premises license.

The *DTS Guidelines* further provide that foreign involvement is not allowed in the following sectors:

- supermarkets/mini markets;
- provision shops/general vendors;
- news agents and miscellaneous goods stores;
- medical halls (traditional/alternative medicines plus general dry foodstuff);
- fuel stations;
- permanent wet market stores;
- permanent pavement stores;
- national strategic interest;
- non-exclusive textile, food and beverages, jewellery shops; and
- such other sectors as MDTCL may from time to time prescribe.

Although the *DTS Guidelines* do not apply to certain activities prescribed above, the *DTS Guidelines* apply to companies with foreign participation that are carrying on unregulated services. Such companies are required to obtain MDTCL's approval prior to commencement of any business of providing unregulated services as set out below:

- Market research and public opinion polling services
- Management consulting services
- Repair services incidental to metal products, machinery and equipment
- Repair services of fabricated metal products, except machinery and equipment, on a fee or contract basis

- Other land transport services and transport services via pipeline
- Supporting services for road transport such as parking services
- Project management services other than for construction
- Leasing or rental services concerning machinery and equipment without operator
- Leasing or rental services concerning office machinery and equipment (including computers) without operator
- Leasing or rental services concerning personal and household goods
- Research and experimental development services on social sciences and humanities
- Other business services (collection agency, telephone answering, duplicating, translation and interpretation, and specialty design services)
- Building cleaning services
- Photographic services
- Real estate services involving own or leased property
- Packaging services
- Services incidental to manufacturing except the manufacture of metal products, machinery and equipment
- Services of membership organisations

III. BANKS AND FINANCIAL INSTITUTIONS

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The Central Bank of Malaysia or also known as Bank Negara Malaysia ("BNM") is a statutory body incorporated under the *Central Bank of Malaysia Act 2009*. Its functions and responsibilities include the supervision, control and regulation of the activities of commercial banks, financial institutions and the financial industry.

A) Regulatory Framework

The following are the principal legislation that regulate banks and financial institutions:-

(i) *Financial Services Act 2013* ("FSA") - provides for the regulation and supervision of financial institutions, payment systems and other relevant entities and the oversight of the money market and foreign exchange market to promote financial stability and for related, consequential or incidental matters.

The *FSA* also provides BNM with powers for oversight over financial groups and to respond effectively to new and emerging risks to the financial system with the aim to preserve public confidence in the system and ensure that critical financial intermediation activities which are vital to the economy are not disrupted.

Institutions within the ambit of the *FSA* consist of -

(a) commercial banks, investment banks and insurers (collectively known as 'licensed persons');

(b) operators of designated payment systems;

(c) operators of payment systems, issuers of designated payment instruments, insurance brokers, money-brokers and financial advisors (collectively known as 'approved persons'); and

(d) merchant acquirers and adjusters (collectively known as 'registered persons').

Under the *FSA*, a new concept of financial holding companies is introduced into the Malaysian financial services sector. A company that holds more than 50% shares in a licensed person is required to submit an application to BNM to be approved as a financial holding company.

An approved financial holding company is required to meet the prudential requirements imposed by the *FSA*. This entails having to seek BNM's approval for *inter alia* the declaring or paying of any dividends on its shares, the appointment, election, re-appointment and re-election of the chairman, directors, chief executive officer and auditors, and also the establishing or acquiring of subsidiaries, whether within or outside Malaysia.

Supervisory and enforcement powers of BNM would include the ability to conduct examination and to request information on any group entities and to issue directions to a financial holding company to rectify concerns or issue directions to any of its subsidiaries if there is a threat to the licensed person's safety and soundness.

The *FSA* which came into force on 30 June 2013 consolidates the regulatory and supervisory framework for Malaysia's banking industry, insurance industry, payment systems and foreign exchange administration matters, and supersedes the *Banking and Financial Institutions Act 1989*, *Insurance Act 1996*, *Payment Systems Act 2003* and *Exchange Control Act 1953*.

(ii) *Islamic Financial Services Act 2013* ("IFSA") - provides for the regulation and supervision of Islamic financial institutions, payment systems and other relevant entities and the oversight of the Islamic money market and Islamic foreign exchange market to promote financial stability and compliance with Shariah and for related, consequential or incidental matters.

Similar to the *FSA*, the *IFSA* provides BNM with adequate regulatory and supervisory powers. In promoting compliance with Shariah, the *IFSA* imposes a duty on Islamic financial institutions to ensure compliance with Shariah at all times and also empowers

BNM to issue standards on Shariah requirements to facilitate institutions in complying with Shariah.

Regulated persons under the *IFSA* comprise of –

(a) Islamic banks, international Islamic banks, takaful operators, and international takaful operators (collectively known as 'licensed persons');

(b) operators of payment systems, takaful brokers and Islamic financial advisors (collectively known as 'approved persons');

(c) issuers of designated Islamic payment instruments; and

(d) conventional institutions approved to carry on its operations according to Shariah.

As in the case of the FSA, the IFSA also requires a company that holds more than 50% shares in a licensed person to submit an application to BNM to be approved as a financial holding company and to be subject to regulatory oversight by BNM.

The *IFSA* came into force on 30 June 2013 and repeals the *Islamic Banking Act 1983* and the *Takaful Act 1984*.

(iii) *Labuan Financial Services and Securities Act 2010* ("LFSSA") – provides, amongst others, for the licensing, regulation and supervision of institutions that conduct Labuan banking business, Labuan investment banking business, Labuan insurance-related businesses and Labuan financial and securities business.

(iv) *Labuan Islamic Financial Services and Securities Act 2010* ("LIFSSA") – provides, amongst others, for the licensing and regulation of Islamic financial services, takaful-related businesses, and Islamic securities-related businesses in Labuan and for other matters related thereto.

(v) *Development Financial Institutions Act 2002* ("DFIA") - provides for the designation of certain institutions as 'development financial institutions' ("DFIs") and the regulation and supervision of such institutions. DFIs are institutions established to develop and promote strategic sectors of the economy, such as agriculture, small and medium enterprises, infrastructure and shipping. Institutions which have been prescribed as DFIs include Bank Simpanan Nasional, Malaysian Industrial Development Finance Berhad, Export-Import Bank of Malaysia Berhad, Small Medium Enterprise Development Bank Malaysia Berhad (SME Bank), and Bank Pertanian Malaysia Berhad (Agrobank).

The following are other legislation that affect banks, financial institutions and quasi-financial and quasi-credit institutions:-

(i) *Moneylenders Act 1951* ("MLA") – provides for the regulation and control of the business of moneylending, the protection of borrowers of the monies lent in the course of such business, and matters connected therewith.

(ii) *Hire Purchase Act 1967* ("HPA") - regulates the conduct of hire purchase business in Malaysia as well as the form and contents of hire-purchase agreements and the rights and duties of parties to such agreements.

(iii) *Money Services Business Act 2011* ("MSBA") - provides for the licensing, regulation and supervision of "money services business." "Money services business" means any or all of the following businesses:

- money-changing business;
- remittance business;
- wholesale currency business.

(iv) *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* ("AMLATFPUAA") - provides for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences and provides for the forfeiture of property involved in or derived from money laundering and terrorism financing offences, as well as terrorist property, proceeds of an unlawful activity and instrumentalities of an offence, and for matters incidental thereto and connected therewith. Reporting institutions under the *AMLATFPUAA* include, *inter alia*, licensed and approved persons under the *FSA* and *IFSA*, a licensee under the MSBA, a moneylender under the MLA and Labuan financial institutions under the *Labuan Financial Services Authority Act 1996*, in respect of prescribed activities carried out by it under the *AMLATFPUAA*.

B) Legal Structure

(i) FSA

A person who is to be licensed to carry on banking business, insurance business (other than a professional reinsurer) or investment banking business shall be a public company incorporated in Malaysia. A public company need not be a listed company and may have a single shareholder.

BNM may specify the form of establishment of a person who is to be licensed as a professional reinsurer; or a person who is to be approved to carry on an approved business.

Subject to the prior written approval of BNM, a licensed person is permitted to establish or relocate its office in or outside of Malaysia. On the other hand, an approved person is only required to notify BNM in writing when it establishes or relocates its office in or outside of Malaysia.

(ii) IFSA

A person who is to be licensed to carry on Islamic banking business or takaful business (other than a professional retakaful operator) shall be a public company, incorporated in Malaysia.

BNM may specify the form of establishment of a person who is to be licensed as a professional retakaful operator, or to carry on international Islamic banking business or international takaful business; or a person who is to be approved to carry on an approved business.

Subject to the prior written approval of BNM, a licensed person is permitted to establish or relocate its office in or outside of Malaysia. On the other hand, an approved person is only required to notify BNM in writing when it establishes or relocates its office in or outside of Malaysia.

(iii) LFSSA

To be eligible to hold a license to carry on Labuan banking business, Labuan investment banking business or Labuan financial business, an entity must be:-

(a) a Labuan company or a foreign Labuan company incorporated or registered under the *Labuan Companies Act 1990*; or

(b) a Malaysian bank, namely a licensed bank, as defined in the *FSA* or a licensed Islamic bank, as defined in the *IFSA*.

C) <u>Capital Requirements and Own Fund Rules</u>

(i) <u>FSA</u>

(a) *Maintenance of Capital Funds*

A banking institution (i.e., licensed bank and licensed investment bank) is required to maintain at all times a minimum amount of capital funds.

Presently the minimum capital funds prescribed under the *Financial Services (Minimum Amount of Capital Funds or Surplus of Assets over Liabilities) (Licensed Person) Order 2013* is:-

- RM300 million in respect of a licensed bank which is a locally incorporated foreign bank; and
- RM2 billion in respect of a licensed bank, which is not a locally incorporated foreign bank; by itself, or in aggregation with the capital funds of its related corporation that is a licensed investment bank.

In addition to the minimum capital funds requirement, a banking institution must also comply with the minimum regulatory capital requirement as set out in the *Capital Adequacy Framework (Capital Components)* and *Capital Adequacy Framework (Basel II – Risk-Weighted Assets)*.

(b) *Maintenance of Reserve Funds*

Banking institutions are required to maintain a capital conservation buffer of 2.5% starting from 2019.

(c) *Other Requirements*

Any change in the paid-up ordinary shares or preference shares of a banking institution is subject to prior written approval of BNM. Further, irredeemable convertible unsecured loan stock ("ICULS") issued by a banking institution to its shareholders can be calculated as part of the capital funds as long as the total value of the ICULS to be included does not exceed 25% of the total capital funds (excluding the ICULS).

(ii) <u>IFSA</u>

(a) *Maintenance of Capital Funds*

An Islamic bank is required to maintain at all times, a minimum capital funds of RM300 million as prescribed in the *Islamic Financial Services (Minimum Amount of Capital Funds or*

Surplus of Assets over Liabilities) (Licensed Person) Order 2013.

In addition to this minimum capital funds requirement, an Islamic bank must also comply with the minimum regulatory capital requirement as set out in the *Capital Adequacy Framework for Islamic Banks (Capital Components)* and *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets).*

According to the *Guidelines on International Islamic Bank*, the minimum paid-up capital for an international Islamic bank set-up as a subsidiary or a branch shall be RM10 million or its equivalent in other currencies.

(b) *Maintenance of Reserve Funds*

Islamic banking institutions are required to maintain a capital conservation buffer of 2.5% starting from 2019.

(c) *Maintenance of Net Working Funds*

According to the *Guidelines on International Islamic Bank*, the minimum net working funds for an international Islamic bank set-up as a subsidiary or a branch shall be RM10 million or its equivalent in other currencies.

(d) *Other Requirements*

Any change in the paid-up ordinary share or preference shares of an Islamic bank is subject to prior written approval of BNM.

(iii) <u>LFSSA</u>

(a) *Maintenance of Capital Funds*

Under the *LFSSA* and *LIFSSA*, a licensed Labuan bank and Islamic bank must maintain at all times a capital fund, unimpaired by losses, of not less than RM10 million or its equivalent in any foreign currency in cash or such amount as may be specified in writing by the Labuan Financial Services Authority.

D) <u>Equity Holdings</u>

For investment banks and domestic Islamic banks, the foreign equity limit is 70%. This is to promote foreign participation and the forging of strategic partnerships between foreign and local players. Such alliances will strengthen business potential and enhance growth prospects of financial institutions through international expertise and global networks of foreign shareholders. The foreign equity limit for domestic commercial banks remains at 30%.

Enhanced operational flexibilities have also been introduced to foreign institutions that operate in Malaysia to improve outreach of financial products and services, with greater flexibility to increase branches so as to achieve greater financial inclusion and insurance penetration in the country;

To provide a more flexible operating business environment, Labuan banking institutions licensed by the Labuan Financial Services Authority that meet the predetermined criteria will be accorded flexibility to have a physical presence onshore from 2010 onwards. This flexibility will be complemented by a strengthened regulatory and supervisory framework that govern these players.

Furthermore, greater flexibility is afforded for employment of expatriates in specialist areas that can contribute to the development of the financial sector.

Under the Financial Sector Blueprint 2011-2020 that was launched on 21 December 2011 ("Blueprint 2011"), a more flexible foreign equity participation in financial institutions was proposed to be accorded under the Blueprint 2011 to boost the level of productive innovation, quality of financial services and risk management practices (Recommendation 3.1.1 of the Blueprint 2011). Speaking after the launch of the Blueprint 2011, the then Prime Minister indicated that the Malaysian Government may allow the foreign ownership of banks to be increased beyond the previously stipulated 30%. The increase in foreign shareholding will be assessed based on the merits of each case.

BNM has on 24 January 2022 launched the Financial Sector Blueprint 2022-2026 ("Blueprint 2022"). Under the Blueprint 2022, BNM will enhance the regulatory framework that governs the disposal and purchase of impaired financing. BNM will seek to remove the existing foreign equity limit requirement for buyers to attract greater participation, particularly from established international players, into the market. With a more diverse buyer market, banks will be able to manage impaired financing in a more efficient manner. This will continue to be subject to safeguards that reasonably protect the rights of impaired borrowers and preserve fair opportunities for them to resolve their debt. Non-bank buyers of impaired financing will be required to meet certain eligibility criteria, for example, a proven track record of fair debt recovery practices. All buyers must also observe strict conduct requirements upon purchase of the impaired financing (Strategy 1A (iii) of the Blueprint 2022).

Under the financial sector's gradual liberalisation, the Prime Minister said the Government would look into the prudential aspects of the exercise and evaluate how foreign shareholders would be able to contribute to the local economy when they secure a larger equity interest in local banks. Amongst other considerations, the Government will evaluate these foreign shareholders' ability to contribute towards enhancing international trade and investment linkages.

E) Financial Sector Blueprint 2022-2026

The Blueprint 2022 sets out BNM's development priorities for the financial sector over the next five years, anchored on efforts to foster market dynamism and support sustainable development objectives, with a continued focus on its monetary and financial stability mandates.

The 5-year Blueprint 2022 outlines the vision and strategies for the development of the nation's financial sector. Underpinned by three broad outcomes of finance for all, finance for transformation and finance for sustainability, the Blueprint 2022 identifies five strategic thrusts to achieve these outcomes:

- Fund Malaysia's economic transformation;
- Elevate the financial well-being of households and businesses;
- Advance digitalisation of the financial sector;
- Position the financial system to facilitate an orderly transition to greener economy; and

- Advance value-based finance through Islamic finance leadership.

F) Deposit Insurance

In 2005, the Malaysian Government introduced a mandatory deposit insurance scheme for bank deposits under the *Malaysia Deposit Insurance Corporation Act 2005*. The *Malaysia Deposit Insurance Corporation Act 2005* has since been repealed and replaced with the *Malaysia Deposit Insurance Corporation Act 2011* ("MDICA"). The deposit insurance scheme is administered by the Malaysia Deposit Insurance Corporation ("MDIC").

The scheme protects the following deposits with commercial and Islamic banking institutions up to a maximum sum of RM250,000 per depositor per member bank (i.e., all commercial banks licensed under the *FSA* and all Islamic banks licensed under the *IFSA*):

- Savings accounts;
- Current accounts;
- Fixed deposits;
- Principal-guaranteed conventional structured products;
- Islamic deposit accounts;
- Foreign currency deposits; and
- Bank drafts, cheques, other payment instructions or instruments made against a deposit account.

