GUIDE TO DOING BUSINESS IN MALAYSIA

January 2019
## Ministries, Regulatory Bodies and Agencies

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Name</th>
<th>Website</th>
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<tbody>
<tr>
<td>AIAC</td>
<td>Asian International Arbitration Centre</td>
<td><a href="https://www.aiac.world/">https://www.aiac.world/</a></td>
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<tr>
<td>Bursa Malaysia</td>
<td>Bursa Malaysia Berhad</td>
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<tr>
<td>CCM/SSM</td>
<td>Companies Commission of Malaysia/Suruhanjaya Syarikat Malaysia</td>
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<td>Customs</td>
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<td>DOE</td>
<td>Department of Environment</td>
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<td>ECM</td>
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<td><a href="https://www.st.gov.my/">https://www.st.gov.my/</a></td>
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<tr>
<td>FELDA</td>
<td>Federal Land Development Authority</td>
<td><a href="http://www.felda.net.my/">http://www.felda.net.my/</a></td>
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<td>IRB</td>
<td>Inland Revenue Board</td>
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<td>MaGiC</td>
<td>Malaysian Global Innovation &amp; Creativity Centre</td>
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<td>Acronym</td>
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<tr>
<td>Acronym</td>
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1. Introduction

Malaysia is strategically located in the heart of South East Asia and offers investors a dynamic and vibrant business environment with ideal prerequisites for growth and profits. Malaysia is a federal constitutional monarchy comprising of thirteen states and three federal territories in both Peninsular Malaysia and East Malaysia. Kuala Lumpur is the Federal Capital of Malaysia whereas Putrajaya is the administrative capital where the seat of government is situated.

Geography

With its land area totalling 329,847 sq. km, Malaysia consists of Peninsular Malaysia and East Malaysia (the states of Sabah and Sarawak) which are separated by the South China Sea. Peninsular Malaysia shares its border with Thailand and sits north of Singapore while East Malaysia is located on the island of Borneo (the world’s third largest island) and shares its border with Brunei and the Indonesian territory of Kalimantan. The country enjoys a tropical climate with hot and humid weather all year round. Annual southwest and northeast monsoons also occur from April to September and November to February respectively.

Demographics

Malaysia has a population of approximately 32.4 million consisting of different ethnic groups with the dominant racial group being the Malays, Chinese and Indian. Ethnic Malays comprise some 69% of the population; Chinese constitute around 23%; Indians constitute approximately 7%; while Eurasians and indigenous peoples make up the rest of the population. In terms of geographical distribution, 26 million inhabit Peninsular Malaysia where the population is mostly concentrated on the west coast. East Malaysia, on the other hand is home to 5 million people.

Islam is the official religion of Malaysia with 60% of Malaysians practicing the religion, but other religions such as Buddhism, Christianity, Hinduism and others are freely practiced.

Language

The official language of Malaysia is Bahasa Malaysia, but English is widely used and is the preferred language when doing business. Many other languages are also widely spoken in Malaysia, such as Cantonese, Mandarin, Tamil and other tribal languages.
Introduction

Currency

Malaysian Ringgit (MYR or RM).

Government

Federal Parliamentary democracy with a constitutional monarch.

Economic Profile

Malaysia is considered one of the most developed economies in South East Asia, with its GDP per capita at the national level rising from RM38,915 to RM42,228 in 2017. Six states surpassed the national level, led by W.P. Kuala Lumpur (RM111,321), followed by W.P. Labuan (RM65,949), Pulau Pinang (RM49,873), Sarawak (RM49,327), Selangor (RM48,091) and Melaka (RM46,015). The growth in these states was primarily driven by the services, manufacturing and construction sectors. Malaysia is an economy that has progressed from an economy dependent on agriculture and primary commodities to a manufacturing based, and now is transforming into a service and knowledge driven economy.

All of Malaysia’s development plans are prepared by the EPU and development planning in Malaysia canvases short to long term plans, all of which aim to set a comprehensive strategy to achieve the targets under the national development agenda, which is for Malaysia to achieve high income status by the year 2020 (Vision 2020).

The Eleventh Malaysia Plan, 2016-2020, is the final five year plan in the journey towards realising Vision 2020. After the historic 14th General Election on 9 May 2018, the new Federal Government has set out in its Mid-Term Review of the Eleventh Malaysia Plain, new priorities and emphases in building the nation, with a view to balancing economic growth objectives and fiscal consolidation initiatives to ensure continuous and inclusive development without impairing growth prospects.

High-impact socioeconomic development projects will be continued to improve the wellbeing of the Malaysian people. In addition, the existing development gaps between states will be narrowed by giving greater emphasis to the less developed states, particularly Sabah, Sarawak, Kelantan, Terengganu, Kedah and Perlis, to ensure a more balanced regional growth. More measures will also be undertaken to raise the income and purchasing power of the local population, especially the bottom 40% of the household income group (B40).

Economic Activities

In terms of magnitude of the various economic activities, the service sector is the largest contributor to the GDP of Malaysia. Major subsectors within services include finance, real estate and business services; wholesale and retail trade; transport and communication. The government plans to develop the services sector through the Services Sector Blueprint as well as efforts in promoting Digital Free Trade Zone and productivity improvements under the Malaysia Productivity Blueprint.

The manufacturing sector is the second largest contributor to the GDP of Malaysia. Other contributing sectors to the GDP include construction, mining and quarrying.

Malaysia’s GDP Growth by Sector

<table>
<thead>
<tr>
<th>Sector</th>
<th>Estimated Share 2018 at Constant 2010 Prices (%)</th>
<th>2017</th>
<th>2018 (estimate)</th>
<th>2019 (forecast)</th>
</tr>
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<tbody>
<tr>
<td>Services</td>
<td>55.3</td>
<td>6.2</td>
<td>6.3</td>
<td>5.9</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>23.0</td>
<td>6.0</td>
<td>4.9</td>
<td>4.7</td>
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<tr>
<td>Mining</td>
<td>8.0</td>
<td>1.0</td>
<td>-0.6</td>
<td>0.7</td>
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<tr>
<td>Agriculture</td>
<td>7.8</td>
<td>7.2</td>
<td>-0.2</td>
<td>3.1</td>
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<tr>
<td>Construction</td>
<td>4.5</td>
<td>6.7</td>
<td>4.5</td>
<td>4.7</td>
</tr>
<tr>
<td>GDP</td>
<td>100.0</td>
<td>5.9</td>
<td>4.8</td>
<td>4.9</td>
</tr>
</tbody>
</table>

*Source: Department of Statistics and Ministry of Finance, Malaysia.
The services sector grew 6.5% (year-on-year) during the first half of 2018 led by wholesale and retail trade, finance and insurance, information and communication, as well as F&B and accommodation subsectors.

The manufacturing sector increased 5.1% (year-on-year) during the first half of 2018 and is expected to grow 4.9% over 2018, largely driven by export-oriented industries.

International Trade

**Free Trade Agreements**

Malaysia’s trade policy is basically in favour of free trade, with some protection for selected industries. The government is seeking the progressive removal of many of the existing trade barriers, which amongst others, involves taking part in the ASEAN Free Trade Area (“AFTA”) and signing free trade agreements (“FTAs”).

**ASEAN Free Trade Area**

In 2003, the AFTA integrated ASEAN into a single market and, with its high population of 550 million with a combined GDP of more than USD 838.2 billion, created a market that rivals regional markets in China. The AFTA removes tariffs for nearly 8,000 items for import and exports among the ASEAN member states, which in turn would result in reductions in product prices. As a result, Malaysia is an attractive investment location as well as a strategic gateway to the ASEAN market. The formation of the ASEAN Community in 2015 is also seen as a move towards a three-pillared community to strengthen regional integration comprising an ASEAN Political and Security Community; an ASEAN Economic Community; and an ASEAN Socio-Cultural Community.

**Trans-Pacific Partnership Agreement / Comprehensive and Progressive Agreement for Trans-Pacific Partnership**

Aside from the AFTA, Malaysia has also signed several regional and bilateral FTAs and several more are still at the negotiation stage. FTAs serve mainly to reduce tariff rates payable in respect of goods originating from countries which have an FTA with Malaysia. Conversely, export goods manufactured in Malaysia can also benefit from lower tariff rates in the country of import which has an FTA with Malaysia. In October 2015, negotiations for the Trans-Pacific Partnership Agreement (“TPPA”) which is a multilateral free trade agreement with 12 countries including United States, Canada, Chile, Mexico, Peru, Australia, New Zealand, Vietnam, Singapore, Brunei and Japan were concluded.

Following from the exit of the United States of America from the TPPA negotiations, the remaining nations, including Malaysia, has proceeded with the negotiations and now rebranded the TPPA as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”). Malaysia and the remaining nations have since signed the CPTPP on 8 March 2018. The CPTPP essentially incorporates the original provisions of TPPA. The CPTPP is however yet to be ratified by Malaysia.

**Regional Comprehensive Economic Partnership (RCEP)**

Malaysia is also party to the Regional Comprehensive Economic Partnership (RCEP) negotiations.

The RCEP negotiating members are: Australia, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam.
Introduction

RCEP aims to foster inclusive development, promote innovation, drive sustainable growth and support job generation among the RCEP Members.

RCEP will cover various aspects of the economy such as trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement, e-commerce and SMEs. Recognising the importance of being inclusive, RCEP will lower trade barriers and has the potential to enhance trade and investments among RCEP Members. By broadening and deepening ASEAN's economic engagements with its FTA partners, RCEP will provide free and fair policies that mutually benefit the RCEP Members. The RCEP is expected to be concluded in 2019.

The liberalisation of investment regime among RCEP Members will no doubt support Malaysia's economic growth and promote trading relationships.

One Belt One Road

In addition, as the recipient of more than USD$ 200 billion worth of Chinese infrastructure and real estate investments, Malaysia is fast becoming the principal ASEAN partner in China’s One Belt One Road (“OBOR”) initiative. OBOR allows transportation and movement of goods to be cheaper and more efficient. This enables local entrepreneurs and investors to penetrate a larger market. Furthermore, this also allows Malaysia to boost its development of various sectors and industries, hence generating bigger growth via better infrastructure as the catalyst. In 2017, Malaysia launched the world’s first digital free trade zone, to facilitate seamless cross border trade and enable local businesses to export their goods with a priority for eCommerce.

Digital Free Trade Zone

On 22 March 2017, Malaysia launched the world's first Digital Free Trade Zone (“DFTZ”) which allows for the facilitation of SMEs to capitalise on the convergence of exponential growth of the digital economy and cross-border e-commerce activities via physical and virtual zones.

The DFTZ will support companies which trade goods, provide services, and drive innovation in the digital economy and the e-commerce industry by facilitating end-to-end support, networking and knowledge sharing. For example, the introduction of the DFTZ eServices platform simplifies and accelerates cargo clearance process for businesses involved in cross-border trade.

With the launch of the DFTZ, Malaysia aims to become a regional eFulfillment centre and serve as the regional hub for SMEs, marketplaces and monobrands. Furthermore, the introduction of the DFTZ is in line with Malaysia’s eCommerce roadmap previously introduced in 2016, which aims to double Malaysia's e-commerce growth and to increase the GDP contribution to RM211 billion (approximately US$ 47.68 billion) by the end of year 2020.

The Newly Formed Government

Pursuant to the 14th General Elections held on 9th May 2018 (“GE14”), Malaysia saw the first change in government since independence as the Barisan National coalition was ousted from power by the opposition coalition party, Pakatan Harapan. The GE14 marked the start of a new Pakatan Harapan led government.
2. Legal Background and Judicial System

A. Background

The Malaysian legal system has been largely influenced by English Common Law. Malaysia practices the concept of constitutional supremacy under which the Malaysian Federal Constitution is the supreme law of the land. The Federal Constitution sets out the roles, limitations and conferment of powers on various persons and bodies in order to facilitate the orderly and efficacious governance of the country:

a) The Sovereign of Malaysia (known as the Yang di-Pertuan Agong) and Rulers of the states in Malaysia

The constitutional monarch holds the governing powers of the country, which are restricted by the terms of the Federal Constitution. Rulers of each of the States in Malaysia are also primarily responsible for the preservation of Malay customary laws and the administration of matters pertaining to the religion of Islam in Malaysia.

b) The Legislature (Parliament of Malaysia)

The Malaysian legislative body is empowered to enact laws and also confer power on Ministers in government ministries to enact subsidiary legislation.

c) The Executive (Prime Minister and his cabinet)

The Malaysian executive is empowered to administer laws enacted by the legislature.

d) The Judiciary (High Courts & Subordinate Courts of Malaysia)

The Malaysian Judiciary is to remain legally independent from the legislature and executive. The Judiciary is tasked to uphold justice and interpret laws by the legislature.