MDIC may approve any other financial instruments as being eligible for deposit insurance protection from time to time.

The following deposits are not eligible for protection:

- Conventional structured products that are not principal-guaranteed;
- Deposits not payable in Malaysia;
- Interbank money market placements;
- Negotiable instruments of deposit (NIDs) and other bearer deposits;
- Repurchase agreements;
- Unit trusts, stocks and shares; and
- Gold-related investment products or accounts.

G) Interest Rates

BNM announced on 19 March 2014 that effective 2 January 2015, the Base Rate ("BR") will replace the Base Lending Rate ("BLR") as the main reference rate for new retail floating rate loans. The new Reference Rate Framework aimed to provide a more transparent reference rate to assist consumers in making better choices among the many loan products offered by financial institutions.

BNM further announced on 11 August 2021 that effective 1 August 2022, the Standardised Base Rate ("SBR") will replace the BR as the main reference rate for new retail floating rate loans/financing facilities. The revised Reference Rate Framework is an outcome of BNM's periodic review of its policies to ensure that the requirements remain relevant and fit-for-purpose in achieving the intended outcomes of the Reference Rate Framework issued on 18 August 2016.

Under the revised Reference Rate Framework, the SBR is used as the common reference rate for pricing of all new retail floating rate loans/financing facilities, the refinancing of existing loans/financing facilities and the renewal of existing revolving retail loans/financing facilities extended from 1 August 2022 onwards. After the effective date, the existing retails loans/financing facilities which were granted prior to 1 August 2022 will continue to be referenced against the BR and the BLR respectively. However, when a financial institution makes any adjustments to the SBR, a corresponding adjustment to the BR and the BLR will also be made. As such, financial institutions would be required to display both their BR and BLR, in addition to the SBR, at all branches and websites.

According to BNM, the shift to the revised Reference Rate Framework should have no impact on the effective lending rates charged to retail borrowers which are determined by various factors, including a financial institution's assessment of a borrower's credit standing, market funding rates and competitive considerations. It is also important to note that the revisions in the Reference Rate Framework do not represent a change in the Bank's monetary policy stance.

The revised Reference Rate Framework ("Framework") was issued by BNM on 11 August 2021. The Framework stipulates, among others, the following requirements:

(a) Financial service providers[1] ("FSP") shall use the SBR as the reference rate for the pricing of retail loans/financing facilities. This requirement applies to applications received for new retail loans/financing facilities and refinancing of existing retail loans/financing facilities, and the renewal of existing revolving retail loans/financing facilities, on or after 11 August 2021.

(b) The SBR shall be set as the FSP's benchmark rate and the prevailing overnight policy rate ("OPR").

(c) The lending/financing rate charged to the borrowers on a retail loan/financing facility shall be the SBR plus a spread.

(d) FSPs shall reflect all other components of pricing the lending/financing rate in the spread over the SBR. Such components can include credit and liquidity risk premiums, operating costs, profit margins and other costs, including the cost of meeting the Statutory Reserve Requirement.

[1] "Financial Service Provider" of "FSP" means a licensed bank under the FSA, a licensed Islamic bank under the IFSA or a prescribed bank under the Development Financial Institutions Act 2002.

(e) In the event of a change in the benchmark rate, FSPs shall adjust the SBR by the same quantum as the change in the benchmark rate within seven working days from the date of the change in the benchmark rate.

(f) FSPs may determine the rates payable on deposits accepted based on their funding requirements and strategies.

IV. FINANCE AND EXCHANGE CONTROL

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A) Bank Negara Malaysia

BNM is responsible for the foreign exchange administration in Malaysia. The approval of BNM is required for matters falling within the purview of the *FSA* and the *IFSA* and the Foreign Exchange Notices issued by BNM. The Foreign Exchange Notices may be revoked or varied by the issuance of subsequent Foreign Exchange Notices.

B) Foreign Exchange Administration

The foreign exchange administration rules in Malaysia are aimed at providing an appropriate framework that will influence capital flows and facilitate currency risk management to promote financial and economic stability in the country. All rules are applied uniformly to transactions carried out with all countries, except for the State of Israel for which special restrictions apply.

For foreign exchange administration purposes, the definition of residents and non-residents are as follows:

Residents comprise:

- Citizens of Malaysia (excluding citizens who have obtained permanent resident status of a country or a territory outside Malaysia and are residing abroad);
- Non-citizens who have obtained permanent resident status in Malaysia and are ordinarily residing in Malaysia;
- Persons, whether body corporate incorporated or established, or an unincorporated body registered with or approved by any authority, in Malaysia; or
- The Malaysian Government or any State Government in Malaysia.

Non-residents comprise:

- Persons other than residents;

- Overseas branches, subsidiaries, regional offices, sales offices, or representative offices of resident companies;

- Embassies, Consulates, High Commissions, supranational or international organizations; or

- Malaysian citizens who have obtained permanent resident status of a country or a territory outside Malaysia and are residing outside Malaysia.

With the relaxation on the foreign exchange administration rules, the following are highlights of certain rules affecting non-residents in foreign exchange transactions:

(1) Investment in Malaysia by Non-residents

(a) Non-residents are free to invest in any form of ringgit assets either as direct or portfolio investments. They are also free to remit out divestment proceeds, profits, dividends or any income arising from investments in Malaysia. Repatriation, however, must be made in foreign currency.

(b) Ringgit assets purchased by residents from non-residents may be settled in ringgit or foreign currency, other than the Restricted Currency (currency of the State of Israel). However, all remittances abroad must be made in foreign currency other than the Restricted Currency.

(2) Extension of Credit Facilities to Non-residents

(i) Ringgit Credit Facilities

A non-resident is free to obtain ringgit credit facilities:

(a) From licensed onshore banks in Malaysia (excluding licensed international Islamic banks), any amount of ringgit trade financing to finance the settlement of goods and services in ringgit with a resident.

(b) From licensed onshore banks (excluding licensed international Islamic banks), up to the amount of an overdraft facility (not exceeding two (2) business days and with no roll over option) to avoid settlement failure for purchase of shares or ringgit instrument traded on Bursa Malaysia or through the Real Time Electronic Transfer of Funds and Securities System (RENTAS) due to inadvertent delay of payment by the non-resident. Such overdraft facility shall only be eligible to be utilised by:

(aa) a non-resident custodian bank, stockbroking corporation, trust bank or international central securities depository acting on behalf of non-resident investor; or

(bb) a non-resident investor purchasing shares or ringgit instrument mentioned above for its own account.

(c) From resident licensed stockbroking companies provided that the borrowing shall be in the form of margin financing to finance the purchase of securities, Islamic securities, financial instruments or

Islamic financial instruments traded on Bursa Malaysia; this does not apply to a non-resident financial institution.

(d) From licensed insurers or licensed takaful operators up to the attained cash surrender value of any life insurance policy or family takaful certificate purchased by the non-resident.

(e) From residents and licensed onshore banks, any amount in ringgit to finance a 'Real Sector Activity' in Malaysia. 'Real Sector Activity' is defined as an activity relating to (a) construction or purchase of a residential or commercial property, excluding purchase of land which will not be utilised for construction or production of goods or services; or (b) production or consumption of goods or services, excluding (i) activity in financial services sector, whether Islamic or otherwise; (ii) purchase of securities or Islamic securities; or (iii) purchase of Financial Instrument or Islamic Financial Instrument. Sub-paragraph (e) does not apply to non-resident financial institutions.

(ii) <u>Foreign Currency Credit Facilities</u>

A non-resident is allowed to borrow in foreign currency:

(a) in any amount from a licensed onshore bank. Proceeds of the borrowing can be utilised in or outside Malaysia.

(b) up to the limit as set out in Parts A and B of Notice 3 from other residents.

(c) in any amount from another non-resident in Malaysia.

(d) in any amount from any of his immediate resident family members.

V. TAX

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All income of companies and individuals accruing in, derived from, or received in Malaysia from outside Malaysia is liable to income tax. Subject to conditions, the following foreign-source income received in Malaysia from 1 January 2022 to 31 December 2026 will continue to enjoy exemption from income tax:

- dividend income received by resident companies, limited liability partnerships and individuals (for dividend income received through a partnership business in Malaysia); and
- all classes of income received by resident individuals, excluding the income sourced from a partnership business in Malaysia, and received in Malaysia from outside Malaysia.

Resident companies engaged in air/sea transport, banking or insurance will usually be subject to income tax on their worldwide income, wherever accruing or derived (worldwide scope).

The Malaysian taxation system comprises direct and indirect taxes. The forms of direct taxes are income tax, real property gains tax, petroleum income tax and stamp duty. Indirect taxes come in the form of excise duty, customs duties, and sales tax and service tax.

As announced in the Malaysian Budget 2024, the Global Minimum Tax is expected to be implemented in Malaysia starting 2025 on companies with an annual global turnover of at least EUR750 million[2]. In addition to this, e-invoicing will be implemented in phases, commencing with companies with more than RM100 million of revenue from 1 August 2024 to full implementation by 1 July 2025.

Income Tax

(i) Sources of Taxable Income

Under the *Income Tax Act 1967* ("ITA"), the classes of income chargeable to income tax are as follows:

- gains and profits from a business;
- gains or profits from an employment;
- dividends, interests or discounts;
- rents, royalties or premiums;
- pensions, annuities or other periodic payments not falling under any of the foregoing paragraphs; and
- other gains or profits of an income nature not falling under any of the above.

For non-residents, special classes of income are also chargeable to tax, which include amounts derived from Malaysia related to:

- amounts paid for services rendered in connection with the use of property, rights, installation or operation of any plant, machinery, or other apparatus;
- amounts paid for advice, assistance, or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or
- rent or other payments made under an agreement or arrangement for the use of any movable property.

(ii) Basis of Assessment

The basis period for a particular year of assessment for an individual is the calendar year, whilst for a company, it is the close of the accounting year.

[2] The Global Minimum Tax rate of 15% applies to a multinational company that operates in at least two jurisdictions and has an annual consolidated global revenue of at least EUR750 million in at least two out of four preceding financial years.

An individual not carrying on a business is required to file tax return by 30 April of the year following the basis period. For an individual carrying on a business, the tax return filing deadline is 30 June of the year following the basis period.

A company is required to file tax return within seven months from the date of the close of its accounting year.

A) <u>Personal Income Tax</u>

A resident individual in Malaysia is chargeable to income tax on income accruing in or derived from Malaysia. The rate of tax depends on the individual's resident status, which is determined by the duration of his stay in the country as stipulated under section 7 of the *ITA*. Generally, an individual residing in Malaysia for more than 182 days in a year has tax resident status.

Resident individuals are also subject to tax on foreign-sourced income when received in Malaysia. However, foreign-sourced income (other than partnership income) that is received in Malaysia is granted a tax exemption from 1 January 2022 to 31 December 2026 provided that the income has been subjected to tax in the country of origin.

A resident individual is taxed on his chargeable income at a graduated rate from 0% to 30% after deducting tax reliefs. A non-resident individual is not eligible for any personal tax relief and is subject to 30% tax on the chargeable income accruing in or derived from Malaysia unless there are tax reliefs under the double tax treaties. Other sources of income received by a non-resident individual are subject to withholding tax as discussed below. Non-resident public entertainers are taxed at 15% of the gross income.

A preferential income tax rate of 15% on the employment income was introduced in 2012 to encourage skilled Malaysian professionals to return and boost the country's economic growth under the Returning Expert Programme ("REP"). The REP incentive was extended for another four years (from 1 January 2024 until 31 December 2027). The revised REP incentive is, among others, (i) flat rate tax of 15% on employment income for a period of five consecutive years of assessment after returning to Malaysia, and (ii) exemption on excise duty for the purchase of Completely Knocked Down (CKD) vehicles (limited to a duty exemption of up to RM 100,000.00).

As part of the Global Services Hub incentive, a special income tax rate of 15% was introduced for three consecutive years of assessment. The 15% income tax rate is available for up to three non-citizen individuals who occupy key or C-suite positions within the company, subject to certain eligibility conditions.

It was also announced in Budget 2024 that a preferential income tax rate of between 0% to 10% will be introduced on foreign film production companies, actors or movie crews who carry out filming in Malaysia.

An employee on a short-term visit to Malaysia enjoys tax exemption in respect of his income from an employment exercised in Malaysia if his employment does not exceed 60 days in a calendar year, and he is a non-resident. If the short-term visiting employee is a resident in a country that has a double taxation agreement with Malaysia, the eligibility period for tax exemption is generally extended to 183 days, granted that several other requirements are met. The income of a non-resident individual who performs independent services such as consultancy services is not exempted from tax.

(i) Personal Reliefs

The chargeable income of a resident individual is arrived at after deduction of reliefs. These include the personal reliefs for self (a further deduction will be given if the taxpayer is a disabled person), spouse and unmarried children below 18 years of age; parents' medical expenses (including complete medical examinations for parents up to RM1,000 and dental examinations and treatment); medical expenses on serious diseases (including medical and dental examinations up to RM1,000) for individual, spouse or child; expenditure for purchase of basic support equipment for the individual, spouse, child or parent who is disabled; and contributions to the Employees Provident Fund, life insurance premiums, and insurance premiums for education or medical benefits, purchase of computer, books and sports equipment, self-skills enhancement courses, expenses related to the cost of installation, rental, purchase or hire-purchase of equipment and subscription fees for the use of electric vehicle charging facilities for personal use etc.

An amount limited to a maximum of RM7,000 is allowed as a deduction for fees expended by the individual for pursuing studies at the tertiary level (including a degree in masters and doctorate level) undertaken for the purpose of acquiring technical, vocational, industrial, scientific, technological, law, accounting, Islamic financing skills or qualification. This category includes an annual tax relief of up to RM2,000 on fees for attending upskilling or self-enhancement courses in any field recognised by the Director General under the Skills Development Act 2006.

(ii) Tax Rebate

The tax liability of a resident individual is reduced by way of the following rebates:

- An individual with a chargeable income not exceeding RM35,000 enjoys a rebate of RM400. Where an individual's spouse is not working or the spouse's income is jointly assessed, and the combined chargeable income does not exceed RM35,000, the spouse enjoys a further rebate of RM400.

- Any zakat, fitrah or any other Islamic religious dues.

- Any departure levy paid for performing umrah and pilgrimage to holy places (limited to twice in a lifetime).

B) Company Tax

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. For a company that is resident in Malaysia, income tax is also applicable to income derived from outside Malaysia and received in Malaysia. Resident companies carrying on business of air, sea transport, banking or insurance are generally subject to tax on their worldwide income. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia.

Generally, the tax rate for resident and non-resident companies is 24%. However, resident companies that meet specific criteria benefit from a reduced tax rate. The criteria include: (a) the company has a paid-up capital of RM2.5 million and below with gross business income of less than RM50 million; (b) the company is not controlled by and does not directly or indirectly control another company with a paid-up capital of more than RM 2.5 million and having a gross business income of less than RM 50 million; and (c) no more than 20% of the company's paid-up capital is owned, directly or indirectly, by companies incorporated outside Malaysia or non-

Malaysian citizens. Companies that meet these criteria will be charged at a preferential tax rate from 15% to 17% for chargeable income up to RM 600,000.00 and any subsequent chargeable income will be taxed at 24%.

A company carrying on petroleum upstream operations is subject to a petroleum income tax of 38%. Petroleum income derived from Joint Development Areas is taxed at 0% for the first eight years of production, followed by 10% for the next seven years and subsequent years of production at 20%.

C) Real Property Gains Tax

Under the current *Real Property Gains Tax Act 1976*, real property gains tax ("RPGT") is chargeable on capital gains arising from the disposal of real property and on the disposal of shares in a real property company. However, from 1 January 2024, RPGT will not be applicable to the disposal of real property shares by a company, limited liability partnership, trust body or cooperative society other than in a Labuan entity that carries on a Labuan business activity under the Labuan Business Activity Tax Act 1990. Please see the section on capital gains tax below for further information.

The table below sets out the current RPGT rates.