Such demarcation of powers between the bodies above is to ensure separation of powers between the
Malaysian legislature, executive and judiciary although overlaps are at times inevitable.

B. Judicial System

The Malaysian judicial system is structured to include superior courts (consisting of the Federal Court, the Court of Appeal and two High Courts) and subordinate courts (consisting of Session Courts and Magistrate Courts). There is also a Special Court established by the Federal Constitution that has the jurisdiction to try civil or criminal action instituted by or against the Yang di-Pertuan Agong or the Ruler of the States. Furthermore, there is a parallel system of state Shariah courts which have jurisdiction in relation to matters of Shariah law.

1. Courts

The specific jurisdictions and functions of the Courts in Malaysia are set out as follows:

**Federal Court**

The Federal Court is Malaysia's apex court and is headed by the Chief Justice of the Federal Court.

The Federal Constitution also sets out the powers of the Federal Court. Article 128(1)(a) provides that the Federal Court has the exclusive jurisdiction to determine whether a law made by the Parliament or by the Legislature of a State is invalid. Article 128(1)(b) of the Constitution also states that the Federal Court has jurisdiction to determine on disputes between States or between the Federal and any State. Essentially, the Federal Court is the final interpreter of the Federal Constitution. The Federal Court is also empowered to listen to appeals from the Court of Appeal of Malaysia, but only on questions of law of public importance. Article 130 of the Federal Constitution permits that the Yang di-Pertuan Agong may refer to the Federal Court, for its opinion, any question regarding the effect of any provision in the Federal Constitution which has arisen or appears to him likely to arise, and the opinion of the Federal Court shall be pronounced in an open court.

**Special Court**

Article 182 of the Federal Constitution provides for there to be a Special Court which consists of the Chief Justice of the Federal Court (who shall be the Chairman of the Special Court), the Chief Judges of the High Courts and two (2) other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers.

The Special Court has exclusive jurisdiction to try all offences instituted by or against the Yang di-Pertuan Agong or the Ruler of a State.

**Court of Appeal**

The main function of the Court of Appeal is to hear appeals of decisions from the High Courts. For criminal matters, the Court of Appeal will only hear appeals of decisions from the High Court in the exercise of its original jurisdiction, or in the exercise of its appellate jurisdiction in respect of any matter decided by the Sessions Court. Any appeal which originated from a Magistrate’s Court jurisdiction can only be heard by the Court of Appeal upon obtaining leave from the Court of Appeal and must be confined to questions of law. For civil matters, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court, whether made in the exercise of its original or of its appellate jurisdiction.

**High Court**

The High Courts of Malaysia (the High Court of Malaya and the High Court of Sabah and Sarawak respectively) have the jurisdiction to hear appeals of civil or criminal cases from the lower courts. The High Courts hear criminal cases involving the death penalty. The High Court also has unlimited jurisdiction for the trial of civil cases. Therefore, save and except for hearing and deciding on appeals against its own decisions as well as constitutional issues, the High Court generally has jurisdiction to
hear criminal and civil cases of any nature, with no restrictions or limit on the subject matter, monetary limit, or methods of enforcing judgments.

Sessions Court

With regards to criminal cases, sessions courts have local jurisdiction to decide on criminal cases which do not involve the death penalty. In the civil context, sessions courts are empowered to decide on cases where the claim does not exceed RM1,000,000. Notwithstanding the restriction on claim limit, the sessions courts may try all actions and suits involving motor vehicle accidents, landlord and tenant and distress cases. The sessions court is governed under the Subordinate Courts Act 1948 ("SCA").

Magistrates Court

Magistrate courts have jurisdiction to try civil cases where the claim does not exceed RM100,000. With regards to criminal matters, magistrate courts have the jurisdiction to try offences where the maximum penalty as set out in the relevant statute does not exceed ten (10) years in prison or which are punishable with a fine only. The magistrates court is also governed under the SCA.

Children’s Court

The Children’s Court is governed under the Child Act 2001 and deals specifically with the trial and sentencing of offenders who are under the age of majority, namely minors below the age of eighteen (18). This court has the jurisdiction to try all offences except those punishable by death.

Shariah Court

Malaysia has Shariah laws enacted by each State (and by Parliament in relation to the Federal Territories of Malaysia) which are only applicable to Muslims. Offences against Shariah laws are tried by the Shariah courts which are set up by the respective State governments. There are thirteen (13) state Shariah law departments and one (1) Shariah law department for the Federal Territories. As provided under Article 121(1A) of the Federal Constitution, the High Courts and subordinate courts have no jurisdiction in matters which fall within the jurisdiction of the Shariah Courts.

Industrial Court

The Industrial Court system exists as a separate system from the mainstream judicial institutions. It is a quasi-judicial tribunal created by the Industrial Relations Act 1967 ("IRA") and deals with employment and industrial disputes in the private sector. Section 30(5) of the IRA mandates that such Court shall act according to equity, good conscience and the substantial merits of the case. Section 33B of the IRA, prohibits Industrial Court decisions from being appealed to the High Court however a decision of the Industrial Court may be challenged or reviewed by way of judicial review.

2. Arbitration

Apart from the Malaysian courts system, parties may also refer disputes to arbitration. Arbitration is one of the main forms of alternative dispute resolution in Malaysia and is separate from the courts system in Malaysia. Arbitration is especially relied upon in resolving disputes under certain sectors, such as the construction industry. Reasons for resorting to arbitration include, inter alia, the contractual parties’ ability to choose their own arbitrator or panel of arbitrators, which are in most instances experts in the industry having the necessary technical knowledge in relation to the subject matter of the dispute. Parties also prefer the flexibility of arbitration, confidentiality of the proceedings, and the enforceability of arbitral awards in a court of law.

Legislation

Arbitration in Malaysia is governed by the Arbitration Act 2005 (which repealed the Arbitration Act 1952 ("Arbitration Act"). Previously, enforcement of arbitral awards was governed by a separate statute, the Convention on the Recognition and Enforcement
Legal Background and Judicial System


In this regard, Malaysia is home to the AIAC, an international dispute resolution centre which is recognised as a neutral, efficient, and reliable provider of dispute resolution services.

**Asian International Arbitration Centre ("AIAC")**

The AIAC was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation ("AALCO") and was the first regional centre established by AALCO in Asia to provide institutional support as a neutral and independent venue for the conduct of domestic and international arbitration proceedings in Asia. The AIAC is a non-profit, non-governmental and independent international body and it was also the first centre in the world to adopt the UNICITRAL Rules for Arbitration as revised in 2010. New rules have since been created to cater to the growing demands of the global business community such as the AIAC Arbitration Rules, the AIAC Fast Track Rules as well as the AIAC Mediation and Conciliation Rules. Beyond the provision of dispute resolution services within the region, the AIAC also promotes international commercial arbitration in the Asia-Pacific Region, co-ordinates and assists the activities of existing arbitral institutions in the Asia-Pacific Region; and also assists in enforcement of arbitral awards.

**Arbitration Clause**

Arbitration under the AIAC begins with the agreement of 2 or more parties for the reference to an arbitration proceeding under the AIAC Arbitration Rules ("Arbitration Rules"). The Arbitration Rules cover all aspects of the arbitral process, including providing a model arbitration clause which parties could insert into their respective agreements, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award.

**Costs and Fees**

In relation to costs and fees, the cost structure for arbitration depends on whether it is an international or a domestic arbitration. The fees for arbitrators would depend on the value of the subject matter in dispute; the higher the amount, the higher the arbitrator’s fees. As an illustration from the fee schedule set out in the AIAC’s official website, the arbitrator’s fees would be USD3,500 (exclusive of administrative fees and taxes) for an international arbitration involving an amount of dispute up to USD50,000. For a domestic arbitration involving an amount of dispute of RM50,000, the arbitrator’s fees would be estimated at RM9,200 (exclusive of administrative fees and taxes).

**Panel of Arbitrators**

As at December 2015, the AIAC has a panel of over 700 experienced domestic and international arbitrators. There are no restrictions imposed on foreign lawyers to appear before arbitral proceedings under the AIAC. Fees are fixed with a structure that is 20% less than other arbitral institutions, and no withholding tax is imposed on arbitrators.

**Advantages of Arbitration**

Apart from technical expertise in the relevant industry relating to the subject matter of dispute, the main advantages of engaging the services of AIAC are attributed to its speed in managing arbitral proceedings as well as it being cost-efficient. Arbitral awards are rendered within 3 months from date of final submission and the appointment of arbitrator is made within 48 hours of receipt of all necessary documents. In certain circumstances, arbitration
may cost less than court litigation, as hearings may be briefer and the preparation work less demanding.

**Interim Measures by the Malaysian Courts**

Whilst the Arbitration Act generally provides for non-interference by the Malaysian courts, the High Court does have the power to grant interim measures in respect of security for costs, discovery of documents and interrogatories, giving of evidence by affidavit, securing the amount in dispute, preservation, interim custody and sale of any property which is the subject matter of a dispute and ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets, and granting interim injunctions. The arbitral tribunal is also given almost similar powers, except that there is no power to grant an injunction or to appoint receivers.

**Enforcement of Arbitral Awards**

Arbitral awards issued in Malaysia, either in respect of domestic or international arbitration are binding and enforceable. In addition, pursuant to provisions under the Arbitration Act and as a result of Malaysia being a signatory to the New York Convention, arbitral awards issued in Malaysia will be recognised and enforceable in other signatory states. Similarly, arbitral awards issued in other signatory states will be recognised and enforceable in Malaysia. There are currently 149 signatories to the New York Convention.

3. **Adjudication**

Adjudication is also a form of alternative dispute resolution resorted to for disputes in the construction industry in relation to payment for work done and services rendered under the express terms of a construction contract. Similarly, with Arbitration, the adjudicator deciding on the dispute is an expert in the construction industry. The administration of adjudication cases is dealt with by the AIAC.

**Legislation**

The Construction Industry Payment & Adjudication Act 2012 (“CIPAA”) came into force on 15th April 2014. To complement the CIPAA, 2 legislations were also implemented - The Construction Industry Payment and Adjudication Regulations 2014 (“CIPAR”) and the Construction Industry Payment and Adjudication (Exemption) Order 2014 (“CIPAEO”).

CIPAA applies equally to the Government of Malaysia as well as the private sector. However, 2 categories of Government construction contracts are exempted as provided in the CIPAEO.

The first category is in relation to a contract for any construction works that is carried out urgently and without delay due to natural disaster, flood, landslide, ground subsidence, fire and other emergency and unforeseen circumstances, or a contract for any construction works that relates to national security or security related facilities which includes the construction of military and police facilities, military bases and camps, prison and detention camps, power plant and water treatment plant.

The second category deals with construction contracts with the Government with the contract sum of twenty million ringgit (RM20,000,000) and below. Such contracts are merely exempted from the application of subsections 6(3), 7(2), 10(1), 10 (2), 11(1) and 11(2) of CIPAA. However, it was a temporary exemption from 15th April 2014 to 31st December 2015.

**Costs and Fees**

The costs and fees for adjudication proceedings are set out in the Schedule of CIPAR and can be found in the AIAC website. Similarly, with arbitration, the higher the amount in dispute, the higher the fees for the services of the adjudicator.
Advantages of Adjudication

CIPAA proceedings are intended to reduce payment defaults in relation to work done and services rendered. Thus, providing for the recovery of payment at the conclusion of the adjudication proceedings. Other remedies may include the right to suspend work or the right to reduce the rate of work progress or securing direct payment from the principal. The adjudicator may be appointed by agreement of the parties or by the Director of AIAC.

Enforcement of Adjudication Award

The enforcement of an adjudication decision is governed under Part IV of the CIPAA. Essentially, a party can apply to the High Court for an order to enforce the adjudication decision as if it is a judgment or order of the High Court. Upon such application, the High Court may make an order in respect of the adjudication decision either wholly or partly and make an order in respect of interest on the adjudicated amount payable.

4. Mediation

Another means of alternative dispute resolution is mediation. Unlike the adversarial nature of a court case or arbitration, this method involves the parties in disagreement cooperating attempting to reach a mutually beneficial solution. A party may initiate mediation by sending the other party a written invitation to mediate, specifying the matter in dispute. Once agreed by both parties, the parties must enter into a written mediation agreement which shall contain an agreement to mediate and other miscellaneous matters such as the appointment of the mediator, and costs.