Disposal period	*RPGT rate*		
	Companies Incorporated in Malaysia	Individuals (Citizen & Permanent Resident)	Companies Incorporated Outside Malaysia & Individuals (Non-citizen)
For disposals within three years	30 per cent	30 per cent	30 per cent
For disposals in the fourth year	20 per cent	20 per cent	30 per cent
For disposals in the fifth year	15 per cent	15 per cent	30 per cent
For disposals in the sixth and subsequent years	10 per cent	0 per cent	10 per cent

D) Capital Gains Tax

With effect from 1 January 2024, a capital gains tax will be introduced in Malaysia for the disposal of shares of a company incorporated in Malaysia not listed on the stock exchange and disposal of shares by a company outside Malaysia that owns real property in Malaysia, or shares, or both, subject to meeting the prescribed conditions. The rate of tax on disposals where the share acquisition date is before 1 January 2024, will be 10% on the net gain on the shares disposed or 2% on the gross sale value, at the election of the taxpayer; and on disposals where the share acquisition date is from 1 January 2024 will be 10% of the net gain of the shares disposed. Disposal of shares in connection with initial public offerings (IPO) approved by Bursa Malaysia, restructurings within the same group and disposals by venture capital related investments may be exempt subject to stipulated conditions.

From 1 January 2024, the disposal of shares in a real property company by a company, limited liability partnership, trust body or cooperative society will fall under the purview of the capital gains provision instead of RPGT.

The disposal of shares in a real property company will be disapplied to disposals of real property company shares by a company, limited liability partnership, trust body or cooperative society. However, RPGT will continue to apply to the gains on disposal of shares in a real property company for a Labuan entity that carries on a Labuan business activity under the Labuan Business Activity Tax Act 1990.

E) <u>Withholding Tax</u>

Under the *ITA*, withholding tax is to be withheld and remitted to the Malaysian Inland Revenue Board ("IRB") by the resident payer within 30 days after payment or crediting such payment to a non-resident person (includes individual and company).

Withholding taxes in Malaysia are limited to certain categories of income under the *ITA* as follows:

(i) 10% on the following special classes of income derived in Malaysia in respect of:

  (a) amount paid in consideration of services rendered in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;

  (b) amount paid in consideration of advice, assistance or services rendered in connection with management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

  (c) rent or other payment made under any agreement or arrangement for the use of any moveable property.

  Withholding tax will not be applicable for income received in respect of the services (a) and (b) rendered or performed outside Malaysia.

(ii) 10% of the gross income of non-residents under Section 4(f) of the *ITA*, that is, gains and profits not covered under Sections 4(a) to 4(e) of the *ITA*.

(iii) 10% on royalties derived from Malaysia or attributable to a business carried on in Malaysia.

(iv) 15% on interest derived from Malaysia or attributable to a business carried on in Malaysia.

(v) 15% on the services of a public entertainer in Malaysia.

(vi) Distribution of income of a Real Estate Investment Trust ("REIT") to persons other than a resident company (including resident and non-resident individuals) at 10%, non-resident company at 24% and foreign institutional investors at 10%.

(vii) 10% on contract payment in respect of services rendered in Malaysia under a contract and 3% on contract payment to the employees of that non-resident company.

(viii) Companies that make payment commissions to a resident individual on sales, transactions or schemes carried out by that resident individual as the authorised agent, dealer, or distributor of the companies, should also withhold tax at 2% of the gross amount, with effect from 1 January 2022. The withholding tax is applicable if the total sum of payments received by the authorised agent, dealer, or distributor in the immediately preceding basis year of assessment exceeds the threshold value of RM100,000.

(As opposed to the other categories above, both of items (vii) and (viii) are not final taxes but are advance payments to the IRB until the final tax is computed).

The withholding tax rates above are subject to reduction in the double taxation treaties, if any.

To reduce the cost of technical services provided by non-residents, reimbursements relating to hotel accommodation in Malaysia will not be included in the computation of gross technical fees for the purpose of withholding tax.

F) Indirect Taxes

Goods and Services Tax ("GST") was abolished with effect from 1 September 2018. With the abolishment of GST, Malaysia reintroduced sales tax and service tax by enacting the *Sales Tax Act 2018* and *Service Tax Act 2018*, respectively.

Sales tax is a single-stage *ad valorem* tax levied on taxable goods imported for local consumption and on taxable goods manufactured and sold locally except petroleum products where the rates are specific. Sales tax does not apply to the Joint Development Area, Labuan, Langkawi, Tioman, Free Zones and Licensed Manufacturing Warehouses ("LMW"). Manufacturers of taxable goods are required to be registered under the *Sales Tax Act 2018* when the total sale value of taxable goods exceeds MYR500,000.00. Sales tax is generally at 10% but certain foodstuff and building materials are taxed at 5%.

Service tax is charged and levied on taxable services (e.g., accommodation, food and beverage, wellness centres, private clubs, golf clubs, betting and gaming, certain professional and consultancy services) provided in Malaysia by a registered person carrying on business in Malaysia at the rate of 6%. However, an exemption of service tax is available for intra-group services. Service tax does not apply to Free Zones, Langkawi, Labuan, Tioman and the Joint Development Area. Generally, any taxable person carrying on taxable services must register as a taxable person under the *Service Tax Act 2018* when the total value of taxable service exceeds MYR500,000.00 over a 12-month period. Commencing 1 March 2024, service tax will be increased from 6% to 8%. The scope of services subject to service tax will be expanded to include delivery services (excluding delivery of food and beverage), brokerage and underwriting services for non-financial services (i.e., brokerage for ship and aircraft space, commodities and real estate), karaoke centre services and logistics services. Service tax for food and beverage services, telecommunication services, vehicle parking space services and logistics services will remain at 6%.

Digital service tax at the rate of 6% is imposed on any foreign service provider who provides any digital service delivered or subscribed over the internet or other electronic network, which cannot be obtained without the use of information technology and where delivery of service is essentially automated.

Following a series of deferrals, the Royal Malaysian Customs Department has announced that the imposition of sales tax on low value goods, i.e. all goods that are sold online at a price not exceeding RM500 and are brought into Malaysia by land, sea or air, will commence on 1 January 2024.

Customs duties (including import duty and export duty) are imposed under the *Customs Act 1967*. The rates of customs duties vary based on the type of goods. The rates and exemption of customs duties are prescribed in subsidiary legislation made under the *Customs Act 1967*.

Stamp duty is imposed on certain instruments and documents under the *Stamp Act 1949*. The rate of stamp duty chargeable depends on the nature of the instrument involved and varies from a fixed charge or an *ad valorem* rate based on the value of the subject matter of the transaction.

Excise duties are levied on selected products manufactured in Malaysia for local consumption and selected imported goods. Goods which are subject to excise duty include cigarettes, liquor, motor vehicles, chewing tobacco products, and sugar-sweetened beverages.

A high value goods tax on luxury items announced during the Budget 2024 is fixed at 5% to 10% on certain high-value items, such as jewellery and watches, based on the threshold value of the goods. To promote tourism, tourists will be exempted from this tax and a refund mechanism will be introduced to enable tourists to claim a tax refund before departure.

G) Double Taxation Agreement

Malaysia has entered into more than 74 bilateral double taxation agreements. Generally, under the double taxation agreements ("DTAs"), the taxation of income such as business profits derived by a non-resident is limited to the profits that are attributable to activities carried out in Malaysia through a permanent establishment ("PE"), that is, a fixed place in Malaysia where a trade or business is carried on.

Generally, DTAs define a PE as a fixed place of business through which the business of an enterprise is wholly or partly carried on and shall include, especially:-

(i) a place of management;

(ii) a branch;

(iii) an office;

(iv) a factory;

(v) a workshop;

(vi) a mine, an oil or gas well, a quarry or other place of extraction of natural resources; and

(vii) a building site or construction, installation or assembly project which exists for more than six months.

PEs do NOT include:-

(i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or collecting information, for the enterprise; and

(v) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise, any other activity of a preparatory or auxiliary character.

A non-resident shall be considered as having a PE in Malaysia if they engage an agent (other than a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business) to act on its behalf in Malaysia, and that agent:-

(i) has, and habitually exercises in Malaysia, authority to conclude contracts in the name of the non-resident (unless his activities are limited to the purchase of goods or merchandise for the non-resident); or

(ii) maintains in Malaysia a stock of goods or merchandise belonging to the non-resident from which he regularly fills orders on behalf of the non-resident.

H) <u>Petroleum Income Tax</u>

Under the *Petroleum Income Tax Act 1967* ("PITA"), income tax is levied annually on the chargeable income derived by any person carrying on petroleum operations in Malaysia. Petroleum operations mean the searching for and the winning or obtaining of petroleum and any sale or disposal of petroleum so won or obtained. Petroleum operations are conducted within the framework of the production sharing agreements ("Agreement") which are entered into between PETRONAS, and the petroleum companies ("Production Sharing Companies").

Petroleum companies that carry on upstream activities are subject to a flat tax rate of 38%. However, income derived from refining or liquefying of petroleum and any activity dealing with refined products is subject to the normal company tax as provided under the *ITA*.

Under the Agreement, 10% of petroleum produced goes to the Government (5% to the Federal Government and 5% to the State Government) while the remaining production is divided between PETRONAS and the Production Sharing Companies in accordance with an agreed formula.

PETRONAS as well as Production Sharing Companies are chargeable to tax on their respective shares of production. Miscellaneous receipts incidental to and arising from petroleum operations are also subject to petroleum income tax. Various deductions are given to petroleum companies under Schedules to *PITA* including qualifying exploration expenditure, transfer of asset, capital allowances and charges.

VI. TAX INCENTIVES

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Tax incentives, both direct and indirect, may be provided for in the *Promotion of Investments Act 1986*, *Income Tax Act 1967*, *Sales Tax Act 2018*, *Service Tax Act 2018*, *Customs Act 1967*, *Excise Act 1976* and *Free Zones Act 1990*. The incentives are applicable to investments in the manufacturing, agriculture, tourism and approved services sectors as well as R&D, training and environmental protection activities.

The direct tax incentives grant partial or total relief from income tax for a specified period, while indirect tax incentives come in the form of allowances, deductions or exemptions incurred for capital expenditure.

The major tax incentives for companies investing in the manufacturing sector are the *Pioneer Status* or *Investment Tax Allowance*. The eligibility for Pioneer Status or Investment Tax Allowance is based on certain criteria, including the levels of value-added products, local content, technology used and industrial linkages. Under the *Promotion of Investments (Promoted Activities and Promoted Products) Order 2012*, such eligible projects are termed as "promoted activities" or "promoted products", and include the following:

- Agricultural production;
- Processing of agricultural produce;
- Manufacture of rubber products;
- Manufacture of oil palm products and their derivatives;
- Manufacture of chemicals and petrochemicals;
- Manufacture of pharmaceutical and related products;
- Manufacture of wood-based products;
- Manufacture of pulp, paper and paperboard;
- Manufacture of textiles and textile products;
- Manufacture of clay-based, sand-based and other non-metallic mineral products;
- Manufacture of iron and steel;
- Manufacture of non-ferrous metals and their products;
- Manufacture of machinery and machinery components;
- Supporting products/activities (metal castings, metal forgings, surface engineering, machining, jigs and fixtures, moulds, tools and dies, and heat treatment)
- Manufacture of electrical and electronic products and components and parts thereof and related services;
- Manufacture of professional, medical, scientific and measuring devices/parts;
- Manufacture of photographic, cinematographic, video and optical goods;
- Manufacture of plastic products;

- Miscellaneous (sports goods or equipment, jewellery of precious metal, costume jewellery, biodegradable disposable packaging products and household wares)
- Hotel business and tourist industry;
- Manufacturing related services;
- Manufacture of kenaf based products; and
- Protective equipment and devices.

A) Pioneer Status

A company that has been granted Pioneer Status will enjoy a five to ten years tax exemption on 70% to 100% of its statutory business income depending on the promoted activities or promoted products. Unabsorbed capital allowances and accumulated losses incurred during the pioneer period can be carried forward and deducted from the post-pioneer income of the company. Effective from YA 2019, unabsorbed losses can only be carried forward for seven consecutive years; any remaining unabsorbed losses thereafter will be disregarded.

B) Investment Tax Allowance

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance. A company granted Investment Tax Allowance gets an allowance of up to 100% on qualifying capital expenditure incurred for the purposes of the promoted activities or products within five to ten years from the date on which the first qualifying capital expenditure was incurred.

The company can offset this allowance against 70% to 100% of its statutory income for each year of assessment depending on the promoted activities or promoted products. Any unutilized allowance can be carried forward to subsequent years until fully utilized. The remaining 30% of the statutory income will be taxed at the prevailing company tax rate.

C) Reinvestment Allowance

Malaysian resident companies engaged in manufacturing and selected agricultural activities that have been in operation for at least 36 months and incur qualifying capital expenditure to expand production capacity, modernize or automate its production facilities and diversify into related products can obtain a reinvestment allowance ("RA").

The RA is 60% on qualifying capital expenditure incurred by the company which can be offset against 70% of its statutory income for the YA and up to 100% of its statutory income (if it can demonstrate that the level of process efficiency ratio exceeds the industrial average) for a period of 15 consecutive years beginning from the year the first reinvestment was made. Previously, any unutilized allowances could be carried forward to subsequent years until fully utilised. Effective from YA 2019, unutilised allowances can only be carried forward for seven consecutive years (starting from the end of the qualifying period of 15 years incentive period). The RA is given in addition to the normal capital allowances.

Companies can only claim the RA upon completion of the qualifying project, i.e., after the building is completed or when the plant/machinery is put to operational use. Assets acquired for the reinvestment disposed of within five years from the time of reinvestment will trigger an RA drawback. The drawback of RA claimed will be deemed as the statutory income in the basis period for the year of assessment in which such asset is disposed.

A company that intends to reinvest before the expiry of its Pioneer Status incentive may surrender its Pioneer Status for cancellation and be eligible for RA.

It was announced during the Budget 2024 that existing companies that have exhausted their Reinvestment Allowance eligibility period can enjoy investment tax allowance incentive at a tiered rate of 100% (to be set-off against 100% of statutory income) or 60% (to be set-off against 70% of statutory income) to be determined on an outcome-based approach. Applications for this incentive must be received by MIDA from 1 January 2024 until 31 December 2028.

D) Deduction for Promotion of Exports

Certain expenses incurred by resident companies for the purpose of seeking opportunities to export Malaysian manufactured and agricultural products and services qualify for deduction.

Some of the eligible expenses that qualify for single deduction are the registration of patents, trademarks and product licensing overseas and hotel accommodation for a maximum of three nights in providing hospitality to potential importers invited to Malaysia. Some of the eligible expenses that qualify for double deduction include:

- overseas advertising;
- publicity and public relations work;
- supplying samples abroad, including delivery costs;
- undertaking export market research;
- preparing tenders for supply of goods overseas
- supply of technical information abroad;
- preparing exhibits and participation costs in trade/industrial exhibitions, virtual trade shows and trade portals and fares for overseas travel by company employees for business;
- accommodation expenses up to RM300 per day and sustenance expenses up to RM150 per day for company representatives who travel overseas for business;
- maintaining sales offices and warehouses overseas to promote exports;
- using local professional services to design packaging for exports;
- undertaking feasibility studies for overseas projects identified for the purpose of tenders;
- preparing architectural and engineering models, perspective drawings and 3-D animations used for participation in international competitions;
- participating in trade or industrial exhibitions in the country or overseas; and

- participating in exhibitions held in Malaysian Permanent Trade and Exhibition Centres overseas.

E) <u>Other Incentives</u>

Other tax incentives include Global Services Hub, accelerated capital allowances, incentives for High Technology Companies, Financial Services, Strategic Projects, Small and Medium Enterprises, amongst others, in the manufacturing industry, green incentives, angel investor, equity crowdfunding, venture capital and other selected industries (e.g., Halal products, Aerospace, Biotechnology, Tourism, Shipping, Information and Communication Technology, and Private and International Schools).