Malaysian Mediation Centre (“MMC”)

The governing body for mediation in Malaysia is the MMC, which was founded in 1999. The MMC was created with the objectives of promoting mediation as a means of alternative dispute resolution, as well as to provide a platform for successful dispute resolutions. The MMC’s objectives and the continuation of its proper function is overseen by the Alternative Dispute Resolution Committee of the Bar Council. The MMC is a member of the Asian Mediation Association, along with other similar centres located in other Asian countries such as Singapore, Indonesia and Hong Kong. The MMC deals with all disputes except constitutional disputes and criminal matters.

Legislation

Mediation in Malaysia is governed by the Mediation Act 2012 (“Mediation Act”). The Mediation Act was introduced with the aim to promote and encourage mediation as a method of alternative dispute resolution and to facilitate settlements of dispute in a just, efficient and cost-effective manner. However, it should be noted that the Mediation Act does not apply to (1) mediation conducted by courts; (2) mediation conducted by the Legal Aid Department; and (3) matters expressly excluded in its schedule (such as proceedings on the Federal Constitution, the remedy of temporary or permanent injunctions, and any criminal matter).

Moreover, the Mediation Act does not require the parties to attempt mediation prior to litigation or arbitration. Nevertheless, the parties may choose to mediate simultaneously with any civil court action or arbitration.

The role of the mediator

The Mediation Act stipulates that a mediator must be appointed by the parties after they have agreed to mediation. All mediators must possess the relevant qualifications, knowledge or experience in mediation via training or formal tertiary education or meet the requirements of an organisation which provides mediation services.

A mediator must act independently and impartially with the objective to assist the parties in reaching a
satisfactory solution to the dispute and to make suggestions for the settlement of the dispute.

Costs and Fees

The basic administration fee for mediation, as set out in the MMC website, is RM100 (non-refundable). A mediator, if requested by the party, will also charge a fee for his services which may be mutually agreed by both parties. There are also other miscellaneous costs, such as hiring a venue. All costs, besides the hiring of personal representation are shared equally between the parties.

Advantages of Mediation

Unlike arbitration, mediation allows for a collaborative method of settling the disputes between parties. The goal of mediation is to reach a solution which benefits both parties, as far as possible. This stands in great contrast to that of litigation and arbitration, where it is conducted in an adversarial manner. As such, it is more likely that parties in mediation are able to maintain their business relationships even after a resolution has been achieved. This is especially crucial in situations where there exists a strong possibility of future dealings between the parties.

In addition, mediation allows parties to settle their disputes in a confidential environment. A party may not wish to disclose matters to the public for a variety of reasons, from preventing competing businesses from gaining an advantage to keeping sensitive family topics out of public scrutiny. The Mediation Act makes it clear that all matters related to the mediation remain confidential and subject to some exceptions, prohibits the disclosure of any oral or written statements made during or in relation to the mediation.

Settlement Agreement

Upon the conclusion of the mediation and an agreement being reached, a settlement agreement will be drawn up and subsequently executed by both parties. The settlement agreement will be binding and may be submitted to the courts as a consent judgment or judgment of the court.

5. Conciliation

Conciliation is a process of alternative dispute resolution whereby parties appoint a conciliator to resolve their dispute. This method of dispute resolution is a lesser known form of alternative dispute resolution in Malaysia. Notwithstanding its lack of adoption, certain laws such as the Industrial Relations Act 1967 and the Law Reform (Marriage and Divorce) Act 1976 both refer to the use of conciliation as a means of dispute resolution.

Legislation

Unlike arbitration and mediation, there is no defining law which sets out the legal mechanisms of conciliation. As such, it could be said that it is an informal method of alternative dispute resolution. This means that the process has no legal standing and no authority to require the presentation of evidence or the calling of witnesses.

The Role of the Conciliator

The role of the conciliator is very different from its counterparts in the realm of alternative dispute resolution. The primary goal of a conciliator is to conciliate by seeking concessions from both parties. This is slightly different as compared to a mediator, who tries to guide the discussion in a way that optimizes parties’ needs, or an arbitrator, who aims to deliver a judgment on the matter.

Process

There will usually be one conciliator, chosen by both parties. The conciliator will often be a person which has expertise in the specific area of dispute and trusted by both parties.

The process of conciliation could be conducted in a number of ways, provided that the conciliator is impartial at all times. A method called “shuttle diplomacy” is commonly employed. This process
would minimise the time that parties would spend face-to-face and instead, the parties will be situated in different room and the conciliator would go from one room to the other to seek common ground to resolve the dispute.

At the end of the day, the conciliator would not pass a decision or award. Instead, he attempts to negotiate with and understand the disputing parties. If successful, such terms of the understanding will be translated into a form of a legally binding settlement agreement (with the assistance of the parties' respective legal advisors).

**Advantages of Conciliation**

Parties could benefit from conciliation as it is a flexible and informal method of dispute resolution. This means that parties could elect for a form of conciliation which would put them at ease and create a more facilitative environment for negotiations. This also means that elements of hostility which is present in the other forms of dispute resolution is largely removed.

In addition to the above, parties and the conciliator could also agree on total confidentiality during or after the course of discussions, which allows parties to speak freely without the fear of prejudice.

As there are no hard and fast rules, this allows parties to expedite the process and could end up being cheaper and more time efficient than the other methods of dispute resolution.
3. Establishing a Presence

In Malaysia, persons who wish to carry on business in Peninsular Malaysia or the Federal Territory of Labuan must register under one of the following: Registration of Businesses Act 1956 ("ROBA 1956"), Companies Act 2016 ("CA 2016") or Limited Liability Partnerships Act 2012. Businesses (sole proprietorships and partnerships) and companies must be registered with the Registrar of Businesses ("ROB") and the Registrar of Companies ("ROC") respectively. Limited liability partnerships must be registered with the Registrar of Limited Liability Partnerships.

Registration of Businesses Act 1956 (ROBA 1956)

The registration requirements for businesses of partnerships and sole proprietorships are prescribed by the ROBA 1956. The ROBA 1956 requires the registration of a new business to be done within 30 days from the date of commencement of the business. Partnerships and sole proprietorships are not required to lodge accounts with the ROB.

Companies Act 2016 ("CA 2016")

The CA 2016 governs the registration, administration and dissolution of companies and provides for matters relating to companies in Malaysia. The CA 2016 came into effect on 31 January 2017 (save for Division 8 of Part III of the CA 2016 on the introduction of new corporate rescue mechanisms, which came into effect on 1 March 2018) and replaces its predecessor, the Companies Act 1965. As at the date of this article, Section 241 of the CA 2016 on the requirement for company secretaries to register with the ROC has not come into force. The CA 2016 introduced substantive and administrative changes such as abolition of par value shares, changes to capital maintenance rules and introduction of a solvency test (which is applicable to redemption of redeemable preference shares, reduction of share capital, financial assistance and share buybacks as well as in the distribution of dividends), simplification of incorporation and administrative processes, increases in directors’ sanctions and new corporate rescue mechanisms.

Companies limited by shares, companies limited by guarantee, unlimited companies and branches of foreign companies are governed by the CA 2016. A company may be formed with a sole shareholder (whether individual or corporate) and a sole director. An individual may be both the sole shareholder and sole director of a company.

The CA 2016 abolished the concept of par value shares and provides that all shares issued before or
after the coming into force of the CA 2016 have no par value. In tandem with this change, there is no longer a concept of authorised share capital and companies are no longer required to maintain a share premium account and a capital redemption reserve account. With the abolition of the concept of par value for shares, there is no prohibition on a company to issue shares at a discount (to par).

Consequently, there is now no minimum price at which shares of a company may be issued although directors of a company continue to have an overriding fiduciary duty to ensure that the subscription price determined for the issue of shares in a company is made in good faith and in the best interest of the company.

A. Forms of Business Organisations

There are seven different forms of business organisation available in Malaysia. These are:

a) Limited Liability Partnership
b) Partnership
c) Sole Proprietorship
d) Company Limited by Shares
e) Company Limited by Guarantee
f) Unlimited Company
g) Branch of a foreign company

1. Limited Liability Partnership

A limited liability partnership ("LLP") is an alternate business vehicle recently introduced in Malaysia. An LLP combines the characteristics of a private company and a conventional partnership and is regulated under the Limited Liability Partnerships Act 2012.

An LLP is a body corporate and has a legal personality separate from its partners (i.e. separate legal entity). Two or more individuals or bodies corporate may form an LLP for any lawful business in accordance with the terms of the LLP agreement executed amongst them. The Limited Liability Partnerships Act 2012 does not impose a maximum number of partners of an LLP. The liabilities of the partners of an LLP are limited. An LLP is also capable of suing and being sued and has unlimited capacity to conduct business and hold property.

An LLP may be formed by professionals i.e. lawyers, chartered accountants and company secretaries for the purpose of carrying on their professional practice. Given that the liability of the partners of an LLP is limited, the LLP business vehicle helps start-ups and small and medium enterprises ("SMEs") grow their businesses without having to worry about their personal liabilities and personal assets. The registration fee for a new LLP or for the conversion of a conventional partnership or private company into an LLP is RM500.

An LLP has perpetual succession and any change in the partners of the LLP will not affect the existence, rights or liabilities of an LLP.

2. Partnership

A partnership is formed when two or more persons combine some or all of their resources, skill, ability or industry, with the objective of making a profit which will be shared by all partners. Partnerships are regulated by the Partnership Act 1961.

In a partnership, all partners are personally jointly liable, without limit, for the debts and obligations of the partnership. Any number of persons up to a maximum of 20 may form a partnership. If more than 20 persons intend to carry on business, the business must be registered as a company under the CA 2016 or must be formed under some other written law in Malaysia (for example, under the Legal Profession Act 1976).

3. Sole Proprietorship

A sole proprietorship is the simplest form of business ownership. It is formed essentially for businesses
comprised of one person (being the sole proprietor). The sole proprietor is entitled to all profits of the business and is personally liable, without limit, for all debts and obligations of the business.

4. **Company Limited by Shares (Sendirian Berhad or Berhad)**

A company limited by shares may be a private limited company or a public limited company. A private company is identified as a "Sendirian Berhad" or "Sdn Bhd" while a public company is identified as a "Berhad" or "Bhd". In a company limited by shares, the personal liability of its members is limited to the amount if any, unpaid on their shares.

The CA 2016 restricts the right of members of private companies to transfer their shares, restricts the number of members to a maximum of 50 and prohibits members from soliciting the public to subscribe for its shares. A private company is also prohibited from accepting deposits of money from the public whether with interest or not. A public company is not subject to the foregoing restrictions. A private company may convert to a public company as it expands and, sometimes, the reverse happens.

5. **Company Limited by Guarantee (Berhad or Bhd)**

A company limited by guarantee limits its member's liability to the amount the member undertakes to contribute to the company in the event the company is wound up. A company limited by guarantee is typically used for non-profit purposes. A company limited by guarantee is required to have a constitution. It may not hold land unless a license has been obtained from the relevant Minister and it is not permitted to distribute dividends to its members.

6. **Unlimited Company**

An unlimited company is a company where the members' liability for its debts is unlimited.

A creditor of the company can sue a member personally for debts of the company but the liability of the members only arises if the company is unable to meet its debt and is wound up.

On the winding up of an unlimited company, every past and present member shall be liable to contribute to the assets of the company for payment of its debts and liabilities and costs incurred in the winding up. However, a past member shall not be liable to contribute to the debts of the company if he ceased to be a member of the company for one year or more before the commencement of the winding up and he is not liable to contribute in respect of any debt or liability of the company incurred or contracted after he has ceased to be a member.

7. **Branch of a Foreign Company**

Under the CA 2016, a foreign company shall not carry on business in Malaysia unless it is registered with the ROC as a foreign company. The CA 2016 does not have an exhaustive definition of "carrying on business" as it defines "carrying on business", to include "establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Malaysia as an agent, legal personal representative, or trustee, whether by servants or agents or otherwise".

The CA 2016 does however provide some negative guidance on the meaning of carrying on business. It provides that a foreign company will not be regarded as carrying on business in Malaysia for the reasons only that it carries on any of the following activities in Malaysia ("Permitted Activities"): a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;

b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
c) maintains any bank account;

d) effects any sale through an independent contractor;

e) solicits or procures any order which becomes a binding contract only if the order is accepted outside Malaysia;

f) creates evidence of any debt, or creates a charge on movable or immovable property;

g) secures or collects any of its debts or enforces its rights in regard to any securities relating to those debts;

h) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time;

i) invests any of its funds or holds any property; or

j) imports goods temporarily under the Customs Act 1967 for the purpose of display, exhibition, demonstration or as trade samples with a view to subsequent re-exportation within a period of three months or within such further period as the Director General of Customs and Excise may in his discretion allow.