VII. NON-TAX INCENTIVES

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A) <u>Exemption from Import Duty on Raw Materials/Components</u>

Full exemption from import duty can be considered for raw materials/components, regardless of whether the finished products are meant for the export or the domestic market. With regard to products for the export market, full exemption from import duty on raw materials/components is normally granted, provided the raw materials/components are either not produced locally or, where they are produced locally, are not of acceptable quality and price. As for products for the domestic market, full exemption from import duty on raw materials/components that are not produced locally can be considered. Full exemption can also be considered if the finished products made from dutiable raw materials/components are not subject to any import duty. Most machinery and equipment that are not locally produced are not liable for import duty. However, machinery and equipment on which import duty is imposed can be considered for exemption subject to certain conditions.

To enhance the competitiveness of the manufacturing sector, eligible manufacturers will receive import duty and sales tax exemption on the importation and local purchase of manufacturing aids, subject to the type of industry and the category of goods determined from 1 January 2024.

B) <u>Drawback of Import Duty, Sales Tax and Excise Duty</u>

Under the *Customs Act 1967*, *Sales Tax Act 2018* and *Excise Act 1976*, a drawback on import duty, sales tax and excise duty that have been paid may be claimed by a manufacturer if the parts, raw materials or packaging materials are used in the manufacture of goods for export.

C) <u>Sales Tax Exemption</u>

Under the *Sales Tax Act 2018*, the Minister of Finance may, by way of statutory orders, grant full or partial exemptions (with or without conditions) on taxable goods or taxable persons from sales tax.

VIII. INSURANCE

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Similar to banks and financial institutions, the insurance industry is governed by BNM.

A) Regulatory Framework

The insurance industry is regulated under the *FSA* which provides laws for the licensing and regulation of insurance business, insurance broking business, adjusting business and financial advisory business.

Under the *FSA*, "insurance business" is divided into two classes:

(a) life business (which in addition to all insurance business concerned with life policies includes any type of insurance business carried on as incidental only to the life insurer's business); and

(b) general business (which means all insurance business which is not life business).

B) Legal Structure

Under the *FSA*, a person who is to be licensed to carry on insurance business (other than a person who is to be a professional reinsurer) must be a public company. BNM may specify the form of establishment of a person who is to be licensed as a professional reinsurer; or a person who is to be approved to carry on insurance broking and financial advisory business.

C) Minimum Capital Requirements and Surplus of Assets Over Liabilities

Under the *FSA*, no person shall be granted a license or an approval if:

(a) in the case of a company, its capital funds; or

(b) in the case of a branch established in Malaysia by a foreign institution, its surplus of assets over liabilities,

is less than the minimum amount as may be prescribed by the Minister of Finance in the case of a licensed person, or BNM in the case of an approved person.

According to the *Financial Services (Minimum Amount of Capital Funds or Surplus of Assets over Liabilities) (Licensed Person) Order 2013*, the *Financial Services (Minimum Amount of Capital Funds) (Approved Person) Order 2013* and the *Financial Services (Requirements and Submission of Documents or Information) (Registered Business) Order 2013*, the respective minimum amounts are as follows:

(a) Minimum capital funds

- Licensed local insurer - RM100 million

- Licensed local life professional reinsurer - RM50 million
- Licensed local general professional reinsurer - RM100 million
- Approved insurance broker – RM1,000,000
- Approved financial adviser – RM50,000

(b) Minimum surplus of assets over liabilities

- Licensed foreign professional reinsurer- RM20 million

(c) Minimum paid-up capital unimpaired by losses

- Registered adjuster – RM150,000

D) <u>Takaful</u>

Takaful (Islamic insurance) is a concept whereby a group of participants mutually guarantee each other against loss or damage. Each participant fulfils his/her obligation by contributing a certain amount of donation (or *tabarru*) into a fund, which is managed by a third party - the takaful operator.

In the event of loss or damage suffered, the takaful operator will disburse the funds accordingly to its participants. Any surplus is paid out only after the obligation of assisting the participants has been fulfilled. Through this principle, takaful operates as a protection and profit-sharing venture between the takaful operator and the participants.

Takaful business is regulated by the *IFSA* and a person who is to be licensed to carry on takaful business (other than a person who is to be a professional retakaful operator) must be a public company. BNM may specify the form of establishment of a person who is to be licensed as a professional retakaful operator, or to carry on international takaful business; or a person who is to be approved to carry on takaful broking and Islamic financial advisory business.

Under the *IFSA*, no person shall be granted a license or an approval if:

(a) in the case of a company, its capital funds; or

(b) in the case of a branch established in Malaysia by a foreign institution, its surplus of assets over liabilities,

is less than the minimum amount as may be prescribed by the Minister of Finance in the case of a licensed person, or BNM in the case of an approved person.

According to the *Islamic Financial Services (Minimum Amount of Capital Funds or Surplus of Assets over Liabilities) (Licensed Person) Order 2013* and the *Islamic Financial Services (Minimum Amount of Capital Funds) (Approved Person) Order 2013*, the respective minimum amounts are as follows:

(a) Minimum capital funds

- Licensed local takaful operator - RM100 million

- Licensed international takaful operator – RM10 million
- Licensed local professional retakaful operator - RM100 million
- Approved takaful broker – RM1,000,000
- Approved Islamic financial adviser – RM50,000.

(b) Minimum surplus of assets over liabilities

- Licensed international takaful operator – RM10 million
- Licensed foreign professional retakaful operator - RM20 million

E) Equity Holdings

For the purposes of allowing insurance companies and takaful operators to have greater flexibility in relation to tie-ups with foreign partners, the foreign equity participation in insurance companies and takaful operators has been increased to a limit of up to 70%. Any foreign equity limit beyond 70% for insurance companies will be considered on a case-by-case basis for players who can facilitate consolidation and rationalisation of the insurance industry.

To improve insurance and takaful penetration in the country, locally-incorporated foreign insurance companies and takaful operators are allowed to establish branches nationwide without restriction.

Further, insurance companies and takaful operators are afforded greater flexibility to employ specialist expatriates that have expertise to contribute to the development of the financial system in Malaysia.

Labuan insurance companies licensed by the Labuan Financial Services Authority that meet the predetermined criteria will be accorded flexibility to have a physical presence onshore from 2011 onwards. This flexibility will be complemented by a strengthened regulatory and supervisory framework that will govern these players.

F) Types of Business-Related Insurance Policies

The following are business-related insurance policies that are typically offered by insurers in Malaysia:

(a) Business Insurance

- Fire policy
- All risks (office equipment and/or personal effects) policy
- Burglary policy
- Money insurance policy
- Public liability insurance policy

- Workmen's compensation policy
- Employer's liability policy
- Electronic equipment insurance

(b) Factory and Machinery Insurance

- Boiler and pressure vessel policy
- Business machines and equipment policy
- Contractors' all risks policy
- Erection all risks insurance
- Machinery insurance

(c) Marine Insurance

- "Goods in transit" policy
- Marine cargo policy

The above policies are also offered by certain takaful operators in the form of machinery and equipment takaful, fire takaful and others.

G) <u>Latest Developments</u>

On 30 June 2023, BNM issued the Policy Document on Operating Costs Controls for General Insurance and Takaful Business ("Policy Document"). The Policy Document is applicable to licensed insurers carrying on general insurance business and licensed takaful operators carrying on general takaful business. The Policy Document will come into effect on 1 January 2024.

Notably, the Policy Document covers, amongst others:-

(a) The realignment of operating cost control categories and limits, which includes, amongst others, the removal of management expenses limits; and

(b) The requirements and guidance on a licensed person's policies on remuneration, governance and management of intermediaries.

In particular, the Policy Document imposes the maximum amount / percentage of gross commission for certain classes of insurance policies. Gross commission is defined in the Policy Document as *"commission or brokerage (other than profit commission) paid on gross direct premium or contribution (net of return premium or contribution) written within Malaysia"*.

The maximum amount / percentage of gross commission imposed are set out below:-

(a) Motor – 10%;

(b) Bonds – 10%;

(c) Medical and health (group policy / certificate) – 10%;

(d) Medical and health (stand-alone individual policy /certificate) – 15%;

(e) Marine cargo, aviation and transit – 15%;

(f) Marine hull – 15%;

(d) Fire – 15%;

(e) Engineering – 15%; and

(f) Other classes – 15%.

It is important to note that under the Policy Document, licensed insurers and licensed takaful operators are prohibited from paying gross commission to intermediaries that operate digital or electronic channels / platforms that serve only to redirect customers to the licensed insurer's or licensed takaful operator's website to complete the purchase of insurance or takaful products and do not provide after-sales services.

In respect of intermediary-related expenses (i.e., any payments other than gross commissions, or benefits in kind, including subsidies in any form provided to any intermediaries. Payments under commercial distribution arrangements with licensed financial institutions or e-commerce platforms that are not linked to production in any way, are excluded), the aggregate amount of intermediary-related expenses incurred by a licensed insurer and licensed takaful operator shall not exceed 3% of gross direct premium or contribution.

In calculating intermediary-related expenses, a licensed insurer and licensed takaful operator shall exclude the gross premium or contribution generated from direct distribution channels, which are not eligible for commission payments.

IX. FEDERAL TERRITORY OF LABUAN

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Labuan, an island off the coast of East Malaysia, is an integrated international financial offshore centre offering a wide range of financial products and services. Labuan was designated as Malaysia's official offshore financial hub in 1990, operating under the official name, Labuan International Offshore Financial Centre until the end of 2007. The name Labuan International Business and Financial Centre ("Labuan IBFC") was introduced in January 2008 to reflect the jurisdictions' growth and international status and was accompanied by an aggressive rebranding and marketing exercise. There are various legislations enacted for the creation of the Labuan IBFC including the establishment of Labuan companies which enjoy protection against public scrutiny of their existence and records.

The Labuan Financial Services Authority operates as the regulatory body of the Labuan IBFC and is tasked with spearheading and coordinating efforts to promote and develop Labuan as an international business and financial centre.

Under the *Labuan Business Activity Tax Act 1990* ("*LABATA*"), subject to certain provisos, "Labuan business activity" means a Labuan trading or a Labuan non-trading activity carried on in, from, or through Labuan in a currency other than the Malaysian currency, by a Labuan entity with non-resident or with another Labuan entity. A Labuan entity includes, *inter alia*, a Labuan company, a Labuan foundation, a Labuan limited partnership and limited liability partnership, a Labuan trust, and a Labuan financial institution.

Labuan trading activities include banking, insurance, trading, management, licensing, shipping operations or any other activity which is not a Labuan non-trading activity. Labuan non-trading activities refer to activities relating to the holding of investments in securities, stocks, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf. Where a Labuan entity carries on both a Labuan trading activity and a Labuan non-trading activity, it shall be deemed to be carrying on a Labuan trading activity.

The *LABATA* provides for the reduction of income tax in respect of Labuan business activities carried on by Labuan entities in Labuan.

Effective from 1 January 2019, a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity or Labuan non-trading activity must comply with the requirements under the Labuan Business Activity Tax (Requirements For Labuan Business Activity) Regulations 2021 (revoking the Labuan Business Activity Tax (Requirements for Labuan Business Activity) 2018 and its amendments) ("Labuan Regulations") in order to enjoy a tax rate of 3% on net profit/chargeable profit for a Labuan trading activity or 0% on net profit for a Labuan non-trading activity.

Depending on the type of business activity, the Labuan Regulations provide that a Labuan entity must incur a prescribed minimum amount of annual operating expenditure ranging from RM20,000 to RM3,000,000 and employ a prescribed minimum number of full-time employees that usually ranges from nil to 4 for each entity or group of companies, as the case may be.

If a Labuan entity does not fulfil the minimum operating expenditure or employment requirements as specified in the Labuan Regulations for a basis period for a year of assessment, its chargeable profit will be subject to tax at the rate of 24% for that YA. The election of RM20,000 as the fixed tax payable for a YA has ceased to apply since the year of assessment of 2020.

A Labuan entity is given the option to subject its income from Labuan business activities to tax under the *Income Tax Act 1967* or the *LABATA*. The election, once made, is irrevocable.

The chargeable profits under the *LABATA* exclude any income derived from royalty and intellectual property right, such income is subject to tax under the *Income Tac Act 1967* at the rate of 24%.

Pursuant to the Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by a Resident) Rules 2018 (amended by the Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020, payments made by a resident payer to a Labuan entity are no longer qualified for full tax deductions as 25% of the payments for interest (including payment in connection with financing in respect of commission, facility fee and advance fee) and lease rental are disallowed and 97% of the payment for other expenses are disallowed.

The following exemptions remain available under the *Income Tax Act 1967*:

(a) Dividends paid by a Labuan company out of income derived from a Labuan business activity or out of exempt income are not subject to income tax in the hands of the recipient. Such dividends will be paid gross without any tax deducted at source.

(b) The distribution made by a Labuan trust is not subject to income tax in the hands of the beneficiary.

(d) Interest paid by a Labuan company to a non-resident person (other than interest accruing to a business carried on by a non-resident person in Malaysia carrying on a banking, finance company or insurance business) or another Labuan company is exempted from withholding tax.

(e) Interest paid by a Labuan company to a resident person, other than a person carrying on a banking, finance company or insurance business in Malaysia, is exempted from tax.

X. LABOUR AND SOCIAL SECURITY

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The main statutes regulating labour law and social security are as follows:-

A) Employment Act 1955

The *Employment Act 1955* ("Employment Act") applies to Malaysian employees and foreign nationals employed in West Malaysia who have entered into a contract of service. However, certain provisions of the Employment Act will only apply to the following categories of employees:

(a) Employees whose wages do not exceed RM4,000 a month; or

(b) Regardless of the amount of wages, employees who are engaged in the following categories of employment:

- manual labourers or their supervisors;
- persons who maintain or operate mechanically propelled vehicles;
- domestic employees; and
- persons in certain positions in sea-faring vessels.

("**Covered Employees**")

The Employment Act contains minimum terms and conditions of employment which must be observed by employers, including provisions on leave entitlements, maximum hours of work, flexible working arrangements, discrimination and forced labour. The provisions which apply only to Covered Employees are payments for work on rest day, payment for overtime work, statutory entitlement to shift allowance, payment for work on public holiday and statutory entitlements to termination benefits.

Equivalent legislation to the Employment Act exists for employees in East Malaysia, although the provisions may differ.

B) Industrial Relations Act 1967

The *Industrial Relations Act 1967* ("Industrial Relations Act") applies to Malaysian and foreign nationals employed in Malaysia including employees of statutory bodies. It regulates the relations between employers and employees (including trade unions) and seeks to prevent and settle differences and disputes arising between them. Some of the main features of the *Industrial Relations Act* are:

(a) the protection afforded to workmen to form and/or join a trade union and to participate in union activities;

(b) the provisions relating to trade union recognition and collective bargaining;

(c) the law and process involved in the settlement of trade disputes;

(d) the protection afforded to workmen against unjust dismissals; and

(e) proceedings in the Industrial Court.

In terms of protection against unjust dismissal, the *Industrial Relations Act* creates a procedure where any employee may seek reinstatement if he considers himself dismissed without just cause or excuse. The Director General of Industrial Relations shall refer representations for dismissal without just cause or excuse under section 20 of the Industrial Relations Act directly to the Industrial Court if he/she is satisfied that there is no likelihood of the representations being settled through conciliation. From 2021, there is no longer a requirement for the Minister of Human Resources to exercise his discretion to refer a representation of unjust dismissal.

Notwithstanding any termination clause in a contract of employment, the employer may only terminate the same for just cause or excuse. Generally, poor performance, misconduct and retrenchment are considered to be just cause or excuse.

If the employer is not able to prove that the dismissal was with just cause or excuse, the employee will become entitled to reinstatement and back wages from the date of termination of employment to the date of the final hearing in court (capped at 24 months). Alternatively, if reinstatement is not ordered, the employee will be awarded compensation of one month's salary for each year of service, in lieu of reinstatement.

C) Trade Unions Act 1959

The *Trade Unions Act 1959* ("Trade Unions Act") applies to both foreign and Malaysian employees. It provides for the registration, constitution and administration of trade unions and regulates their activities in matters relating to union disputes and usage of funds.

D) Employees Provident Fund Act 1991

The *Employees Provident Fund Act 1991* makes it mandatory for all employers and most employees to contribute to a state-managed provident fund in accordance with the rates prescribed therein. Contributions by foreign nationals employed in Malaysia are voluntary.

E) Employees' Social Security Act 1969

The *Employees' Social Security Act 1969* ("SOCSO Act") makes it mandatory for social security contributions to be made on behalf of all employees, except for those excluded from the application of the SOSCO Act. Contribution rates are as prescribed by the SOSCO Act.

F) The Minimum Wages Order 2022

The Minimum Wages Order 2022 prescribes the minimum wage payable to employees as being RM1500 per month or RM7.21 per hour.

G) Minimum Retirement Age Act 2012

The *Minimum Retirement Age Act 2012* imposes the minimum (not mandatory) retirement age at 60 years old. An employer may not retire an employee before he or she attains this age. Any existing contractual term that provides for retirement at an earlier age is revised by law to 60 years. However, optional early retirement according to the employee's contract of service or any applicable collective agreement is allowed.

H) Employment Insurance System Act 2017

The *Employment Insurance System Act 2017* ("EIS Act") requires the employer and employee to make contributions, at a rate prescribed under the EIS Act, in order to offer certain benefits and reemployment placement programme for insured employees who have lost employment.

I) Occupational Safety and Health Act 1994

The *Occupational Safety and Health Act 1994* ("the OSHA") was enacted with the intent to ensure the safety, health, and welfare of all persons at all places of work. It is based on the concept of self-regulation, with the primary responsibility of ensuring safety and health at the workplace lying with those who create the risks and work with the risks. The OSHA also provides for a consultative process at the policy level with the establishment of the National Council for Occupational Safety and Health.

The main objectives of the OSHA are to:

(a) To secure the safety, health, and welfare of persons at work against the risks to safety or health arising out of the activities of persons at work;

(b) To protect persons at place of work other than persons at work against risks to safety or health arising out of the activities of persons at work;

(c) To promote an occupational environment for persons at work which is adapted to their physiological and psychological needs;

(d) To provide the means whereby the associated occupational safety and health legislation may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.

The OSHA specifies the general duties of employers, manufacturers, suppliers and employees. For example, employers with more than five employees are required to formulate a written Safety and Health Policy, whilst the establishment of a Safety and Health Committee at the workplace is required if there are 40 or more persons employed. In carrying out their respective duties under the OSHA, parties are required to satisfy the standard of '*so far as is practicable*'. Any contravention of the provisions of the OSHA will be an offence which upon conviction carries the penalty of a fine or a term of imprisonment or both.

The Occupational Safety and Health (Amendment) Act 2022 was gazetted on 16 March 2022 and will come into force on a date to be determined by the Minister of Human Resources ("**OSHA Amendment Act**"). The OSHA Amendment Act will extend the OSHA's scope of applicability to all places of work through Malaysia including the public service and statutory authorities; and extends the obligation to ensure safety and welfare to include any person who contracts with a contractor for the purpose of carrying out work. This new category of persons has been referred to as "principal" under the OSHA Amendment Act. Additional obligations imposed by the amendments are the duty to conduct a risk assessment and to appoint an occupational safety and health coordinator if there are five or more persons employed. Pursuant to the amendments, an employee has the right to remove himself from imminent danger at his place of work or the work if the employer fails to take any action to remove such danger. Further, the penalties in relation to breaches of OSHA provisions have also been significantly increased (for example, the penalty for an employer's failure to provide a safe working environment to his employees pursuant to section 15 of the OSHA has increased from RM 50,000.00 to RM 500,000.00).

The Department of Occupational Safety and Health (DOSH), under the Ministry of Human Resources, is responsible for administrating and enforcing legislation related to occupational safety and health including OSHA.

J) <u>Factories and Machinery Act 1967</u>

The Factories and Machinery Act 1967 ("the FMA") together with the OSHA are enforced by the Department of Occupational Safety Malaysia with the aim of ensuring the safety, health and welfare of workers and other persons from the hazards of work activities. The FMA provides for the control of factories with respect to matters relating to the safety, health, and welfare of persons therein, the registration and inspection of machineries and for matters connected thereto. Part II of the FMA sets out the provisions in relation to safety, health, and welfare. Amongst others, it provides that foundations, floors and roofs shall be of sufficient strength, means to ensure safe access to any place of work shall be provided and maintained as far as reasonably practicable, that no person shall be employed to lift or carry a load heavy enough to cause bodily injury and that there shall be precautions against fires in the factory which encompasses the means of escape and means of extinguishing the fire. Any contravention of the provisions of the FMA will be an offence which upon conviction carries the penalty of a fine or a term of imprisonment or both.

Pursuant to the Factories and Machinery (Repeal) Act 2022 ("FMA Repeal Act"), the FMA is to be repealed and the elements therein are to be incorporated under the amended OSHA.

K) Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990

Under the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 ("EMSHAAA"), amongst others, foreign employees, i.e., holders of a Visit Pass (Temporary Employment) are required to be provided with accommodation in line with EMSHAAA and the Employees' Minimum Standards of Housing, Accommodations and Amenities (Accommodation and Centralised Accommodation) Regulations 2020 ("Regulations").

The Regulations lay down extensive obligations on the part of the employer in respect of the standard of accommodation, including in relation to ensuring the safety and health of employees, minimum requirements in respect of sleeping and personal areas, supply of water and electricity and minimum requirements in respect of the accommodation building. All centralised accommodation must be issued with a Certificate for Accommodation before it may be provided to employees for accommodation.

XI. IMMIGRATION AND EXPATRIATE POSTS

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The Government's policy is to encourage employment of Malaysians. However, the Government allows foreign nationals to work in Malaysia subject to the issuance of a valid work pass.

The following work passes are issued to foreign nationals to work in Malaysia:

A) Employment Pass

The Employment Pass may only be applied for the individual through the hiring employer. There are three types of Employment Passes as follows:-

Characteristics	Employment Pass – Category I (Expatriate)	Employment Pass – Category II (Expatriate)	Employment Pass – Category III (Knowledge/ Skilled Worker)
Basic Monthly Salary	Minimum RM 10,000 per month	Between RM 5,000 - RM9,999 per month	Between RM 3,000 – RM 4,999 per month
Employment Contract Duration	Up to 5 years	Up to 2 years	Must not exceed 12 months
Dependents Allowed	Yes	Yes	No

When employed under an Employment Pass, the Malaysian employer and the expatriate employee will be subject to all employment obligations and responsibilities such as payment of income tax.

B) Professional Visit Pass

Professional Visit Passes are issued to foreign nationals who hold acceptable professional qualifications for the purpose of taking up temporary professional work in Malaysia for a Malaysian entity not exceeding 12 months (non-renewable). Under a Professional Visit Pass, the expatriate does not become an employee of the Malaysian employer but is permitted to work in Malaysia for the duration stated in the Professional Visit Pass. The permitted areas of work include expertise transfer, research, training at ESD-registered companies, volunteer work, exhibitors under the regulation of Malaysian Convention & Exhibition Bureau and student internships. Applications must be made by the Malaysian hosting company.

C) Residence Pass - Talent

The Residence Pass - Talent is issued to foreign nationals considered to be high-achieving individuals with the capacity to drive business results that contribute towards the national key economic areas (NKEA) namely: oil, gas and energy; palm oil; financial services; tourism; business services; communications, content and infrastructure; electronics and electrical; wholesale and retail; education; health care; and agriculture. The Residence Pass – Talent is not linked to a Malaysian employer/ hosting company and is valid for 10 years. A foreign national must meet several eligibility criteria before applying for the Residence Pass – Talent, such as possessing a valid Employment Pass and having worked in Malaysia for a minimum period of 3 years.

D) Visit Pass (Temporary Employment)

The Visit Pass (Temporary Employment) is issued for the employment of unskilled foreign citizens, from specific source countries in certain sectors of the economy, such as agriculture, construction, manufacturing, plantation and services.

Family members of a holder of an Employment Pass Category I and II may apply for a Dependant's Pass (limited to legal spouse, child below 18 years of age (biological, stepchild, legally adopted) or disabled child regardless of age of the Employment Pass Category I or II holder) or Social Visit Pass (Long Term) (limited to children above 18 years of age and unmarried, parents and parents-in-law of the Employment Pass Category I or II holder; common law spouse of Employment Pass holder can be considered).

In respect of Employment Passes and Professional Visit Passes which must be applied for by the Malaysian hiring/hosting company, the following criteria must be satisfied by the hiring/ hosting company:

(a) It must fall within any of the following categories of employers:-

- Must be registered with the Companies Commission of Malaysia;
- Must be registered with the Registry of Societies Malaysia;
- Firms incorporated under specific acts such as law firms or accounting firms;

- Organisations supported by ministries or government agencies; or
- International organisations certified by the Ministry of Foreign Affairs.

(b) It must fulfil the following paid-up capital (not applicable to public limited companies, companies limited by guarantee, associations and organisations incorporated under specific acts):

EQUITY	PAID-UP CAPITAL
100% Local Owned	RM 250,000
Joint Venture (30% Foreign Shareholding required)	RM 350,000
100% Foreign Owned	RM 500,000
Foreign Owned companies (foreign equity at 51% and above) operating in the Wholesale, Retail and Trade sectors or unregulated services	RM 1,000,000

XII. INTELLECTUAL PROPERTY

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The scope of intellectual property rights protection in Malaysia is wide-ranging and currently the legislative regime covers trademarks, patents, copyright, industrial designs, geographical indications and layout designs of integrated circuits. Other areas such as confidential information and trade secrets are recognized and given protection under common law. Malaysia is also a member of the World Intellectual Property Organisation (WIPO) and a signatory to a number of international treaties which govern intellectual property rights, including the Berne Convention for the Protection of Literary and Artistic Works 1886, the Paris Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the Patent Cooperation Treaty (PCT), Madrid Agreement Concerning the International Registration of Marks of 1891 and the Protocol Relating to the Madrid Agreement (1989).

A) <u>Trademarks</u>

In general, the nature of protection that may be accorded to a trademark will be determined by whether or not the trademark is registered. Protection of registered trademarks is provided for under the Trademarks Act 2019, Trademarks Regulations 2019 and the Guidelines of Trademarks 2019, and the predecessor statutes Trade Marks Act 1976 and Trade Marks Regulations 1997. Upon registration, no one other than the registered proprietor or registered user/ licensee is allowed to use the trademark. In the event of any unauthorised use or infringement of a trademark, the proprietor may take civil action against the purported infringing party.

The Trademarks Act 2019 also provides an avenue for the registered proprietor to lodge a complaint to the relevant authorities (Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs) to investigate any person who has committed or is committing an offence under the Act. The offences include counterfeiting a trademark, falsely applying a registered trademark to goods or services, making or possessing of article for committing offence, importing or selling goods with falsely applied trademark and falsely representing a trademark as registered.

With regards to trademarks that are either unregistered or pending registration, an aggrieved party may have recourse to a remedy under the law of passing off. However, in order for a passing off action to succeed, the aggrieved party must prove that there is goodwill or reputation in the unregistered mark, that there is misrepresentation by the other party and that he has suffered damage or loss to his goodwill or reputation as a result of that misrepresentation. Notably, in conformance with TRIPs, the *Trademarks Act 2019* also has provisions setting out the scope of protection for well-known trademarks in Malaysia.

B) <u>Patents</u>

The *Patents Act 1983* and *Patent Regulations 1986* govern the protection of inventions in Malaysia. An invention is patentable if it is universally novel, involves a non-obvious step and is capable of industrial application. Once granted, a patent owner will be entitled to fully exploit the patent, assign or transmit the patent, and to conclude license contracts.

It should be noted that, as of 16 August 2006, PCT applications can be filed with the Intellectual Property Corporation of Malaysia ("MyIPO").

C) <u>Copyright</u>

Unlike trademarks, patents and industrial designs, the protection afforded by copyright is not dependent on registration. Copyright law in Malaysia is governed by the *Copyright Act 1987* as well as various subsidiary legislations. The *Copyright Act 1987* confers copyright on three broad categories of work: (i) original works (i.e. literary, musical and artistic works, films, sound recordings and broadcasts); (ii) derivative works (i.e. translations, adaptations, arrangements and other transformations of works eligible for copyright, collections of works or collections of mere data, whether in machine readable or other from, eligible for copyright which, by reason of the selection and arrangement of their contents, constitute intellectual creation); and (iii) published editions of literary, musical or artistic works. As Malaysia is a member of the Berne Convention, works of foreign authorship are also entitled to the same rights and protection in Malaysia as a work created by a Malaysian author. Works that were first published in a country that is a member of the Berne Convention, or where it is first published elsewhere, it is then published in a country that is a member of the Berne Convention within 30 days of such publication elsewhere would be accorded the protection in Malaysia as if it were first published in Malaysia. .

In line with its obligations under the TRIPs Agreement, Malaysia has also recognised a performer's right in his live performance. Pursuant to the *Copyright (Amendment) Act 2000*, performers' rights are now incorporated as part of the *Copyright Act 1987*. Thus, a performer may now control the way his live performance will be communicated to the public as well as the fixation (i.e., recording) of his live performance as a sound recording or on film. Additionally, a performer may also control the reproduction, distribution, rental or sale of a fixation of his live performance.

The *Copyright (Amendment) Act 2012* introduced a voluntary mechanism for notification of copyright works. Applications for voluntary notification of copyright works may, as of 2 February 2021, be made online. The *Copyright (Amendment) Act 2012* also sets forth anti-camcording provisions and limitations on the liability of internet service providers in respect of copyright infringements.

The *Copyright (Amendment) Act 2020* (which came into force on 1 July 2020) introduced provisions empowering the Copyright Tribunal to hear any dispute relating to royalties arising between a licensing body and any of its members, providing for an alternative dispute resolution mechanism.

The *Copyright (Amendment) Act 2022* (which came into force on 18 March 2022, except for sections 4, 5, 6 and 10, which came into force on 30 June 2022) introduced amendments to the *Copyright Act 1987* which lay the groundwork for Malaysia's accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled 2013. The *Copyright (Amendment) Act 2022* also introduced new offences aimed at tackling piracy on the internet, including among others, making it a specific offence to facilitate copyright infringement via the manufacture, import, sale, etc. of streaming technologies. The *Copyright (Amendment) Act 2022* also amended the *Copyright Act 1987* such that applications for voluntary notifications of copyright may now only be made by the owner or assignee of the copyrighted work, and not the author.

D) Industrial Designs

Malaysia also provides for the protection of industrial designs by virtue of the *Industrial Designs Act 1996* and *Industrial Designs Regulations 1999*. An industrial design is defined as features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, such features appealing to and being judged by the eye in the finished article. A design can only be registered if it is new and does not merely involve a method of construction or dictated solely by function. It is to be noted that an artistic work incorporating a design may also be registrable under the *Industrial Designs Act 1996*. Industrial designs are granted 25 years protection from the time of filing of the application or the date of the priority application, if any.

E) Layout-Designs of Integrated Circuits

Integrated circuits are now accorded protection in Malaysia under the *Layout-Designs of Integrated Circuits Act 2000*. In order to qualify for protection, the layout design of an integrated circuit has to be original, to the extent that the layout design must result from the creator's own intellectual effort and be freely created. Similar to copyright, registration is not a pre-requisite to the granting of protection for layout designs of integrated circuits.

F) Geographical Indications

The *Geographical Indications Act 2022* came into force on 18 March 2022, repealing the *Geographical Indications Act 2000* which was introduced in Malaysia to accord protection to goods which are named after the region or locality in which the goods are produced. Akin to trademarks, there is a requirement for registration for geographical indications. However, geographical indications which are contrary to public order and morality are not registrable. Once registered, a geographical indication would be given protection for 10 years' duration, subject to renewals. In the case of any infringement of geographical indications, the actions and remedies available to an aggrieved party are also similar to those of trademark infringement.

Among others, the *Geographical Indications Act 2022* introduces the following salient changes:

(a) Foreign governments can now apply for registration of a geographical indication.

(b) Geographical indications can only be sought in respect of goods falling within one or more of the categories of goods set out in the guidelines or practice directions issued by the Registrar of Geographical Indications.

(c) Introduces extensive new provisions on the examination procedure.