Foreign companies intending to carry on business in Malaysia may either incorporate a subsidiary or register a branch under the CA 2016. The branch of a foreign company does not have separate legal personality and is considered an extension of the foreign company. The foreign company will be liable for all debts and liabilities of the branch.

Pursuant to the Guidelines on Foreign Participation in the Distributive Trade Services Malaysia ("DTS Guidelines"), with effect from 1 November 1995, the establishment of a branch in Malaysia to carry on business in wholesale or retail trade is not permitted for a foreign company. Any foreign involvement in wholesale and retail trade would require the incorporation of the business locally by the foreign company. As the DTS Guidelines is merely a regulatory guideline and does not have the force of law, failure to comply is not an offence. Non-compliance could, however, result in administrative consequences for the company.

B. Requirements of a Locally Incorporated Company

By the CA 2016, every company shall have at least one director who is ordinarily resident in Malaysia, although with respect to public listed companies, the Main Market Listing Requirements issued by Bursa Malaysia requires a minimum of 2 directors. A director of the company does not also need to be a shareholder of that company.

A company incorporated in Malaysia must maintain a registered office in Malaysia where all books and documents required under the provisions of the CA 2016 are kept. Apart from company secretarial documents and statutory registers, a company is required to keep accounting records, financial statements and instruments of charges at its registered office. A notice must be made to the ROC if such documents are kept at a different place.

All business letters, notices and official publications (including in electronic form), websites, cheques and order invoices must contain the company name and registration number.

Generally, each equity share of a company carries one vote at a poll at any meeting of members of the company. A company may, however, provide for varying voting rights for its shareholders.

By the CA 2016, a company has 30 days from its incorporation date to appoint a company secretary. The secretary of a company must be a natural person of full age who is a citizen or permanent resident of Malaysia and has his principal or only place of residence in Malaysia. He must be a
member of a professional body prescribed under the CA 2016 or hold an individual licence issued by SSM. Section 241 of the CA 2016 (which as at the date of this article, is not yet in force) requires all persons to register with the ROC before they can act as a company secretary. The company must also appoint an approved company auditor for each financial year, although the CA 2016 gives discretion to the ROC to exempt certain private companies from the requirement to appoint an auditor.

Companies are not required to have a constitution, although companies may choose to adopt a constitution. For companies incorporated under the Companies Act 1965, unless otherwise revoked, its Memorandum and Articles of Association will be deemed to be its constitution. Where companies do not adopt a constitution, the default provisions on the rights, powers, duties and obligations of the directors and members under the CA 2016 apply.

C. Procedure for Incorporation (Locally Incorporated Company)

The CA 2016 has simplified the requirements for incorporating a company by requiring only one member and one director. This is a welcome move particularly for small businesses, start-up ventures and entrepreneurs as it facilitates the ability for one individual to maintain control over the company while having the benefit of limited liability.

1. Application to Confirm Availability and Reservation of Name

An application must be made to the ROC to confirm the availability of a proposed name of the company. The applicant may also apply for the reservation of the proposed name. The steps involved for the reservation of the proposed name are:

a) Completion and submission of an application under Sections 27(1) and 27(4) of the CA 2016 to the ROC; and

b) Payment of an RM50 fee for each name applied.

The application and payment to the ROC must be made electronically using the MyCoID 2016 Portal on SSM’s website.

Thereafter, provided the ROC is satisfied that the name is not one which is undesirable, unacceptable or identical to another name, it will be reserved for 30 days from the date of the application or such longer period as the ROC may allow.

2. Application for Incorporation of Local Company

An application must be made to the ROC for incorporation of a local company. The information to be provided to the ROC for the purposes of incorporation of a company include:

- a) the name, status (whether the company is private or public) and proposed address of the registered office of the proposed company;
- b) the nature of business of the proposed company;
- c) details of each proposed member of the company including name, identification, nationality, place of residence / incorporation (as applicable);
- d) details of each proposed director;
- e) in the case of a company limited by shares, the details of class and number of shares to be taken by a member; and
- f) in the case of a company limited by guarantee, the amount up to which the member undertakes to contribute to the assets of the company in the event of its being wound up.

The application for incorporation must include a statement by each promoter or director confirming his consent to act as promoter or director and that he is not disqualified to act as a promoter or director under the CA 2016.
Once the ROC is satisfied that the requirements for incorporation under the CA 2016 are complied with and upon payment of the relevant fee, the ROC will issue an electronic notice of registration. The company is incorporated on the date of incorporation specified in the notice of registration.

3. **Fees for Incorporation**

A flat fee for the incorporation of a company is payable depending on the type of company incorporated, as follows:

<table>
<thead>
<tr>
<th>TYPE OF COMPANY</th>
<th>FEES (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company Limited by Shares</td>
<td>1,000</td>
</tr>
<tr>
<td>Company Limited by Guarantee</td>
<td>3,000</td>
</tr>
<tr>
<td>Unlimited Company</td>
<td>1,000</td>
</tr>
</tbody>
</table>

4. **Post-Incorporation Obligations**

Upon incorporation, the company and/or officers of the company are responsible for ensuring compliance with the CA 2016. Any change in the company’s name must be filed with SSM within 30 days from the date a special resolution is passed to change the company’s name, together with the appropriate fees.

The company’s annual return must be lodged with the ROC once in every calendar year, no later than 30 days from the anniversary of the company’s incorporation date (save for the calendar year in which the company was incorporated).

The company, directors and managers must keep such accounting and other records which will explain the financial position of the company and its transactions to enable true and fair profit and loss accounts and balance sheet (together with relevant reports) to be prepared and cause those records to be kept in such manner to enable them to be properly audited. The financial statements and records must be circulated to the members of the company within 6 months of its financial year end (in the case of a private company) or at least 21 days before its annual general meeting (in the case of a public company). The company must lodge the financial statements and reports for each financial year with the ROC within 30 days from the date such financial statements and records are circulated (in the case of a private company) or within 30 days from the date of its annual general meeting (in the case of a public company).

Every company must maintain statutory records and registers in compliance with the CA 2016 including register of option holders, register of members, register of mortgages/charges, register of debenture holders, register of directors, managers and secretaries, register of directors’ shareholdings and minute books containing minutes of all proceedings of general meetings and of meetings of directors.

Companies are required to notify the ROC of changes to its particulars within the prescribed time. The key requirements are as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Prescribed time to notify ROC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in registered office</td>
<td>Within 14 days of change</td>
</tr>
<tr>
<td>Change in directors</td>
<td>Within 14 days of change</td>
</tr>
<tr>
<td>Filing of Annual Return</td>
<td>Within 30 days of anniversary of incorporation</td>
</tr>
<tr>
<td>Return of Allotment of shares</td>
<td>Within 14 days</td>
</tr>
<tr>
<td>Change in Register of Members</td>
<td>Within 14 days of change</td>
</tr>
<tr>
<td>Change in substantial shareholding</td>
<td>Notify company and ROC within 3 days (public listed companies) / 5 days (non-listed public companies)</td>
</tr>
<tr>
<td>Change in nature of business</td>
<td>Within 14 days of change</td>
</tr>
<tr>
<td>Change in business address</td>
<td>Within 14 days of change</td>
</tr>
</tbody>
</table>

In addition, the ITA provides that a company is required to retain sufficient records or documents for...
at least 7 years from the end of the year to which the income of the business relates for the purposes of tax assessments. Such records or documents includes records and books of accounts including a cash book, sales ledger, purchase ledger and a general ledger. Supporting documents such as invoices, bank statements, paying-in slips, cheque stubs, receipt of payments, payroll records and copies of receipts issued should also be retained. This list is not exhaustive and the company should keep and retain in safe custody sufficient records to enable the income or loss of the company for the basis period for any year of assessment to be readily ascertained for the purpose of income tax. Matters related to the keeping of records and documents are set out in the IRB’s Public Ruling No. 4/2000.

D. Requirements of a Foreign Company

A foreign company shall not carry on business in Malaysia unless it is registered as a foreign company under the CA 2016. A foreign company registered under the CA 2016 must comply with the CA 2016. Foreign companies must appoint an agent in Malaysia who shall be answerable for all such acts, matters and things that are required to be done by the foreign company under the CA 2016 and be personally liable to all penalties imposed on the foreign company for any contravention of the CA 2016. The foreign company must have a registered office within Malaysia at all times.

E. Procedure for Registration (Branch of a Foreign Company)

The application process for registration of a foreign company under the CA 2016 are as follows:

1. Application to Confirm Availability of Name

An application must be made to the ROC to confirm the availability of a proposed name of the company, an application and payment of the prescribed fee must be made electronically to the ROC using the MyCoID 2016 Portal on SSM’s website.

Thereafter, provided the ROC is satisfied that the name is not one which is undesirable unacceptable or identical to another name and that the requirements for registration below are met, the company shall be registered under that name by the ROC.

2. Application for Registration of Foreign Company

An application must be made to the ROC for registration of a foreign company under the CA 2016. The information to be provided to the ROC for the purposes of registration of a foreign company include:

a) details of every shareholder in Malaysia, including name, identification, nationality, place of residence / incorporation (as applicable);

b) details of each director in Malaysia;

c) a list of its shareholders and details of the class and number of shares at its place of origin;

d) for a foreign company limited without share capital, the amount up to which the member undertakes to contribute to the assets of the foreign company at its place of origin in the event of its being wound up; and

e) details of the agent of the foreign company appointed under a memorandum of appointment or power of attorney.

The application for registration must include a statement by the appointed agent confirming his consent to the appointment.

Once the ROC is satisfied that the requirements for registration under the CA 2016 are complied with and upon payment of the relevant fee, the ROC will issue an electronic notice of registration. The notification is conclusive evidence that the
requirements as to registration have been complied with.

3. Fees for Registration

The fee payable for the registration of a foreign company depends on its share capital, as follows:

<table>
<thead>
<tr>
<th>SHARE CAPITAL EQUIVALENT</th>
<th>FEES (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 million</td>
<td>5,000</td>
</tr>
<tr>
<td>1 million – 10 million</td>
<td>20,000</td>
</tr>
<tr>
<td>10 million – 50 million</td>
<td>40,000</td>
</tr>
<tr>
<td>50 million – 100 million</td>
<td>60,000</td>
</tr>
<tr>
<td>100,000,001 and above</td>
<td>70,000</td>
</tr>
</tbody>
</table>

To determine the fees payable for registration of a foreign company, the share capital of the foreign company should be converted to the Malaysian currency (Ringgit Malaysia) at the prevailing exchange rate. In the event a foreign company does not prescribe any share capital, a flat rate of RM70,000 must be paid to SSM.

4. Post-Registration Obligations

Any change in the particulars of the company including the company’s name, constitution, particulars of directors and particulars of its agent must be lodged with the ROC within 14 days from the date of change together with the appropriate fees. Any change in the share capital or authorised capital must be lodged with the ROC within 30 days from the date of change together with the appropriate fees.

Every foreign company is required to keep proper accounting records in Malaysia which will sufficiently explain the transaction and financial position of the foreign company arising out of its operations in Malaysia. The foreign company’s annual return must be lodged with the ROC once in every calendar year. Every foreign company is required to lodge with the ROC a copy of its audited financial statements within 2 months of its annual general meeting, and audited financial statements showing the assets used and liabilities arising out of its operations in Malaysia.

Similar to a locally incorporated company, a foreign company is required to comply with the applicable requirements under the ITA and the IRB’s Public Ruling No. 4/2000.

F. Representative/Regional Office

Foreign investors can consider setting up a representative or a regional office in Malaysia to establish a presence for a minimum of 3 years to allow investors to decide if Malaysia is a right place for them to operate a business. A representative or a regional office is not a permanent business set-up and therefore is not governed by the ROBA 1956 or the CA 2016. Instead they are within the authority of the responsible statutory body such as MITI or BNM. MITI is responsible for the registration of regional and representative office in the manufacturing, service, logistics and trading sectors whereas BNM is responsible for the banking and finance sectors.

There is a difference between a representative office and a regional office. A representative office is usually set up to collect relevant information on investment opportunities, typically in the manufacturing and services sector. A representative office may also be established to enhance bilateral trade relations, promote the export of Malaysian goods and services or to carry out research and development. A representative office may be used to perform permissible activities for its head office/principal and it must be completely funded by sources outside of Malaysia. To set up a representative office, a foreign company must obtain the approval from MITI.