(d) Expands on the rights conferred to registered proprietors.

(e) Introduces new statutory offences relating to, among others, the false use of geographical indications, and import and sale of goods bearing a falsely applied geographical indication.

(f) Introduces new grounds for refusal of registration of a geographical indication and introduces a new provision which contains all the grounds for refusal.

(g) Expands protection of homonymous geographical indications and allows registration of homonymous geographical indications for all types of goods with practical conditions differentiating the homonymous and earlier geographical indications.

(h) Introduces new provisions relating to the institution of proceedings in Court.

(i) Introduces provisions for cancellation of a registered geographical indication.

G) <u>Confidential Information and Trade Secrets</u>

Apart from the intellectual property rights protected by statute, confidential information and trade secrets are also entitled to protection under the principles of common law and equity. An action for breach of confidence requires that the information be confidential in nature, that it was imparted in circumstances importing an obligation of confidence and that the use of the information was unauthorised.

H) <u>Administration of IP Matters</u>

A statutory body known as the Intellectual Property Corporation of Malaysia (MyIPO) was set up to take over the functions of the Intellectual Property Division of the Ministry of Domestic Trade, Co-operatives and Consumerism. Pursuant to the *Intellectual Property Corporation of Malaysia Act 2002*, the body has been given jurisdiction over all issues relating to intellectual property, such as registration as well as advising on the review and updating of all intellectual property legislation in Malaysia.

XIII. TECHNOLOGY, MEDIA, AND TELECOMMUNICATIONS

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The technology, media, and telecommunications ("TMT") industry in Malaysia is governed by the Ministry of Communications and Digital, and regulated by the Malaysian Communications and Multimedia Commission ("MCMC"), which was established pursuant to the Malaysian Communications and Multimedia Commission Act 1998 ("MCMC Act").

A) Regulatory Framework

(i) Communications and Multimedia Act 1998

The primary legislation regulating this sector is the Communications and Multimedia Act 1998 ("CMA"), which sets out the general regulatory and licensing framework for the communications and multimedia industry, and provides the Minister of Communications and Digital and the MCMC with specific powers of oversight over the communications and multimedia industry, such as powers to issue directions, determinations, declarations, and decisions, as well as powers of investigation and enforcement.

Subsidiary legislation, statutory instruments, and industry codes and guidelines address specific matters dealt with in the CMA in more detail. For example, there are technical codes registered by the MCMC setting out the technical standards for certifying certain communications equipment.

(ii) Other Legislation

(1) The Computer Crimes Act 1997 ("CCA") was enacted to provide for offences relating to the misuse of computers, such as the offences of unauthorised access to computers, unauthorised modification of computer contents, and the communication of computer passwords, codes or any other means of access to a computer to unauthorised persons.

(2) The Film Censorship Act 2002 ("FCA") was enacted to provide for the censorship of films and other related matters, including the establishment of the Film Censorship Board ("FCB"). Section 2 of the FCA states that it shall not be construed as permitting the censorship of any film transmitted over the Internet.

(3) The Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 was enacted to establish the National Film Development Corporation of Malaysia (commonly abbreviated as "FINAS") and requires any person intending to produce, distribute, or exhibit films in Malaysia to obtain a license.

B) Licensing Regime under the CMA

Any person providing any of the licensable activities set out in the Communications and Multimedia (Licensing) Regulations 2000 ("Licensing Regulations") will need a license. The Licensing Regulations also set out the license application procedure, applicable fees and forms, as well as the information required for an application. Certain activities and services are exempted from the licensing requirement – these are set out in the Communications and Multimedia (Licensing) (Exemption) Order 2000 and include, for example, private or incidental network facilities and services.

There are 4 categories of telecommunications licenses under the CMA:

(1) Network Facilities Provider License: For the provision of network facilities or physical infrastructure for or in connection with the provision of network services e.g., satellite earth stations, fixed links and cables, radiocommunication transmitters and links, submarine cable landing stations, and towers, ducts, poles and pits used in conjunction with other network facilities.

(2) Network Service Provider License: For the provision of network services for basic connectivity and bandwidth to support a variety of applications e.g., bandwidth services, switching services, access applications services, gateway services, space services, and cellular mobile services.

(3) Applications Service Provider ("ASP") License: For the provision of a service provided by means of, but not solely by means of, one or more network services. Applications services are essentially the functions or capabilities, which are delivered to end-users. Examples include PSTN telephony, public cellular services, IP telephony, public switched data services, directory services, Internet access services, and messaging services.

(4) Content Applications Service Provider License: For the provision of application services which provide content, such as satellite broadcasting, subscription broadcasting, and terrestrial radio broadcasting.

The licenses above may be issued either as "individual" or "class" licenses, save for ASP licenses which are only issued as class licenses. An individual license imposes a high degree of regulatory control which is for a specified person to conduct a specified activity and may include special conditions. Individual licenses are subject to equity restrictions although leniency may be applied for and will depend on factors such as applicable bilateral/multilateral trade agreements, participation in the Malaysia Digital scheme, and amount of investment contemplated. A class license, on the other hand, is a 'light-handed' form of regulation designed for easy market access.

C) <u>Numbering and Electronic Addressing</u>

Pursuant to the CMA, the MCMC is vested with the control, planning, administration, management, and assignment of the numbering and electronic addressing of network and applications services. In the exercise of its powers, the MCMC developed and issued the Numbering and Electronic Addressing Plan, which sets out the rules relating to the use, assignment, transfer, portability, and structure of numbers and electronic addresses in Malaysia.

D) <u>Spectrum</u>

The use of spectrum in Malaysia is heavily regulated and must be pursuant to an assignment of spectrum issued by the MCMC, namely either an apparatus assignment, class assignment, or spectrum assignment. The use of spectrum under an applicable class assignment does not involve any application or fees, whereas an apparatus assignment must be applied for and is an assignment by MCMC to use a specified kind of network facility at a specified frequency band(s). Spectrum assignments can only be issued by MCMC when specific frequency bands have been determined by the Minister of Communications and Digital, and assignments are made by way of auction or tender.

The MCMC has also developed and published the Spectrum Plan 2022 which sets out, among others, Malaysia's Table of Frequency Allocations and which incorporates the Radio Regulations issued and regulated by the International Telecommunications Union.

E) Media and Online Content

Online content is primarily under the MCMC's purview. The MCMC registered the Content Code 2022, an industry code developed by the Communications and Multimedia Content Forum which is aimed at facilitating self-regulation in the industry and which sets out standards and practices relating to the dissemination of content in the networked medium (which includes content communicated over the Internet and traditional media outlets like television).

The Complaints Bureau (a division of the Content Forum) manages complaints received regarding content disseminated in the networked medium, and has the power to issue sanctions such as written reprimands and fines against offending parties who are subject to the Content Code.

The FCB regulates and censors content disseminated via traditional media outlets such as TV and cinemas. We understand that in practice, the FCB does not regulate/censor online content. FINAS has prerogative over film production, distribution and exhibition activities in Malaysia. They currently do not require online content providers (e.g., over-the-top media services) to obtain any distribution license from them. Any film production activities taking place in Malaysia will, however, require a production license from FINAS, regardless of the medium the film will be shown in.

Other legislation, statutory instruments, codes, and guidelines may also be relevant to the dissemination of content in Malaysia depending on the context, e.g., the Sedition Act 1948 which prohibits seditious publications.

In relation to music licensing, there are currently 3 licensing bodies authorised under the Copyright Act 1987 for collection of music-related royalties in West Malaysia: (i) Music Authors' Copyright Protection Berhad representing composers and lyricists; (ii) Public Performance Malaysia Sdn. Bhd. representing recording companies; and (iii) Recording Performers Malaysia Berhad representing singers and musicians of sound recording.

F) Certification of Communications Equipment

Pursuant to the Communications and Multimedia (Technical Standards) Regulations 2000, all communications equipment must be certified by the MCMC or its registered certifying agency (i.e., SIRIM QAS International Sdn Bhd) with either a compliance approval, which is granted to a specific model of a device which has been certified as compliant with the specified standards or technical codes, or by way of a special approval. Special approvals are only granted to equipment used exclusively by the applicant for specific purposes.

G) Access Regime

The CMA also provides for an access regime, which mandates that access be provided to designated services and facilities such as fixed and mobile network origination services and co-location services. Among others, the access regime implements:

(1) Mandatory price caps for access to designated services and facilities.

(2) Mandatory standards and requirements on CMA licensees providing access to designated services and facilities, such as requirements to ensure any access is provided on an equitable and non-discriminatory basis.

(3) The requirement for access agreements to be entered into between access providers and access seekers, and minimum requirements for such access agreements.

XIV. PERSONAL DATA PROTECTION

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The *Personal Data Protection Act 2010* came into force on 15 November 2013 and provides various safeguards to protect the interests of data subjects. It regulates the processing and use of personal data but only covers personal data that is information in respect of commercial transactions. The personal data must relate directly or indirectly to a data subject, who is identified or identifiable from the information or other information in the possession of a data user, and the data must be capable of being processed wholly or partly by means of equipment operating automatically, be recorded with the intention that it should be processed wholly or partly by such equipment or be recorded as part of or with the intention that it should form part of a relevant filing system.

The *Personal Data Protection Act 2010* imposes various obligations on a data user by way of seven data protection principles, including the notice and choice principle, the disclosure principle and the data integrity principle. It also provides for the appointment of a Personal Data Protection Commissioner to oversee compliance with its provisions. The *Personal Data Protection Act 2010* purports to safeguard personal data by requiring the data user to comply with the data protection principles and by conferring certain rights to the data subject in relation to his personal data, such as access and correction rights, as well as the right to revoke consent.

Several regulations and orders were also issued pursuant to the *Personal Data Protection Act 2010*, addressing issues pertaining to consent, standards and registration of data users.

Pursuant to the *Personal Data Protection (Class of Data Users) Order 2013*, certain classes of data users are required to register with the Personal Data Protection Commissioner; namely those involved in the following sectors: Communications, Banking & Financial institutions, Insurance, Health, Tourism & Hospitalities, Transportation, Education, Direct Selling, Services, Real Estate and Utilities. Subsequently, in late 2016, Moneylenders and Pawnbrokers were also added to the list of data users required to be registered. There are fees chargeable for registration and renewal. Failure to register is an offence under the *Personal Data Protection Act 2010.*

Data user forums were formed for specific industries and each data user forum was directed by the Personal Data Protection Commissioner to develop its own codes of practice for adherence by data users in the respective sectors. The following enforceable codes of practice have been registered: Code of Practice for the Utilities (Electric) Sector, Code of Practice for the

Insurance/Takaful Industry, Code of Practice for the Banking and Financial Sector, Code of Practice for the Transportation Sector (Aviation), and Code of Practice for the Communications Sector.

At the end of 2015, the Personal Data Protection Standards were introduced. The Standards spell out detailed measures and requirements pertaining to data security, data retention and data integrity for implementation by data users. Compliance with the Standards is mandatory for all parties who process or handle personal data.

Several proposal and consultation papers have also been issued from time to time by the Personal Data Protection Commissioner in relation to matters such as the management of employee data, consent requirements, direct marketing, management of CCTV, proposed whitelisted countries in respect of transfers of data out of Malaysia as well as data breach notification requirements. In 2020, a proposal paper was issued to seek the views and comments of the public, as part of an ongoing review of the *Personal Data Protection Act 2010*. All the consultation papers remain at consultation stage and have not matured into operative law. It has been reported that amendments to the PDPA are in the pipeline, but the proposed changes have not yet been made publicly available.

XV. RENEWABLE ENERGY

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Renewable energy ("**RE**") has been identified in the Malaysia National Energy Transition Roadmap ("**NETR**") as one of the key levers that will facilitate the nation's transition to a clean energy, low-carbon economy. The Malaysian Government targets to achieve 70% installed capacity of RE in the country's power mix by 2050.

The Energy Commission of Malaysia ("Energy Commission") is the regulator of the electricity industry for Peninsular Malaysia. For the States of Sarawak and Sabah, electricity supply is regulated at State-level by the Ministry of Utility and Telecommunication Sarawak and Energy Commission of Sabah respectively.

A) Renewable Energy Act 2011

The *Renewable Energy Act 2011* ("RE Act") was introduced in order to encourage the development of RE and to reduce Malaysia's national dependency on fossil fuels power generation, via the implementation of the feed-in tariff ("FiT") programme . The RE Act is presently applicable throughout Malaysia, except for the State of Sarawak. A Bill has also been passed for the amendment of the RE Act, with the intent of allowing the State Government of Sabah to have regulatory authority over electricity supply in the state.

B) RE Programmes

There are a number of RE programmes that have been implemented in Malaysia, with the intent of encouraging the development of the RE industry as well as the generation and consumption of clean power. Given that solar energy is the primary RE source, most of these programmes are designed for the utilisation of the same. It is to be noted that the NETR has identified solar as the main driving force towards achieving the country's target of 70% installed RE capacity by 2040, and there are key initiatives in the pipeline to accelerate the growth and deployment of utility-scale solar.

The NETR has also identified hydrogen as being a future alternative source of energy. While there are several large-scale hydrogen projects underway, particularly in the State of Sarawak, this is still in its infancy due to the technical and commercial challenges of such projects and the lack of a specific regulatory framework for hydrogen in Malaysia.

(i) FiT Programme

The FiT programme under the RE Act allows individuals or companies to sell electricity generated from RE sources to distribution licensees at a fixed premium price for a period of 21 years. The four RE sources eligible for FiT are biogas, biomass, small hydropower, and solar photovoltaic.

The Sustainable Energy Development Authority Malaysia ("SEDA") is a statutory body established under the *Sustainable Energy Development Authority Act 2011* and is tasked with administering and managing the implementation of the FiT programme.

To be eligible to participate in the FiT programme, there must be a proposal by the applicant to generate renewable energy from a renewable energy installation with an installed capacity of not more than 30MW, or such higher installed capacity as may be approved by the Minister. As stipulated under Rule 3 of the *Renewable Energy (Feed-In Approval and Feed-In Tariff Rate) Rules 2011*, a corporate body will only be eligible to apply for a FiT approval if it satisfies the following criteria:

(a) the company must be incorporated in Malaysia; and

(b) the foreign equity participation in the corporate body must not exceed 49 %.

Note that if the company holds an existing license under the *Electricity Supply Act 1990* ("ESA"), or if it is an associate of an existing ESA license holder, then that corporate body is prohibited from making any application for a feed-in approval relating to a renewable energy installation proposed to be connected to the electricity distribution network of the ESA license holder.

Further, it should be noted that the foreign equity cap of 49% applies during the application and throughout the entire validity period of the FiT approval. Any change in the particulars of a FiT approval holder, including its shareholding, is subject to SEDA's prior consent.

There are other prerequisites for SEDA approval, but these differ depending on the RE resource and the output of the renewable energy installation. SEDA has issued guidelines and determinations detailing the tests, application processes, and checks to be conducted and technical requirements for each type of renewable energy installation. This includes the requirement that corporate applicants must have a minimum paid-up capital of MYR 20,000 or equivalent if they intend to develop renewable energy installations with a rated kWp or net export capacity of up to 72kWp or 72kW. If the installation's net export capacity exceeds 72kWp, the minimum paid-up capital required is MYR 50,000 or its equivalent.

FiT approvals are also subject to quotas announced by SEDA on its official website. Successful applications will be subject to balloting until the quota is fully allocated.

(ii) Net Energy Metering ("NEM")

The NEM programme was introduced in 2016 as an incentive to boost the uptake of solar adoption in Malaysia by employing a mechanism which allows excess solar photovoltaic (PV) generated energy to be exported back to the grid on a "one-on-one" offset basis. The mechanism under the NEM programme operates such that the energy produced from the solar PV systems will be utilised by the consumer first, and any excess will be exported to the grid and sold to Tenaga Nasional Berhad ("TNB"), the electricity utility company in Peninsular Malaysia. At present, the NEM programme has only been implemented in Peninsular Malaysia.

In order for an applicant to participate in NEM, an applicant must be a registered customer of TNB. Foreign entities also eligible to apply provided they comply with the aforesaid registration requirement. It is worth noting that the RE resource for generation of electricity must be solar energy. Other RE resources may be allowed on a case by case basis, at the discretion of the Energy Commission.