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

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

A representative office or regional office only represents its head office/principal to undertake designated functions. A representative office or regional office must also confine its activities to promotion and liaison carried out on behalf of its parent company.

G. Licences/Registration

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

1. **Business Premise Licence and Signage Licence**

Generally, companies doing business in Malaysia at physical premises are required to apply for business premise and signage licenses from the relevant municipal council. Requirements for business premise and signage license vary depending on the location of the physical premises and the by-laws of the relevant municipal council.

2. **Income Tax Registration**

Companies are required to register for an income tax reference number with the IRB as provided under the ITA upon commencement of business.

3. **Wholesale Retail Trade Licence (for foreign involvement)**

All proposals for foreign involvement in distributive trade requires the approval of the Ministry of Domestic Trade and Consumer Affairs ("MDTCA"). The MDTCA would issue a Wholesale Retail Trade Licence ("WRT"), typically with a validity of 2 years. Please see Chapter 4 for further information on the WRT licence requirements under the Guidelines on Foreign Participation in the Distributive Trade Services issued by MDTCA.
4. Foreign Investment and Local Equity Participation Requirements

Background

Malaysia applies local equity participation requirements in various economic sectors. However, the approach taken by the Malaysian Government towards local equity participation requirements for the past few years and of late has been a positive one, with the abrogation and/or liberation of local equity participation requirements for different sectors.

The precursor to the imposition of local equity participation requirements was the New Economic Policy ("NEP"). It was implemented with the objects of eradicating poverty, restructuring society and in the long run to facilitate economic and political progress of the country. The aim of the NEP was also to ensure that local indigenous people (known as "Bumiputera") became full partners in all aspects of the economic life of the nation.

Later, the Malaysian Government implemented new policies called the National Development Policy ("NDP") and the National Vision Policy ("NVP") with the aims of achieving a “balanced development” within a framework of rapid growth with equity as its primary thrust. In particular, one of the main objectives of the NVP was to achieve at least 30% Bumiputera participation in all industries by 2010. During this period, many government ministries were given the task to implement policies and guidelines to achieve the NVP.

In light of frequent acquisitions, take-overs and mergers and acquisitions by foreign interests of Malaysian companies and assets, the Foreign Investment Committee ("FIC") was formed to implement the NDP and NVP by regulating foreign interests in order to minimise imbalances of local participation in Malaysia whilst at the same time welcoming foreign investment with balanced ownership and control.

The result of this was the implementation of guidelines regulating foreign participation in acquisitions of interest, mergers and takeovers, and acquisitions of properties ("FIC Guidelines").

Today

Although the equitable growth or "Growth with Distribution" is still the Malaysian Government's
policy, the former Prime Minister has acknowledged the urgent need for Malaysia to undergo a transformation in its pursuit to achieve the status of a developed nation.

Hence, on 22 April 2009, the former Prime Minister announced the removal of the 30% Bumiputera equity requirement for 27 services sub-sectors. Shortly thereafter, on 30 June 2009, the Malaysian Government announced further measures to liberalise a host of restrictions on foreign investments in Malaysia, including disbanding of the FIC and the repeal of the FIC Guidelines.

The disbanding of the FIC and liberalisation of certain restrictions are intended to stimulate growth and encourage further participation of foreign investments. This is not to say that restrictions on foreign investments in Malaysia have been wholly lifted.

Notably, the Malaysian Government has stated that sectoral regulation by the relevant government ministries and/or agencies continues to apply. This is no different from the implementation of the regulatory framework in Malaysia since the advent of the NDP, as sectoral regulations typically dovetail with equity conditions imposed by the FIC. As such, there continues to be requirements for local equity participation in foreign investments in certain sectors.

Repealing the FIC Guidelines does mean, however, that one layer of bureaucracy has been removed in respect of equity investments. This move will ease as well as decrease the costs of doing business in Malaysia.

The requirements for local equity participation in foreign investments are administered via 2 methods, i.e. legal and non-legal controls.

A. Administrative/Non-legal control

Generally, committees are set up under various governmental ministries and are given the task of procuring guidelines to seek to achieve the 30% Bumiputera participation envisaged in the NEP/NDP/NVP. Previously, the FIC played an important role in this regard. Since the deregulation of the FIC, the main committee which continues to enforce 30% Bumiputera participation is the Committee on Distributive Trade (established under the MDTCA). The committee seeks to achieve Bumiputera participation through non-legal (or administrative) controls.

Ministry of Domestic Trade and Consumer Affairs (“MDTCA”)

“Distributive trade” is given a broad definition in the Guidelines on Foreign Participation in the Distributive Trade Services (“DTG”) published by the MDTCA to comprise all linkage activities that channel goods and services down the supply chain to intermediaries for resale or to final buyers. The definition of "distributive trade" does not include: (i) manufacturing companies; and (ii) companies granted the status of regional establishments by the Malaysian Industrial Development Authority.

The MDTCA requires all proposals for foreign participation in distributive trade in Malaysia and any ancillary business to obtain prior approval of MDTCA. "Foreign participation" is defined in the DTG to mean any interest, associated group of interests or parties acting in concert which comprises: (i) individual who is not a Malaysian citizen including Permanent Resident; or (ii) foreign company or institutions; or (iii) local company or local institution whereby the parties as stated in item (i) and/or (ii) hold more than 50% of the voting rights in the company or institution.

A non-exhaustive list of foreign activities which require the prior approval of MDTCA is set out in the DTG which includes: (i) acquisition of interest in the distributive trade company; (ii) mergers and/or
takeovers by foreign interests; (iii) opening of new branches/outlets/chain stores; (iv) relocation of branches/outlets/chain stores; (v) expansion of existing branches/outlets/chain stores; (vi) buying over/taking over outlets of other operators; and (vii) purchase and sale of properties to operate distributive trade activities prior to obtaining the approval/licence from local authorities and other agencies to operate distributive trade activities.

The DTG provides that all distributive trade companies with foreign equity shall: (i) appoint Bumiputera director/directors; (ii) hire personnel at all levels including management to reflect the racial composition of the Malaysian population; (iii) formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector; (iv) hire at least one percent (1%) of the total hypermarket workforce from persons with disabilities; (v) increase the utilisation of local airports and ports in the export and import of the goods; (vi) utilise local companies for legal and other professional services which are available in Malaysia; (vii) submit annual financial reports to the MDTCA; and (viii) comply with all by-laws and regulations of local authorities.

The DTG further provides specific incorporation, capital and equity structure conditions for (i) hypermarkets; (ii) department stores; (iii) superstores; (iv) specialty stores; (v) franchisor and franchisee; and (vi) various other distribution formats (i.e. other types of distributive trade businesses not specified in items (i) to (v) which will be considered on the merits of each case with particular reference to their contribution to the socio-economic development of Malaysia). All six (6) types of distributive trades are required to be carried out by companies incorporated locally under the Companies Act, 2016. There are different minimum capital requirements, operational conditions as well as environmental and public interest conditions for each type of distributive trade company. For instance, the DTG specifies that an impact study on existing local retailers should be carried out if the store is to be operational in a standalone building or if the business floor area is not less than 5,000 square meters. Businesses should also ensure a safe and clean environment as well as efficient use of energy. The DTG further imposes an additional equity structure condition on any foreign involvement in hypermarkets. Distributive trade companies operating hypermarkets are required to have at least thirty percent (30%) equity participation by Bumiputeras. A grace period of three (3) years for compliance may be given by the MDTCA upon approval to operate a hypermarket. This requirement also applies to operations established prior to the coming into effect of the DTG. However, hypermarket operators are not allowed to open a new branch in Malaysia unless it has fulfilled the requirement of 30% Bumiputera ownership in the company’s equity structure.

Although not specifically stated in the DTG, failure to comply with the conditions and approval requirements in the DTG can result in administrative sanctions against a distributive trade company with foreign involvement such as rejection by the Malaysian immigration authorities of any application by foreigners for an employment pass.

It should be noted that the MDTCA has provided for a prohibition of foreign involvement in certain distributive trades listed in the DTG. These include: (i) supermarket/mini market (less than 3000 square meters sales floor area); (ii) provision shop/general vendor; (iii) convenience store (that opens for business for 24 hours); (iv) news agent and miscellaneous goods store; (v) medical hall (inclined towards traditional and alternative medicines plus general dry foodstuff); (vi) fuel stations (with or without convenience store); (vii) permanent wet market store; (viii) permanent pavement store; (ix) national strategic interest; (x) textile, restaurant (non-exclusive), bistro, jewellery shops; and (xi) others as deemed fit by the MDTCA.

A key point that has been clarified by the MDTCA since the implementation of the DTG is that foreign...
participation in companies that are purely service providers and do not distribute or supply goods are still required to obtain the MDTCA's approval prior to the commencement of business. This sector is known as 'Unregulated Services' and falls under the purview of the 'Services Industry' division of the MDTCA. Although there is no express provision in the DTG stating that the scope of the DTG extends to companies carrying out Unregulated Services that have foreign participation, the MDTCA has taken the view that Unregulated Services would fall under the heading of 'Various Other Distribution Formats' and accordingly, would need to comply with the conditions as set out in the DTG.

The MDTCA has published a list of sub-sectors under the scope of Unregulated Services which would require the approval of the MDTCA. These include: (i) market research and public opinion polling services; (ii) management consulting services; (iii) other business services; (iv) repair services incidental to metal products, machinery and equipment; (v) other land transport services; (vi) supporting services for road transport; (vii) services related to management consulting; (viii) building-cleaning services; (ix) photographic services; (x) leasing or rental services concerning machinery and equipment without operator; (xi) leasing or rental services concerning personal and household goods; (xii) services furnished by membership organisations; (xiii) other services (e.g. dry cleaning services, hairdressing and barbers' services etc.); (xiv) research and experimental development services on social sciences and humanities; and (xv) real estate services involving own or leased property.

It should be noted that products and services governed by other acts such as petroleum products, explosives and agricultural raw materials are subject to other acts and regulations for specific reasons. Distributive trade companies intending to carry out the distribution of such products would be required to observe different requirements, conditions and/or rules imposed by other government authorities depending on the types of goods intended to be distributed by the companies. As an illustration, distribution of pharmaceutical, medicinal and orthopaedic products would require a licence from the Ministry of Health Malaysia.

B. Legal Control

Legal control in respect of Bumiputera participation is enforced through administrative discretion conferred under statutes or subsidiary legislations. Equity ownership is controlled through the issuance of licences, permits and employment passes or in the purchase of real property and acquisitions of any interest in real property. Where the intended operations of a company or business in Malaysia require certain operating licences, equity conditions or restrictions may be imposed through the approval and issuance of such licences by government or statutory bodies, or by the Securities Commission on initial public offerings.

There is no legislation prohibiting foreign ownership of the share capital of Malaysian companies.

Nonetheless, as discussed, the relevant government department or statutory bodies may require or stipulate certain equity conditions in granting licences, permits or other governmental approvals. Certain examples are listed below:

Manufacturing

Manufacturing companies (except those with shareholders’ funds of less than RM2.5 million or less than 75 full-time paid employees) are required to be licensed under the Industrial Coordination Act 1975 which is regulated by MITI. As it is difficult for a branch of a foreign company to obtain a manufacturing licence, a foreign company wishing to establish a manufacturing operation must generally incorporate a subsidiary.

The Malaysian Government has in the past few years taken various steps to liberalise the restrictions on foreign participation in the
manufacturing industry in Malaysia. The present policy is that 100% foreign equity will be allowed for all new investments, including investments for expansion and diversification by existing licensed manufacturers.

Whilst equity and export conditions imposed on existing licensed manufacturing companies prior to the new policy will be maintained, MITI has left open the possibility of removing any such existing conditions.

**Services**

In general, the services sector is under the purview of different government authorities having responsibility for the respective industries and subject to the relevant laws. For example, the Malaysian Communications and Multimedia Commission is the responsible body to oversee courier services. It is also a sector regulated under the Postal Services Act 2012. On 22 April 2009, the Malaysian Government had liberalised 27 service subsectors to allow 100% foreign ownership in companies carrying out these services. The subsectors include transport services, health and social services, tourism services, business services and computer and related services.

In 2012, the Malaysian Government further announced that 18 subsectors will be liberalised in phases to allow 100% foreign equity participation, involving telecommunication services, healthcare services, professional services, environmental services, distributive trade, education services and courier services.

**Trading**

As discussed above, foreign interests engaging in wholesale or retail trade (i.e. the re-sale of goods without transformation) are currently required to comply with the DTG which introduces rules and conditions in connection with specifically defined various distributive trade businesses. The DTG is not law and only a reflection of the Malaysian Government's aspirations. Although there are no legal sanctions against non-compliance, the DTG can be enforced through the refusal to register branches of foreign companies engaged in such trade, and through licensing, immigration passes and business premises permits requirements.

**Petroleum – Upstream Activities**

Petroliam Nasional Berhad ("Petronas"), a wholly-owned entity of the Malaysian Government is vested with the entire ownership and control of the petroleum resources in Malaysia. It licenses upstream activities and generally requires local and Bumiputera equity ownership in entities which it deals with.

Despite the local equity requirements mentioned above, the Malaysian Government's direction is towards liberalisation of local equity requirements and encouragement of foreign investment into the country. This can be seen in the Malaysian Government's formulation of investor friendly policies and laws (such as the Promotion of Investments Act 1986) for incentives and taxation benefits to foreign investors (as discussed in the following chapter).

**C. Foreign Employment**

Where there is a shortage of trained Malaysians, companies are allowed to bring in expatriate personnel i.e. 'key post' or 'time post'. Key posts are high level managerial posts in foreign-owned private companies and firms operating in Malaysia. Key posts are posts essential for companies to safeguard their interest and investments. The expatriates are responsible in determining the company's policies in achieving its goal and objectives.

Time posts are positions filled for a specified time. There are two types of time posts. Executive time posts are intermediate level managerial and professional posts. The post requires professional qualifications, practical experience, skills and expertise related to the respective job. The
expatriates are responsible for implementing the company’s policies and supervision of staff. Non-executive time posts are posts for the performance of technical jobs that require specific technical or practical skills and experience.

Please see Chapter 11 for further information on the immigration requirements and Chapter 7 for applicable taxes in relation to employment of expatriates in Malaysia.

D. Free Trade Agreements

At present, Malaysia has entered into FTAs with 17 countries. These FTAs not only provide market access for trade in goods, but also improved market access for service providers and investments with FTA partner countries. At the regional level, Malaysia and its ASEAN partners have also established the ASEAN Free Trade Area aiming to promote similar benefits.

On 4 February 2016, Malaysia signed the TPPA as a result of 5 years of negotiations with 11 countries namely New Zealand, Australia, Chile, Mexico, Japan, Peru, Canada, Vietnam, Singapore, Brunei and the United States. The TPPA aims at promoting economic integration to liberalise trade and investments. However, on 23 January 2017, United States President Donald Trump signed a Presidential Memorandum to withdraw the United States from the TPPA.

In light of the withdrawal by the United States, Malaysia and the remaining member countries went on to affirm the economic and strategic importance of the TPPA. On 9-10 November 2017, Malaysia and the remaining 10 TPPA parties have reached an agreement on the new way forward to implement the TPPA, renamed as the CPTPP. The CPTPP will incorporate the original TPPA, with suspension of a limited number of provisions, while maintaining the high standard and comprehensive nature of the TPPA. However, any schedules and annexes specific to the United States and any references to the United States appearing in the original TPPA will have no application given the withdrawal by the United States.

On 8 March 2018, the CPTPP was signed by all 11 participating countries - Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The next course of action would be for the participating countries to ratify the CPTPP, where changes to legislation may be needed. In contrast to the original TPPA, the mechanism for the entry into force of CPTPP is simpler. On 31 October 2018, the CPTPP achieved the target of 50% ratification by its signatories. As such, the CPTPP came into force on 30 December 2018.

Another significant regional cooperation is the Regional Comprehensive Economic Partnership ("RCEP"), involving 16 countries namely the 10 ASEAN member countries, China, Japan, Korea, India, Australia and New Zealand. The RCEP is aimed at broader and deeper engagement with significant improvements over existing free trade agreements and comprehensive economic partnership agreements between ASEAN and the other 6 countries. Negotiations on the RCEP are ongoing.
5. Franchise Law

Starting a franchise business has become a viable business model compared to the traditional business models. Since the Franchise Act 1998 ("FA 1998") was introduced to regulate such businesses, they have maintained a slow but steady growth. However, becoming a successful franchisor requires the franchisor to know and comply with the requirements of the Act and guidelines issued by the Ministry of Domestic Trade and Consumer Affairs ("MDTCA") that heavily regulates the franchise industry in Malaysia.

A. The Law and its Scope

The franchise industry in Malaysia is mainly governed by the FA 1998. It provides for the registration of as well as regulation of any franchise related matters. It also provides an extensive definition of what is considered a franchise under the FA 1998.

Generally, a franchise refers to a contract / an agreement where a franchisee is granted the right to operate a franchise business following a set of rules / guidelines (also known as franchise system) along with the right to use the trade mark, trade secret or any confidential information by the franchisor. In addition, unlike a licensing arrangement, a franchisor has the right to exercise continuous control over the franchisee's franchise business during a franchise term. Under the FA 1998, a franchise term must be for a period of 5 years and above ("Minimum Term").

B. Registration Requirements

Preliminary requirements

The FA 1998 requires a franchisor (be it local or foreign) to register its franchise with the Franchise Development Division of MDTCA ("Franchise Division") before a franchise business commences operation / a franchise business is offered for sale. An application can be submitted online by anyone through the Malaysian Franchise Express portal at http://myfex.kpdnhep.gov.my/ ("Application"). To facilitate the registration process, a franchisor should consider operating at least 1 franchise outlet for 3 years due to the Act's requirement to have the franchisor's current audited financial statements of 3 years ("Statements") submitted to the Franchise Division.

A master franchisee may not need to submit the Statements if certain requirements are met for example, the master franchisee has operated the franchise business for more than 1 year or the master franchisee has only been incorporated for
less than 3 years. However, before a master franchisee submits the Application to the Franchise Division to obtain its approval that the Statements are not required, the master franchisee should consider whether such an application will impact any party’s commercial arrangements on the commencement / operation of the franchise business due to the length of time required by the Franchise Division to approve these approvals.

1. **Registration of a franchisor (whether local or foreign)**

According to the FA 1998, a franchisor refers to a person who grants a franchise to a franchisee and includes a master franchisee in relation to its relationship with a sub-franchisee.

Generally, a fine will be imposed by the Registrar of Franchise ("RoF") if a franchisor is found by the RoF to have failed to register as required by the Act as follows:

a) a fine not exceeding RM250,000 for a body corporate; or

b) a fine not exceeding RM100,000 if the person who defaults is not a body corporate.

2. **Registration of a franchisee of a foreign franchisor**

Before a franchisee intends to commence the franchise business, the franchisee who has been granted a franchise from a foreign franchisor shall apply to register the franchise with the Franchise Division.

Likewise, where a franchisee has been granted approval from a foreign franchisor to sell the franchise business, the franchisee is also required to register such approval with the Franchise Division.

3. **Registration of a franchisee of a local franchisor**

Where a franchisee has been granted a franchise from a local franchisor or a local master franchisee, the franchisee must register the franchise business with the Franchise Division by way of the Application within 14 days from the date of signing the franchise agreement between the franchisor and the franchisee. The parties should note that the franchise agreement that is to be signed is the franchise agreement that has been duly approved by the Franchise Division.

4. **Registration of franchise broker or franchise consultant**

It is common for a franchisor or a franchisee to engage a franchise broker or a franchise consultant when setting up a franchise business in Malaysia. A franchise broker or a franchise consultant must first register himself with the RoF.

All the requirements as prescribed on the qualifications of a franchise broker or franchise consultant in the FA 1998 must be met before he can be registered.

A “franchise broker” is defined as a person doing business as an agent or representative of a franchisor to sell a franchise to any person for a certain consideration but does not include any director, officer or employee of the franchisor or franchisee, whereas a “franchise consultant” means a person who provides advice and consultancy services to another person on the registration of a franchise business and compliance of the related laws.

The RoF may impose conditions on the registration of the franchise broker or franchise consultant which may include the following: -

a) conditions governing the sale of a franchise by a franchise broker or franchise consultant; and
b) conditions on the conduct, suspension, termination, prohibition or denial of registration of a franchise broker or franchise consultant.

5. Sale of franchise by a foreigner in Malaysia
Where a foreign person intends to sell a franchise in Malaysia or to any Malaysian citizen, the foreign person is required to submit an Application to the Franchise Division.

6. Approval or refusal of application for registration
Upon the receipt of an application for registration together with the documents required for registration under the FA 1998, the RoF has the discretion to approve or refuse the application and the RoF must give reasons for the refusal.

An application for registration which is approved may be subject to conditions imposed by the RoF and may require the applicant to pay such amount of fees as may be prescribed.

7. Cancellation from register
A franchisor may, at any time after the franchise term, apply to the RoF for cancellation of registration of the franchise from the register.

The RoF shall cancel the registration of the franchise from the register if he is satisfied that:

a) the franchisor has failed to submit his annual report to the RoF for the duration of five (5) years continuously;

b) the franchisor is insolvent; or

c) the franchisor is no longer granting rights under the franchise.

C. The Franchise Agreement and the Disclosure Documents
As part of the registration requirements, the FA 1998 requires a copy of the franchise agreement to be submitted to the Franchise Division for approval before it is signed between the parties. After obtaining the approval from the Franchise Division, the FA 1998 requires the franchisor to provide a set of documents / information (i.e. all the documents / information submitted by the franchisor in support of the Application) to the franchisee at least 10 days before the franchise agreement is signed by the franchisee.

Additionally, the FA 1998 also provides for certain mandatory provisions to be included in the agreement. Failure to include these provisions will render a franchise agreement null and void. Some of the provisions are:

1. Confidential information and prohibition against similar business
The franchisee must provide to the franchisor a written guarantee that during the term and for two years after the franchise agreement has ended, the franchisee, its directors and their spouses and immediate family, and its employees will not disclose confidential information or engage in businesses similar to the franchise operated by the franchisor.

2. Cooling off period
A franchise agreement must also provide for a cooling off period of not less than 7 working days after the franchise agreement has been signed during which the franchisee has the option to terminate the agreement and be refunded all monies paid to the franchisor, save for reasonable expenses incurred by the franchisor in preparing the agreement.

3. Extension of a franchise term
The FA 1998 requires the Minimum Term for a franchise with an option for the franchisee to apply
for an extension of the franchise term on similar conditions for a further term or not less favourable than the conditions in the previous franchise agreement. Save where the franchisee has breached the terms of the previous franchise agreement or where the franchisee gives the franchisor a written notice of his intent not to renew the franchise agreement, the franchisor may only refuse to renew the franchise if he agrees to compensate the franchisee. In the event the franchisee intends to apply for an extension of the Minimum Term, the franchisee must give a written notice to the franchisor not less than 6 months prior to the expiration of the franchise term.

Alternatively, the franchisor may waive any provision in the franchise agreement which prohibits the franchisee from conducting substantially the same business under another trade mark in the same area prior to the expiration of the franchise agreement.

4. Termination

Under the FA 1998, a franchisor may not terminate a franchise agreement before the expiration date except for a "good cause". An example of a "good cause" is when a franchisee fails to remedy a breach after the franchisor has given a notice of, and an opportunity to remedy, the breach.

Though a franchise term must not be less than the Minimum Term, a franchise term may be terminated before the expiry of the minimum term in the following circumstances: -

a) where both parties to the franchise agreement agree to a termination; or

b) where the court has decided that there are certain conditions in the franchise agreement which merit the agreement to be terminated earlier than the minimum term.

5. General requirements

Where a franchisee is required to make payment for the purpose of the promotion of the franchise, the franchisor must establish a promotion fund to be managed under a separate account, used solely for the purpose of payment by franchisees for the promotion of the product under the franchise.

1. Annual report

The franchisor must submit an annual report to the RoF in the prescribed form within 6 months from the end of each financial year of the franchise business. The FA 1998 allows the RoF to cancel the registration of the franchise on its own accord if the annual report is not submitted.

2. Registration of trade mark or service mark

A franchisor is required to register his trade mark or service mark relevant to his franchise in accordance with the Trade Marks Act 1976 (if they are registrable under the FA 1998) before applying for the registration of the franchise.