Upon obtaining a NEM approval, the consumer is required to enter into a separate NEM contract with TNB for the export and sale of the excess electricity. The consumer will also need to obtain a generating license from the Energy Commission if the solar PV system is above 24kWp (single phase system) or above 72kWp (three-phase system).

The NEM programme allows for third party financing and ownership and solar leasing models, which is an avenue for increased participation by consumers.

The current NEM programme is NEM 3.0, which has a total quota of 1,050MW. Applications for quota may be made to SEDA, the implementing agency, until 31 December 2023 or until the quota has been fully taken up. The three main initiatives under the NEM 3.0 programme are as follows:

(a) NEM Rakyat Programme

This program is available for domestic consumers. A total capacity quota of 150MW has been allocated for NEM Rakyat.

(b) NEM GoMEn (Government Ministries and Entities) Program

This program is aimed at reducing the energy bills of government buildings and offices. A total capacity quota of 100MW has been allocated for NEM GoMEn.

(c) NEM NOVA (Net Offset Virtual Aggregation) Program

This program is available to commercial and industrial consumers. Participants in NEM NOVA have the option of virtual aggregation, whereby excess energy may be exported to a maximum of three designated premises.

(iii) Large Scale Solar ("LSS")

As part of its efforts to push the country in the direction of renewable energy, the Malaysian Government has commissioned number of LSS in the country. To date, the Energy Commission has conducted four competitive bidding exercises for the development of LSS plants in Peninsular Malaysia and Sabah. The export capacity offered by the Energy Commission ranges between 1MWac to 100MWac.

Under the LSS programme, the plant will sell its energy to the electricity utility company, namely TNB or to Sabah Electricity Sdn. Bhd. (as the case may be) pursuant to a power purchase agreement. The form of power purchase agreement is prepared and provided by the relevant electricity utility company.

The LSS programme requires applicants to pass the prescribed minimum Malaysian equity interest thresholds in order to be eligible for participation. The thresholds for the LSS programme are as follows:

(a) At least 51% of the equity of the project company is held by Malaysians; or

(b) The equity of the project company to be established in the event of an award will comprise at least one Malaysian shareholder, and an overall minimum Malaysian equity participation of 51%.

It is pertinent to note that there is a strict moratorium of five years with respect to changes in the shareholding of the project company.

In respect of foreign investor participation in LSS projects, they differ according to the specific tender requirements issued. For the LSS 1 to LSS 3 competitive bidding exercises, foreign equity was capped at 49%. As for the fourth LSS competitive bidding exercise, known as LSS@MEnTARI, the project company must be a 100% locally owned and incorporated company, or a company listed on Bursa Malaysia (the Malaysia Stock Exchange) which has at least 75% local shareholding.

It should be noted that for LSS4, all contractors engaged for the construction of the project must be registered as a 'local contractor' with the Construction Industry Development Board of Malaysia. In order to qualify for registration as a 'local contractor', a minimum of 70% local shareholding is required and this hampers the participation of foreign contractors in the LSS projects.

Pursuant to the *ESA* (Section 9), a generating license must be obtained from the Energy Commission in order to generate electricity under the LSS programme.

(iv) <u>Green Electricity Tariff ("GET")</u>

Consumers have the option of purchasing electricity generated from RE resources by participating in the GET programme. Participating consumers will be required to pay a premium tariff rate of MYR 0.218 / kWh in addition to what they pay TNB for their electricity consumption at the gazetted tariff rate.

The GET programme allows consumers to reduce their carbon footprint via the issuance of renewable energy certificates (RECs) evidencing their consumption of clean electricity.

All customers of TNB are eligible to participate in the GET programme and will be required to enter into a Green Electricity Tariff Agreement with TNB. Consumers will subscribe for capacity, which is in the form of 100kWh blocks for residential consumers and 1,000 kWh blocks for non-residential consumers. A total quota of 6,600 gigawatt-hour has been allocated for subscription under the GET programme.

(v) Carbon Capture, Utilisation and Storage ("**CCUS**")

As part of the Malaysian government's commitment towards transitioning to the production and consumption of cleaner energy, Malaysia has implemented the National Energy Policy 2022- 2040 ("NEP") which details the government's priorities for the energy sector for the next twenty years. The NEP covers both renewable and non-renewable sources across all sectors of the economy aiming to establish low carbon by 2040 following the Low Carbon Nation Aspiration 2040 initiative.

In line with the NEP, PETRONAS implemented the Pathway to Net Zero Carbon Emissions 2050 initiative which is aimed at achieving net zero carbon emissions by 2050 through reducing operational greenhouse gas emissions by implementing decarbonisation activities such as carbon capture and storage. As part of their efforts on developing solutions, Petronas has established a centralised Carbon Management Division to accelerate their carbon capture and storage and decarbonisation efforts across its operations.

There is currently no single comprehensive legal framework or policy for CCUS activities in Malaysia and given so, existing federal and/or state legislation will govern activities carried out within the CCUS chain (i.e. capture, transport, storage/utilisation). CCUS activities will also be governed by any contracts entered in relation thereto, particularly on aspects such as ownership, risk and liability, and the law of tort.

The Malaysian Budget 2023 introduced several tax incentives for participants in carbon capture and storage activities and/or projects. For instances, companies undertaking carbon capture and storage in-house activity will be eligible for the following:

- Investment Tax Allowance ("ITA") of 100% of qualifying capital expenditure for a period of 10 years. The allowance can be set-off against up to 100% of business statutory income.
- Full import duty and sales tax exemption on equipment used for carbon capture and storage technology commencing on 1 January 2023 until 31 December 2027.
- Tax deduction for allowable pre-commencement expenses within 5 years from the date of commencement of operation.

Companies undertaking carbon capture and storage services will be eligible for the following:

- ITA of 100% of qualifying capital expenditure for a period of 10 years. The allowance can be set-off against up to 100% of statutory income; or
- Tax exemption of 70% on statutory income for a period of 10 years; and
- Full import duty and sales tax exemption on equipment used for carbon

capture and storage technology starting 1 January 2023 until 31 December 2027.

Regardless of the absence presently of a single comprehensive CCUS legal framework or policy in Malaysia, it is possible for a foreign investor to progress CCS projects/activities in Malaysia as evident from the two ongoing CCS projects in Malaysia involving foreign collaborators/leading players, namely the CCS projects in Kasawari (headed by PETRONAS) and Lang Lebah (headed by PTT Exploration and Production Public Company Limited (a national petroleum exploration and production company)).

Given the recent development on CCUS, we shall look forward in expecting an official mandate from the Government of Malaysia for a comprehensive CCUS framework.

(vi) Corporate Green Power Programme ("CGPP")

The Energy Commission launched the CGPP in late 2022, which introduced the model of virtual / synthetic power purchase agreements in Malaysia. A total quota of 800MW has been allocated for the CGPP. Applications for participation in the CGPP may be made until 31 December 2023 or until the quota has been fully taken up.

It should be noted that the CGPP currently only allows for the use of solar energy as the RE resource. However, the Malaysian Government has announced plans to allow the use of other RE resources in the future.

A party may participate in the CGPP as either a solar power producer ("SPP") or a corporate consumer.

(a) *SPP*

The SPP will undertake the development, construction and operation of a new solar power plant with a maximum export capacity of 30MWac. The solar power plant must be completed by 31 December 2025. Further, the SPP has to register for participation in the New Enhanced Dispatch Arrangement ("NEDA"), which allows power generator to bid their variable costs in selling energy to TNB.

It is a requirement for the SPP to be a local company with a minimum 51% equity interest. In the event the SPP is a consortium, the consortium must have a minimum 51% Malaysian equity interest and at least one local company.

A restriction on any change of shareholders and shareholding structure for a period of five years from the date on which the solar power plant commences commercial operations is imposed on the SPP.

(b) *Corporate Consumer*

In order to participate in the CGPP as a corporate consumer, the corporate consumer must be a company established and operating in Peninsular Malaysia and in the manufacturing or services industries.

The SPP and the corporate consumer will enter into a virtual/synthetic power purchase agreement, pursuant to which the corporate consumer will purchase energy generated by the SPP at a fixed price or pricing structure. Such agreed pricing may take into account the value of environmental attributes such as RECs.

Separately, the SPP will enter into a NEDA agreement with TNB. Pursuant to the NEDA agreement, the SPP will deliver and sell energy to TNB and receive payments for the same based on the actual system marginal price (market price) at the applicable time.

The CGPP allows both the SPP and corporate consumer to hedge electricity prices, whereby either the SPP pays the corporate consumer, or the corporate consumer pays the SPP, depending on the difference between the actual system marginal price received by the SPP and the agreed price under the virtual/synthetic power purchase agreement.

C) RE Tax Incentives

The generation of energy using RE resources is a promoted activity under the *Promotion of Investments Act 1986*. Companies generating energy from RE resources are eligible for the following tax incentives:

(i) *Pioneer Status*

A company involved in a promoted activity is eligible to be granted Pioneer Status. By acquiring Pioneer Status, there will be a total or partial income tax exemption for a period of five years.

(ii) *Green Investment Tax Allowance ("GITA")*

Companies incorporated in Malaysia may apply for an investment tax allowance with respect to:

- *The purchase of qualifying green technology assets that are listed under the MyHIJAU Directory.*

  An investment tax allowance of 100% of qualifying capital expenditure incurred on such assets is given and can be offset against 70% of statutory income in the year of assessment. Unutilised allowances can be carried forward until fully utilised.

- *The undertaking of qualifying green technology projects whether for business purposes or for self-consumption.*

  An investment tax allowance of 100% of qualifying capital expenditure incurred on a green technology project is given and can be offset against 70% of statutory income in the year of assessment. Unutilised allowances can be carried forward until fully utilised.

It is pertinent to note that solar projects under the FiT programme are not eligible for this incentive.

(iii) *Green Income Tax Exemption – Services*

An income tax exemption is granted to qualifying companies that provide green technology services that have been verified by the Malaysian Green Technology and Climate Change Corporation and are listed under the MyHIJAU directory. The exemption is 70% on statutory income for qualifying services from the year where the first invoice is issued after application for the exemption is made.

(iv) *Green Income Tax Exemption – Solar Leasing*

Separate from the income tax exemption granted in relation to green technology services as described above, an income tax exemption is granted to qualifying companies providing solar leasing services that have been verified by SEDA and are listed under the Registered Solar PV (RPVI) directory.

The exemption is 70% on statutory income for solar leasing activities for a period of up to 5 years of assessment (for minimum installed capacity of 3MW up to 10MW) and for a period of 10 years of assessment (for minimum installed above 10MW and up to 30MW).

XVI. COMPETITION ACT 2010

Key Contact:

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A) Competition Authority

The relevant competition authority in Malaysia is the Malaysia Competition Commission ("MyCC"), which has been given wide powers of investigation and enforcement under the Malaysian Competition Commission Act 2010.

B) Restrictive Agreements and Practices

Malaysia enacted the Competition Act 2010 on 10 June 2010. The Act came into operation on 1 January 2012 and applies to any commercial activity (carried out by both local and foreign entities) within Malaysia, and outside Malaysia if it has an effect on competition in any market in Malaysia.

The Act prohibits any horizontal or vertical agreement between enterprises, insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services. In particular, the Act deems certain specified horizontal agreements (fixing prices, dividing markets, limiting production or supply, or rigging bids) as anti-competitive. Other agreements can infringe the Act if they have the effect of significantly preventing, restricting or distorting competition. The MyCC will not consider the effect of an agreement as significant if:

- The parties to the agreement are competitors in the same relevant market and have a combined market share of 20% or less.

- The parties to the agreement are not competitors and all of the parties individually have market shares of less than 25% in any relevant market.

An enterprise that is a party to an anti-competitive agreement is potentially liable for an infringement and an associated financial penalty. However, the parties may avoid liability if:

- the agreement has significant technological, efficiency or social benefits that could not have been provided absent the agreement;

- the detrimental effect of the agreement is not disproportionate to the benefits; and

- the agreement does not eliminate competition completely.

These conditions are the criteria on which the MyCC determines applications for exemptions to the anti-competitive agreements prohibition.

C) Unilateral Conduct

The Competition Act 2010 regulates unilateral conduct by enterprises that are in a dominant position in any market for goods or services. Whether an enterprise is dominant in any market depends on whether it possesses "such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors". Generally, the MyCC will consider a market share above 60% of the relevant market to be indicative that an enterprise is dominant. However, the Act states that the market share of the enterprise is not conclusive as to whether that enterprise occupies a dominant position in that particular market. Under section 10(2) of the Competition Act 2010, conduct that may amount to an abuse includes:

- Imposing unfair purchase or selling price or other unfair trading conditions on any supplier or customer;

- Limiting or controlling production, market outlets or market access, technical or technological development, or investment;

- Boycotts;

- Discrimination;

- Tying and bundling;

- Predatory behaviour towards competitors; and

- Buying up scarce resources or intermediate goods required by a competitor.

D) Other Key Provisions

There are both civil and criminal penalties for violations of the competition laws in Malaysia. In the event that the MyCC decides that there has been an infringement of the prohibitions under the CA 2010 by an enterprise, the MyCC is empowered by the Act to issue any direction that it deems appropriate, including:

- making a cease-and-desist order against, or specifying appropriate steps required to be undertaken by, the relevant enterprise(s) engaged in the infringing conduct; and

- imposing a financial penalty of up to 10% of the worldwide turnover of an enterprise for any infringement of the prohibitions over the period during which the infringement occurred.

The Act contains leniency provisions that provide for up to a 100 per cent reduction in applicable fines for enterprises that report their involvement in any of the agreements which are deemed to be anti-competitive (see above) to the MyCC and cooperate with the investigation. The MyCC is also empowered to accept voluntary undertakings from parties to cease infringements. A decision by the MyCC is subject to appeal to the Competition Appeal Tribunal ("**CAT**"), the decision of which is final and binding. However, an aggrieved party may still file for a judicial review of the CAT decision in the high court and following this, the high court's decision can be subsequently appealed to the Court of Appeal and finally to the Federal Court, which is the apex court in Malaysia.

The Act also stipulates that it is an offence to interfere with, or obstruct, the MyCC's investigation into any suspected infringement of the prohibitions. Offences include:

- The destruction and non-disclosure of documents and information;

- Reprisals against whistle blowers; and

- Tipping-off of any impending MyCC raids.

Upon conviction, a company can be fined up to MYR5 million for its first offence and up to MYR10 million for its second and subsequent offence. The CEOs, COOs (chief operating officers), directors, officers, managers and secretaries of the convicted company may also be criminally liable and may be fined up to MYR2 million and/or imprisoned for up to five years.

Excluded from the Act are activities regulated by the Malaysian Communications and Multimedia Commission under the Communications and Multimedia Act 1998, the Energy Commission under the Energy Commission Act 2001 and the Malaysian Aviation Commission under the Malaysian Aviation Commission Act 2015, activities directly or indirectly in the exercise of a government authority, activity based on the principle of solidarity, and any purchase of goods or services not for the purpose of offering goods and services as part of an economic activity.

The Competition (Amendment of First Schedule) Order 2013, which came into operation on 1 January 2014, further excludes any activities regulated under the Petroleum Development Act 1974 and the Petroleum Regulations 1974 directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia.

XVII. DISPUTE RESOLUTION

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A) Malaysian Court Structure

The Malaysian judicial system is composed of five tiers of Courts. The hierarchy of the courts begin from the Magistrates' Court, moving on to the Sessions Court, High Court, Court of Appeal, and lastly with the Federal Court as our apex court.

The Magistrates' Court and the Sessions Court are the Subordinate Courts. The jurisdiction and powers of the Subordinate Courts are stipulated in the Subordinates Courts Act 1948.

The High Court (consisting of the High Court of Malaya, and the High Courts of Sabah and Sarawak), the Court of Appeal and Federal Court are the Superior Courts. The Superior Courts derive their powers and jurisdiction from the Courts of Judicature Act 1964.