D. Conduct and obligations of a franchisor and a franchisee

1. Conduct of parties

The FA 1998 provides for the conduct of the parties as follows: -

a) the franchisor and the franchisee must act in an honest and lawful manner and must endeavour to pursue the best franchise business practice of the time and place;

b) the franchisor and the franchisee in their dealings with one another shall avoid substantial and unreasonable overvaluation of fees and prices;

c) the franchisor and the franchisee in their dealings shall avoid conduct which is unnecessary and unreasonable in relation to the risks to be incurred by one party; and

d) the franchisor and the franchisee in their dealings shall avoid the conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.
e) The franchisee must also operate the business separately from the franchisor, and the relationship of the franchise with the franchisor must not at any time be considered as a partnership, service contract or agency i.e. if Party A has equity participation in Party B, Party B shall not be regarded as a franchisee of Party A and do not fall within the definition of a "franchise".

2. Obligations of a franchisor and a franchisee

a) In the event of a breach of contract by a franchisee, a franchisor must give a written notice about the breach and allow the franchisee time to remedy the breach. The franchisor must also provide assistance to a franchisee to operate his business, such as the provision or supply of materials and services, training, marketing and business or technical assistance.

b) One of the obligations of a franchisee is that, a franchisee must pay the franchise fees, royalty fees, promotion fees or other payment as provided in the franchise agreement to the franchisor. It is vital that a franchisor and a franchisee protects the consumer’s interests at all times.

E. Offences and Penalties

The FA 1998 provides for various offences and penalties, amongst others, are as follows:

1. Holding out a franchise business

A person who assumes / uses the term "franchise"/ any words indicating the carrying of a franchise business without the required approval from the Franchise Division will usually be liable for:

a) a fine not exceeding RM250,000 for a body corporate; or

b) a fine not exceeding RM100,000 if the person who defaults is not a body corporate.

2. Offence by body corporate

If an offence against any provision under the FA 1998 has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall be deemed to have committed the offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves:-

a) that the offence was committed without his knowledge, consent or connivance; and

b) that he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

3. General penalty for any other offence not specifically provided under the FA 1998

A person who commits an offence under the FA 1998 for which no penalty is expressly provided shall, on conviction, be liable to the following:

a) a fine not less than RM10,000 and not more than RM50,000 for a body corporate; or

b) a fine of not less than RM5,000 and not more than RM25,000 if the person who defaults is not a body corporate.

The aim of the legal framework of franchising in Malaysia brings greater protection for Malaysian businesses. Through proper implementation, the FA 1998 will encourage innovation and economic growth. However, franchisors should also be aware of the laws in place to establish franchise systems that are acceptable by all the parties, including the Franchise Division.
6. Investment Incentives

Malaysia offers a wide range of investment incentives in the form of tax exemptions, grants, reinvestment allowances and other benefits. Over the years Malaysia has gained more interest from investors and continues to develop new incentives to promote investment. The more pertinent incentives in the sectors of manufacturing as well as the newly introduced investment incentives are briefly set out below.

A. Manufacturing Sector

The major tax incentives made available for companies investing in the manufacturing sector are the pioneer status ("Pioneer Status") and the Investment Tax Allowance ("ITA") incentives. The MIDA is the body appointed to receive applications for Pioneer Status or ITA.

Pioneer Status incentive is made available for companies participating in a promoted activity or producing a promoted product. The list of promoted products or activities generally covers the manufacturing, agricultural, hotel, tourism, research and development and technical or vocational training sectors as well as certain commercial sectors connected to manufacturing.

Companies with Pioneer Status have the privilege of income tax exemption of 70% of statutory income for five years. The company pays tax on 30% share of its statutory income with the exemption period commencing from its production day. The exempt income is credited to the exempt account from which exempt dividends are distributed to the shareholders of the company. As an alternative to Pioneer Status, a company may opt for ITA. In order to qualify for ITA the companies must be of those which have not commenced production and fulfil the two criteria (i.e. Level of value-added (VA) percentage and level of technology as measured by the Managerial, Technical and Supervisory index ("MTS Index")).

As for the benefits, ITA provides allowances of 60% on its qualifying capital expenditure (factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date the first qualifying capital expenditure is incurred. The company can offset this allowance against 70% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of its statutory income will be taxed at the prevailing company tax rate.
Other incentives available for the manufacturing sector include the following:

1. **Reinvestment Allowance ("RA")**

RA is given to existing companies engaged in manufacturing and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification of its existing business into any related products within the same industry on condition that such companies have been in operation for at least 36 months effective from the Year of Assessment 2009. The RA is given at the rate of 60% on the qualifying capital expenditure incurred by the company and can be offset against 70% of its statutory income for the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised.

A company can offset the RA against 100% of its statutory income for the year of assessment if the company attains a productivity level exceeding the level determined by the Ministry of Finance. The RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made.

2. **Accelerated Capital Allowance ("ACA")**

1. **Reinvestment for promoted activities or products**

   After the 15-year period of eligibility for RA, companies that reinvest in the manufacture of promoted products are eligible to apply for the ACA. The ACA provides a special allowance, where the capital expenditure is written off within three years, i.e. an initial allowance of 40% and an annual allowance of 20%. Applications should be submitted to the IRB.

2. **Waste Recycling**

   Effective from the Year of Assessment 2001, a manufacturing company which has incurred on Qualifying Expenditure for the purpose of its business may claim ACA on the plant and machinery which are:

   (i) Used exclusively or otherwise for the recycling of wastes; or

   (ii) Used for the further processing of the wastes into finished products.

A company that fulfils the above criteria is eligible to claim ACA of 20% for the initial allowance ("IA") and 40% for the annual allowance ("AA"). Applications should be submitted to the IRB.

3. **Conservation of Energy**

   Effective from the Year of Assessment 2003, ACA is given to a company which has incurred capital expenditure in the basis period for a year of assessment on the:

   (i) Provision of plant or machinery as certified by the Ministry of Energy, Green Technology and Water; or

   (ii) Machinery used exclusively for the conservation of energy of its business.

ACA is fully given within one year with IA of 40% and AA of 60%. Applications should be submitted to the IRB.

4. **Equipment to Maintain Quality of Power Supply**

   In order to reduce the costs of doing business, effective from year of assessment 2005, companies which incur capital expenditure on equipment to ensure the quality of power supply, are eligible for ACA for a period of two years which allows the companies to write off the capital expenditure within two years, i.e. an initial allowance of 20% and an annual allowance of 40%. Only equipment determined by the Ministry of Energy, Green Technology and Water is eligible for the ACA. These rules do not apply to a company which:

   (i) has been granted any incentive except for deduction for promotion of exports under the Promotion of Investments Act 1986; or

   (ii) has made a claim for RA under Schedule 7A of the ITA.
Applications should be submitted to the IRB.

5. **Equipment for Information and Communications Technology**

Effective from the Year of Assessment 2009 to Year of Assessment 2015, capital expenditure incurred in the basis period for a year of assessment in relation to the purchase of any information and communications technology equipment used for the purpose of a business are eligible for ACA. ACA is given at 20% for IA and 80% for AA. This means the qualifying expenditure is written off in one year. Applications should be submitted to the IRB.

6. **Equipment for Security Control**

ACA is given on security control equipment installed in the factory premises of companies licensed under the Industrial Coordination Act 1975. This allowance is eligible to be claimed within one year. Effective from the Year of Assessment 2009, this allowance is extended to all business premises. Applications should be submitted to the IRB.

3. **Incentive for Industrial Building System ("IBS")**

IBS will enhance the quality of construction, create a safer and cleaner working environment as well as reduce the dependence on foreign workers. Companies which incur expenses on the purchase of moulds used in the production of IBS components are eligible for the ACA with effect from year of assessment 2006 at rate of 40% for IA and 20% of or AA. Applications should be submitted to the IRB.

4. **Group Relief**

Group relief is provided under the ITA to all locally incorporated resident companies. Effective from the Year of Assessment 2009, group relief is increased from 50% to 70% of the current year’s unabsorbed losses to be offset against the income of another company within the same group (including new companies undertaking activities in approved food production, forest plantation, biotechnology, nanotechnology, optics and photonics) subject to the following conditions:

(i) The claimant and the surrendering companies each have a paid-up capital of ordinary shares exceeding RM2.5 million;

(ii) Both the claimant and the surrendering companies must have the same accounting period;

(iii) The shareholding, whether direct or indirect, of the claimant and the surrendering companies in the group must not be less than 70%;

(iv) The 70% shareholding must be on a continuous basis during the preceding year and the relevant year;

(v) Losses resulting from the acquisition of proprietary rights or a foreign-owned company should be disregarded for the purpose of group relief; and

(vi) Companies currently enjoying the following incentives are not eligible for group relief:

(1) Pioneer Status;
(2) ITA/investment allowance;
(3) RA;
(4) exemption of shipping profits;
(5) exemption of income tax under Section 127 of the ITA; and
(6) incentive investment company.

Claims should be submitted to IRB.

With the introduction of the above incentive, the existing group relief incentive for approved food production, forest plantation, biotechnology, nanotechnology, optics and photonics will be discontinued. However, companies granted group relief incentive for the above activities shall continue to offset their income against
100% of the losses incurred by their subsidiaries. Claims should be submitted to IRB.

B. High Technology Companies

High Technology Companies are namely those involved in promoted activities or in the production of promoted products in areas of new and emerging technologies. They are eligible and may opt for either Pioneer Status or ITA. Under Pioneer Status, a high technology company would enjoy tax exemption of 100% of the statutory income for a period of five years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period be carried forward and deducted from the post pioneer income of the company.

In regard to ITA, as much as 60% of ITA is granted on the qualifying capital expenditure incurred within five years from the date the same is incurred. In addition, the allowance can be offset against 100% of the statutory income for each year of assessment. Any utilised allowance can be carried forward to subsequent years until fully utilised.

The high technology company must fulfil the following requirements:

a) the percentage of local research and development expenditure to gross sales of the company should be at least 1% on an annual basis. The company has 3 years from its date of operation or commencement of business for the company to comply with this requirement;

b) scientific and technical staff having degrees or diplomas with a minimum of 5 years’ experience in related fields should comprise at least 15% of the company’s total workforce; and

c) value-added must be at least 40%.

C. Strategic Projects

Strategic projects involve products or activities of national importance. This is meant for companies who largely deal with heavy capital investments with long gestation periods, have high levels of technology, are integrated, generate extensive linkages and have significant impact on the economy. These companies qualify and may opt for either Pioneer Status or ITA. Under Pioneer Status the companies are granted income tax exemption of 100% of the statutory income for a period of 10 years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company. ITA provides for 100% on the qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

D. Incentives for Small and Medium-Scale Companies and Small-Scale Manufacturing Companies

To encourage and support the development of small and medium scale companies, a range of incentives are made available for them. Namely companies with a paid-up capital of RM2.5 million and below are deemed as small and medium-scale companies and are eligible for a reduced corporate tax of 20% on chargeable incomes of up to RM500,000. Meanwhile the tax rate on the remaining chargeable income is maintained at 25%.

As for small-scale manufacturing companies incorporated in Malaysia with shareholders’ funds not exceeding RM500,000 and having at least 60% Malaysian equity, they are eligible for either the benefits under Pioneer Status or ITA. Companies with Pioneer Status are given income tax exemption of 100% of the statutory income for a period of five years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company. As an
alternative to Pioneer Status, the Companies may opt for the ITA's incentive of 60% (100% for promoted areas) on the qualifying capital expenditure incurred within five years. The incentive further allows for the allowance to be offset against 100% of the statutory income for each year of assessment.

There are pre-conditions of fulfilling a set of criteria before the company is deemed to be eligible for the incentives. The criteria amongst others includes level of technology as measured by the MTS Index, level value added percentages and the requirement that the paid-up capital directly or indirectly owned by the first mentioned company in respect of ordinary shares of the related company shall not be more than 20%.

E. Incentives for the Machinery and Equipment Industry

1. Production of Specialised Machinery and Equipment

Companies that undertake to produce specialised machinery and equipment, namely, machine tools, plastic injection machines, plastic extrusion machinery, material handling equipment, packaging machinery and such are eligible for income tax exemption of 100% of the statutory income for a period of ten years under Pioneer Status. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company. Alternatively, it can opt for ITA of 100% on the qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

To qualify for the above incentive, company must comply with the following requirements:

a) value added must be at least 40%; and
b) percentage of Managerial, Technical and Supervisory staff (MTS Index) to total workforce must be at least 25%.

2. Production of Heavy Machinery

Locally incorporated companies that reinvest in the production of heavy machinery such as cranes, quarry machinery, batching plant and port material handling equipment, are eligible for the same kind of incentives as above except that it enjoys lower amount of exemption, i.e. under Pioneer Status it is granted income tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company.