(i) Magistrates' Court

For civil matters, the First Class Magistrates Courts have jurisdiction to try all actions and suits where the amount of dispute or value of the subject matter does not exceed RM100,000.00. On the other hand, the Second Class Magistrates Courts only have jurisdiction to try original actions or suits where the plaintiff seeks to recover a debt or liquidated monetary demand not exceeding RM10,000.00.

For criminal matters, the First Class Magistrates Courts have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed 10 years imprisonment or which are punishable with fine only not exceeding RM 100,000.00. Furthermore, the two offences of robbery (pursuant to section 392 of the Penal Code), and lurking, house-trespass or housebreaking by night in order to commit an offence punishable with imprisonment (pursuant to Section 457 of the Penal Code) are also specifically stated to be under the jurisdiction of the First Class Magistrates Courts. On the other hand, the Second Class Magistrates Courts only have the jurisdiction to try offences for which the maximum term of imprisonment provided by law does not exceed 12 months' imprisonment or which are punishable with fine only.

(ii) Sessions Court

For civil matters, the Sessions Courts have jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant, and distress. The Sessions Court also has the jurisdiction to try all actions where the amount in dispute or the value of the subject matter does not exceed RM1million.

For criminal matters, the Sessions Courts have jurisdiction to try all offences other than offences punishable by death.

(iii) High Court

Proceedings in the High Court are heard and disposed of by a single judge.

The High Courts have unlimited original jurisdiction to try all actions and suits for any criminal and civil matters and may pass any sentence and award provided for under statute.

The High Courts also exercise supervisory, revisionary, and appellate jurisdiction. For instance, the High Court may decide on Constitutional questions or hear judicial review challenges against a public authority's decision. The High Court would also hear appeals from the Subordinate Courts. However, there can be no appeal to the High Court where the decision of the Subordinate Court involves a civil action where the amount in dispute or value of the subject matter is RM10,000 or less, except on a question of law. The only exception to this is where the appeal is against a decision of a Subordinate Court in any proceedings relating to the maintenance of wives or children wherein the appeal can be heard by the High Court regardless of the amount involved.

(iv) Court of Appeal

Proceedings in the Court of Appeal are usually heard and disposed of by a panel of three judges.

(j) *Civil Appeals*

The Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order arising from any High Court in the exercise of its original jurisdiction or of its appellate jurisdiction except in any of the following cases: -

- Where the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000.00, unless the leave of the Court of Appeal is first obtained;
- Where the judgment or order is made by consent of parties;
- Where the judgment or order relates to costs only, unless the leave of the Court of Appeal is first obtained;
- Where, the judgment or order of the High Court, is expressly declared by statute to be final.

The notice of appeal must be filed with the Registrar of the Court from which the decision appealed against was given within 30 days of the date of judgment or order appealed against.

(k) *Criminal Appeals*

The Court of Appeal has jurisdiction to hear all appeals against any decision made by the High Court in the exercise of its original jurisdiction and in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.

For criminal appeals, the notice of appeal must be filed with the Registrar of the Court from which decision appealed against was given within 14 days after the date of decision.

(v) Federal Court

(a) *Civil Appeals*

The Federal Court is the apex court in Malaysia. Save where otherwise expressly provided for under the law, the appeal to the Federal Court against a decision of the Court of Appeal is a two-tiered process.

First, one will have to seek leave to appeal from the Federal Court within one month from the date on which the decision appeal against was given or within such further time as may be allowed by the Court. A panel of three judges will usually hear the application for leave to appeal. The Federal Court will grant leave to appeal if the appeal satisfies any of the statutory conditions of appeal set out below: -

- The appeal is from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage; and/or

- The appeal is from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to any such provision.

In the event leave is granted by the Federal Court, the appeal will then be heard on its merits. Statistically, only approximately 20% of applications for leave to appeal are allowed.

The appellant will then have to file the notice of appeal within 14 days from the date that leave to appeal was granted. At this stage, the appeal will usually be heard and disposed of before a panel of three judges or such greater uneven number of judges as the Chief Justice may in any particular case determine. The Federal Court has empanelled a panel of nine judges in recent times for hearings involving landmark/constitutional matters.

Where leave to appeal to the Federal Court is not required, the notice of appeal shall be filed within 30 days from the date on which the decision appealed against was given.

(b) *Criminal Appeals*

The Federal Court has jurisdiction to hear and determine any criminal appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction. The notice of appeal shall be filed within 14 days of the decision of the Court of Appeal at the Registry of the Court of Appeal.

B) Rules and Key Legislation in Civil Proceedings

(i) Rules of Court 2012

The Rules of Court 2012 ("Rules of Court") is applicable in all proceedings before the Magistrates' Courts, the Sessions Courts, and the High Courts. The Rules of Court are a procedural code which sets out the civil procedure and timelines for parties to comply with when taking part in court proceedings.

The Rules of Court also provide for modes to enforce judgments and/or orders granted by the Subordinate and Superior Courts. For instance, enforcement of judgments for payment of money can be done by way of garnishee proceedings, writ of seizure of sale, charging order, appointment of a receiver or an order of committal. On the other hand, enforcement of judgments for possession of immovable property can be effected by a writ of possession or an order of committal, and enforcement of judgment for delivery of movable property can be done by a writ of delivery or an order of committal.

In administering the Rules of Court, the Court shall have regard to the overriding interest of justice.

(ii) <u>Rules of The Court of Appeal 1994</u>

The Rules of Court of Appeal 1994 ("Rules of The Court of Appeal") are applicable to every proceeding before the Court of Appeal.

The Rules of The Court of Appeal sets out, amongst others, the procedures and timelines to be complied with by parties in proceedings before the Court of Appeal. For instance, it sets out the relevant documents to be included in the records of appeal.

Where no other provision is made by any written law or by the Rules of The Court of Appeal, the procedure and practice in the Rules of Court shall apply mutatis mutandis in the event of a lacuna.

(iii) <u>Rules of The Federal Court 1995</u>

The Rules of The Federal Court 1995 ("Rules of The Federal Court") applies to all proceedings in the Federal Court.

The Rules of The Federal Court set out, amongst others, the procedures and timelines to be complied with by parties in Federal Court proceedings. It is also interesting to note that under Rule 137 of the Rules of the Federal Court, the Federal Court has an inherent power to review any of its previous decisions to prevent injustice or to prevent an abuse of the Court process.

Similarly, where no other provision is made by any written law or by the Rules of The Federal Court, the procedure and practice in the Rules of Court shall apply mutatis mutandis.

(iv) <u>Key Legislation</u>

Other key legislation in the Malaysian legal jurisprudence include the Civil Law Act 1956, Limitation Act 1953, Government Proceedings Act 1956, Specific Relief Act 1950, Debtors Act 1957, Insolvency Act 1967 and Companies Act 2016.

C) <u>Alternative Dispute Resolution Mechanisms</u>

The Malaysian legal system recognises a number of alternative dispute resolution ("ADR") mechanisms for parties who wish to resolve their disputes without resorting to the court process. The main ADR processes in Malaysia are (1) arbitration; (2) adjudication; and (3) mediation.

(i) Arbitration in Malaysia

In 2005, Malaysia adopted the UNCITRAL Model Law on International Commercial Arbitration and enacted the Arbitration Act 2005 ("Arbitration Act"). The Arbitration Act governs all arbitral proceedings in Malaysia, both domestic and international, and sets out the law for all stages of an arbitration – including the requirements of a valid arbitration agreement, the jurisdiction of an arbitral tribunal, the conduct of arbitral proceedings, applications to set aside an arbitral award, and the enforcement of an arbitral award.

Malaysian law on arbitration recognises the central pillar of arbitration, that is party autonomy. In summary, party autonomy ensures that the choice of the parties will usually take precedence with regard to matters including, amongst others, the composition of the arbitral tribunal, the seat of the arbitration and the procedural rules governing the arbitration. It also ensures that intervention by the Malaysian courts is minimal, with their primary function being a supervisory one.

Institutional arbitrations in Malaysia are conducted under the auspices of the Asian International Arbitration Centre ("AIAC"). Parties who conduct institutional arbitrations in Malaysia may opt for the procedural rules published by the AIAC, the primary set of rules being the AIAC Arbitration Rules 2023. The AIAC Arbitration Rules 2018, which incorporate the UNCITRAL Arbitration Rules, provides a comprehensive procedural framework governing matters such as the commencement of an arbitration and the powers of the appointed arbitral tribunal. Of particular note are the provisions of the UNCITRAL Arbitration Rules which provide for the conduct of arbitral proceedings through means of telecommunications (such as video conferencing), namely the examination of witnesses. This can aid in overcoming obstacles posed by the COVID-19 pandemic (e.g., travel restrictions).

Further rules published by the AIAC include the AIAC Fast Track Arbitration Rules 2018, which provide the parties to an arbitration with options which may expedite the arbitral process, such as the ability to conduct the arbitration on a documents-only basis. Additionally, there are the AIAC i-Arbitration Rules 2023, which present a Shariah-compliant set of rules for parties who wish to resolve their disputes through arbitration.

Malaysia is also a signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention"). The New York Convention, amongst others, facilitates the enforcement of foreign arbitral awards in the Courts of signatory states. As such, valid arbitral awards obtained in Malaysia can be enforced in the Courts of other signatory states to the New York Convention. Similarly, valid arbitral awards obtained in other signatory states can be enforced by the Malaysian High Courts.

(ii) Adjudication

Adjudication allows parties to resolve disputes on an expedited basis, by referring their disputes to a third-party decision maker who can issue a temporarily binding decision. An adjudication decision is temporarily binding as it remains subject to a final determination in either litigation or arbitration. In this regard, adjudication is an attractive option for parties whose contract involves a project where speedy resolutions to disputes are necessary to ensure the continued progress of the project. As such, like in many other countries, adjudication in Malaysia is most typically used in the realm of construction contracts.

Under the Construction Industry Payment and Adjudication Act 2012 ("CIPAA"), parties to a construction contract have a statutory right to refer payment claims to adjudication. The CIPAA governs matters such as pre-adjudication procedure, the initiation of an adjudication, the appointment of an adjudicator, the conduct of an adjudication, the enforcement of an adjudication decision, and any challenges to set aside an adjudication decision. An adjudication decision is binding on the parties until and unless (1) it is set aside by the Malaysian High Court; (2) the parties agree in writing to settle the matter in dispute; or (3) the dispute is finally determined in arbitration or court. A party may enforce an adjudication decision by applying to the Malaysian High Court to enforce it as a judgment or order of the Court.

For adjudications under CIPAA, the AIAC serves as the adjudication authority in Malaysia. Its role includes the setting of competency standards and criteria of an adjudicator, the determination of standard terms of appointment of an adjudicator and the fees of an adjudicator, and the provision of general administrative support.

(iii) Mediation

Parties who wish to resolve their disputes without the involvement of a third-party decision maker (as opposed to the case in litigation, arbitration and adjudication) may do so through mediation. In summary, mediation allows the parties to employ a neutral third party (i.e., a mediator) who can facilitate discussions and negotiations between the parties with the aim of resolving their disputes by way of agreement.

In Malaysia, mediation is given formal recognition and regulation by the Mediation Act 2012 ("Mediation Act"). The Mediation Act governs matters such as the commencement of mediation, the requirements for a valid mediation agreement, the appointment of a mediator, the mediation process, and the enforcement of a settlement agreement obtained through mediation. Importantly, the Mediation Act also contains provisions on confidentiality and privilege, which are key attractive features of the mediation process.

Settlement agreements obtained through mediation are binding on the parties. They may be enforced as a contractual agreement between the parties. Furthermore, if court proceedings have been commenced, a settlement agreement obtained through mediation may be recorded before the Court as a consent judgment or judgment of the Court, and thus may be enforced thereafter.

Aside from private mediation, parties in litigation may elect to mediate their disputes, if suggested to do so by the presiding Judge, at the pre-trial case management stage. Upon an agreement of the parties, the Judge presiding over their dispute may refer the parties to another Judge who will sit as mediator. The process and guidelines of judge-led mediation are set out in Practice Direction No. 4 of 2016 issued by the Chief Justice of Malaysia. The mediation process would be carried out on a without prejudice bass and will not infringe upon the interests and rights of the parties in litigation in the event the mediation is unsuccessful.

Mediations may also be administered through the AIAC, where the AIAC Mediation Rules 2018 may be employed. Additionally, mediations may be administered through the Malaysian Mediation Centre ("MMC") in accordance with the MMC Rules. The MMC has a list of Certified Mediators registered with the Centre.

Malaysia is a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention"). Similar to the effect of the New York Convention in arbitration, the Singapore Convention strives to facilitate the enforcement of settlement agreements obtained through mediation among signatory states.

D) Enforcement of Foreign Judgments

(i) The Reciprocal Enforcement of Judgments Act 1958

Under the Reciprocal Enforcement of Judgments Act 1958 ("REJA"), certain judgments of foreign courts may be registered and enforced in Malaysia. The list of applicable countries is contained in the First Schedule to the REJA. It includes the United Kingdom, Hong Kong, Singapore, New Zealand, Sri Lanka, India, and Brunei Darussalam ("Reciprocating Countries").

The procedure governing applications to register a foreign judgment in Malaysia under REJA is further set out in Order 67 of the Rules of Court 2012.

(a) *Requirements to Enforce a Foreign Judgment*

Under REJA, only a judgment of the superior courts of the Reciprocating Countries may be enforced in Malaysia, provided that it first satisfies the following requirements:

- The judgment is final and conclusive as between parties thereto (section 3(3)(a) REJA);
- Under the judgment, a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty (section 3(3)(b) REJA); and
- The judgment is registered in Malaysia in accordance with the procedure set out in section 4 REJA (the key procedural steps are detailed in Part D.2. below).

(b) *The Registration of a Foreign Judgment*

A party who wishes to enforce a foreign judgment under REJA must first apply to the High Court to register the judgment. The ex-parte application must be made within six years from the date of the judgment and the judgment must not have been satisfied in full by the judgment debtor. It is a mechanistic process. The application must also exhibit a duly verified/certified/authenticate copy of the foreign judgment together with a certified translation if the foreign judgment is not in the English language.

Importantly, a judgment, once registered, has the same effect as if it were a judgment originally granted by High Court. In summary, this provides the following:

- Enforcement/Execution proceedings may be taken on a registered judgment;
- The sum of the registered judgment shall carry interest;
- The registering court shall have the same powers to levy execution on a registered judgment.

Once the registration order is pronounced, a sealed copy of the said order must be served personally on the judgment debtor together with a notice of registration. The notice of registration must consist of the following:-

- The particulars of the judgment, and the registration order;

- The name and address of the judgment creditor or his solicitor on whom any application to set aside the registration order may be served;

- The right of the judgment debtor to set aside; and

- The period within which such application to set aside the registration may be made (usually 14 to 21 days).

(c) *Applications to Set Aside Registered Judgments*

The party against whom a registered judgment may be enforced may apply to set aside the registered judgment within the time period stated in the registered judgment. Grounds to set aside a registered judgment include, amongst others, the following:

- The judgment is not applicable under REJA or was registered in contravention of the requirements under REJA;

- The original court had no jurisdiction in the circumstances of the case;

- The defendant in the original proceedings did not receive notice of the said proceedings in sufficient time to enable them to defend the proceedings and thus did not appear;

- The foreign judgment was obtained by fraud;

- The enforcement of the foreign judgment would be contrary to public policy in Malaysia; or

- The rights under the foreign judgment are not vested in the person by whom the application for registration was made.

(ii) <u>Common Law Enforcement of Foreign Judgment</u>

Where the judgment originates from a non-Reciprocating Country and/or is a non-monetary judgment, common law provides for the recognition and enforcement of the foreign judgment via the initiation of a fresh suit in court to enforce such judgment.

The requirements for an action on a foreign judgment at common law is similar to those under REJA, with the only substantive difference being that it need not be a judgment of a superior court.

In recognising and enforcing a foreign judgment under common law, an action on the judgment must first be commenced by way of a writ action or an originating summons (together with an affidavit in support). Thereafter, the plaintiff may apply for a summary judgment, in reliance on the foreign judgment, or seek an order in terms of its application at the hearing of the originating summons.

SKRINE

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