The alternative incentive is the ITA of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

3. Production of Machinery and Equipment

Companies are ideally encouraged to reinvest their returns and the Malaysian government does so by way of incentives. This is however only for locally owned companies. Those that reinvest in the production of machinery and equipment, including specialised machinery and equipment and machine tools, would qualify for the following incentives:

a) Pioneer Status incentive provides income tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years. Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer
period can be carried forward and deducted from the post pioneer income of the company; or

b) ITA of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

In a bid to attract more investments into the country, Malaysia has recently introduced four new tax incentives. The focus of these tax incentives is mainly on the less developed areas, industrial area management, capital allowance to increase automation in labour intensive industries as well as for the establishment of a principal hub. The four new tax incentives are as set out below.

F. Incentive for Less Developed Areas

The Incentive for Less Developed Areas is only available for companies who undertake manufacturing or services activities in less developed areas.

This incentive allows for an income tax exemption of 100% up to 15 years of assessment (5+5+5) commencing from the first year the company derives statutory income or an income tax exemption equivalent to 100% of qualifying capital expenditure incurred within a period of 10 years. The company must comply with the conditions and achieve the Key Performance Index ("KPIs") for additional 5 years.

There are also customised incentives such as income tax exemption, stamp duty exemption and withholding tax exemption available under the same category.

G. Incentive for the Establishment of Principal Hub

A principal hub is a locally incorporated company that uses Malaysia as a base for conducting its regional and global businesses and operations. The new Principal Hub incentive scheme is an incentive provided under Section 127(3)(b) of the ITA with annual submissions of reports to MIDA for performance evaluation. It is available to companies registered in Malaysia with a paid-up capital of more than RM2.5 million. The incentive is in the form of a three-tiered rate of tax reductions based on the level of value created. This includes level of business spending, high-value job creation, high level personnel, level of value-adding functions and risks transferred to the principal Company, and revenue. It also includes import duty exemptions, foreign exchange administration flexibilities, support full off-shoring trading, and wider service coverage.

There are also facilities accorded to the Principal Hub. An approved Principal Hub company will enjoy certain facilities such as the company can bring in raw materials, components or finished products with customs duty exemption into free industrial zones, licensed manufacturing warehouse, free commercial zones and bonded warehouses for production or re-packaging, cargo consolidation and integration before distribution to its final consumers for goods-based companies. There is also no local equity / ownership condition imposed. Further thereto a foreign-owned company is allowed to acquire fixed assets so long as it is for the purpose of carrying out the operations of its business plan.

H. Incentive for Industrial Area Management

This incentive is a 100% tax exemption on statutory income for 5 years starting from the date the company commences its activities. To be eligible, the Industrial Estate ("IE") must be gazetted by the State Authority as an industrial land. A newly established company or existing company appointed by a local authority must have an agreement on the management of IEs, be self-funded and licensed by a local authority. It is a mandatory criterion for the company to undertake all of the specified management, upgrading and maintenance activities.
within the IE. This includes roads, street lightings and draining systems; common facilities; landscaping; industrial waste collection, transfer and disposal; and database system maintenance. At least 30% of the annual income of the industrial area management must be derived from these compulsory activities.

I. Capital Allowance to Increase Automation in Labour Intensive Industries

To further spur the growth of automation, capital allowance of 200% on the first RM4 million expenditure incurred within the year of assessment 2015 to 2020 for high labour intensive industries; and on the first RM2 million expenditure incurred within the year of assessment 2015 to 2020 for other industries. To be eligible, companies need to possess a valid business licence from the local authority and a valid manufacturing licence from MITI. The Company must have been incorporated under the Companies Act 1965 (which is now CA 2016) and have been in operation for at least 36 months.

J. Tourism Industry Incentives

Malaysia holds a strategic location that is ideal for tourism and the government has put in place incentives to boost the tourism industry. Tourism projects, including eco-tourism and agro-tourism projects, are eligible for tax incentives. These include hotel businesses, tourist projects and recreational projects.

a) Pioneer Status

A company with a pioneer status has the privilege of a 5-year partial exemption of 70% on the income tax.

b) ITA

A company can apply for ITA and upon such grant is entitled towards allowance of 60% on the qualifying expenditure for a period of 5 years from the date of when the qualifying expenditure was first incurred.

c) Enhanced Incentives

Companies undertaking new investments in 4 – 5 stars hotel in Sabah and Sarawak are provided with bigger incentives whereby those with pioneer status will enjoy 100% tax exemption on statutory income for the period of 5 years. Alternatively, companies granted with ITA can enjoy allowance of 100% on the qualifying expenditure for a period of 5 years from the date of when the qualifying expenditure was first incurred.

d) Reinvestment Incentives

Companies undertaking new investments in 4 – 5 stars hotel in Sabah and Sarawak are provided with bigger incentives whereby those with pioneer status will enjoy 100% tax exemption on statutory income for the period of 5 years. Alternatively, companies granted with ITA can enjoy allowance of 100% on the qualifying expenditure for a period of 5 years from the date of when the qualifying expenditure was first incurred.

There are also similar incentives as above that have been put in place to accommodate companies that are reinvesting in tourism projects within the industry.

e) Private Healthcare Facilities

Companies that establish new private healthcare facilities or existing private healthcare facilities undertaking expansion/modernisation/refurbishment for purposes of promoting healthcare travel are eligible to apply for an income tax exemption equivalent to ITA of 100% on the qualifying capital expenditure incurred within a period of five (5) years. The allowance can be used to offset against 100% of the statutory income for each year of assessment. Any unutilised
allowance can be carried forward to subsequent years until fully utilised.

K. Other Incentives

Other incentives may be applicable to the following sectors: manufacturing, agriculture, aerospace, environmental management, research and development, training, information and communication technology, Approved Service Projects (projects in transportation, communications and utilities sub-sectors approved by the Minister of Finance) and manufacturing related services:

a) **Industrial Building Allowance**

An Industrial Building Allowance (IBA) is granted to companies incurring capital expenditure on the construction or purchase of a building that is used for specific purposes, including manufacturing, agriculture, mining, infrastructure facilities, research, Approved Service Projects and hotels that are registered with the Ministry of Tourism. Such companies are eligible for an initial allowance of 10% and an annual allowance of 3%. As such, the expenditure can be written off in 30 years. Claims should be submitted to IRB.

b) **Industrial Building Allowance for Buildings in MSC Malaysia**

To encourage the construction of more buildings in Cyberjaya for use by MSC Malaysia status companies, IBA for a period of 10 years will be given to owners of new buildings occupied by MSC Malaysia status companies in Cyberjaya. Such new buildings include completed buildings but are yet to be occupied by MSC Malaysia status companies.

c) **Deduction of Audit Fees**

To reduce the cost of doing business and enhance corporate compliance, expenses incurred on audit fees by companies are deemed as allowable expenses for deduction in the computation of income tax.

d) **Tax Incentives for Venture Capital Industry**

Generally, venture capital companies (“VCC”) is eligible for income tax exemption for 10 years subject to the investment condition as follows:

i. at least 50% of funds invested in venture companies must be in seed capital; or

ii. at least 70% of funds invested in venture companies must be in start-up or early stage financing.

To stimulate and further promote the funding of venture companies, VCCs investing in venture companies with at least 30% of its funds in seed capital, start-up or early stage financing are eligible for income tax exemption for five years. This incentive is effective for applications received by the Securities Commission from 30 August 2008 until 31 December 2013.

e) **Incentive for Acquiring Proprietary Rights**

Capital expenditure incurred in acquiring patents, designs, models, plans, trade marks or brands and other similar rights from foreigners qualify as a deduction in the computation of income tax. This deduction is given in the form of an annual deduction of 20% over a period of five years.

f) **Incentive for the Use of Environmental Protection Equipment**

Companies using environmental protection equipment receive an initial allowance of 40% and an annual allowance of 20% on the capital expenditure incurred on such equipment. Thus, the full amount can be written off in three years.

g) **Donations for Environmental Protection**
Donations to an approved organisation exclusively for the protection and conservation of the environment qualify for single deduction.

Incentive for Employees' Accommodation
Buildings used for employees for the purpose of living accommodation in a manufacturing operation, an Approved Service Project, hotel or tourism business, are eligible for special Industrial Building Allowance of 10% of the expenditure incurred on the construction/purchase of the building for 10 years.

h) Incentives for Employees' Child Care Facilities
Buildings used for employees for the purpose of living accommodation in a manufacturing operation, an Approved Service Project, hotel or tourism business, are eligible for special Industrial Building Allowance of 10% of the expenditure incurred on the construction/purchase of the building for 10 years.

L. Green Technology Incentives
As part of Malaysia’s effort to strengthen the development of green technology, Malaysia has introduced various tax incentives for the green sector. These tax incentives are in the form of ITA for the purchase of green technology assets, income tax exemption and tax incentive for green technology services.

1. Tax Incentive for Green Technology Project
Malaysia currently offers ITA of 100% of qualifying capital expenditure incurred on a green technology project from the year of assessment 2013 commencing from 25 October 2013 until the year of assessment 2020. The allowance can be offset against 70% of statutory income in the year of assessment. Unutilised allowances can be carried forward until they are fully absorbed.

This form of ITA is applicable for green technology projects which focus on renewable energy, energy efficiency, green building, green data centre, and waste management.

2. Tax Incentive for Green Technology Services
Malaysia provides income tax exemption of 100% of statutory income from the year of assessment 2013 until the year of assessment 2020.

Services that would qualify for such exemption under this sector are those which deals with renewable energy, energy efficiency, electric vehicle, green building, green data centre, green certification and verification, and green township can qualify for this tax incentive.

3. Tax Incentive for Purchase of Green Technology Assets
ITA of 100% of qualifying capital expenditure incurred on green technology asset from the year of assessment from 25 October 2013 until the year of assessment 2020. Similar to the tax incentives benefit afforded for green technology projects, the allowance can be offset against 70% of statutory income in the year of assessment.
7. Taxation

Malaysia’s taxation system is assessed on a current year basis, and all income accrued in, derived from or remitted to Malaysia are liable to tax. The IRB, an agency of the MOF, is the responsible regulatory body for the administration of tax laws in Malaysia. This Chapter summarizes the various taxes which are relevant to doing business in Malaysia.

A. Indirect Taxes

1. Sales and Service Tax (“SST”)

The Goods and Services Tax Act 2014 (which was effective from 1 April 2015) was repealed and replaced by the Sales Tax Act 2018 and the Service Tax Act 2018 (SST regime) on 1 September 2018.

**Sales Tax**

Sales tax is a single stage consumption tax imposed on goods manufactured in or imported into Malaysia for local consumption. This means that the tax is only imposed at one level. All goods manufactured in Malaysia or imported into Malaysia are taxable unless they are specifically exempted by order of the Minister of Finance.

Sales tax on importation of taxable goods into Malaysia shall be levied and payable as if it were a customs duty or an excise duty. Sales tax is levied on the sales value of imported taxable goods, which is computed based on the value of such taxable goods plus any customs duty or excise duty paid or to be paid on such taxable goods.

Goods that are exported will not be subjected to sales tax. Sales tax is also not applicable on taxable goods which are imported into or transported between designated areas (i.e. Labuan, Langkawi and Tioman) and/or special areas (i.e. free zones\(^1\) (such as the Port Klang Free Zone), licensed warehouses or licensed manufacturing warehouses\(^2\) and the Joint Development Area\(^3\)).

The Minister of Finance may by order fix, amend or vary the rate of sales tax from time to time. Presently, the sales tax rate is fixed at 5% or 10% generally, depending on the category of goods specified under the Sales Tax (Rates of Tax) Order 2018 ("STO"). Petroleum products on the other hand are subject to different rates under the STO.

Goods which are exempted from sales tax include vegetables, live animals, daily necessities such as rice, cooking oil, newspapers, and certain chemicals and medicines.

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\(^1\) Declared under the Free Zones Act 1990  
\(^2\) Licensed under the Customs Act 1967  
\(^3\) Pursuant to the Malaysia-Thailand Joint Authority Act 1990
Service Tax

Service tax is another form of consumption tax levied and charged on any taxable service. A service which is taxable may be prescribed by the Minister of Finance to be a taxable service under the Service Tax Act 2018, which presently includes provision of rooms for lodging and premises for meetings, conventions, and cultural and fashion shows, health services, and provision of accommodation and food by private hospitals. Any person who provides any taxable service which is of the prescribed value must be registered.

Similar to sales tax, the Minister of Finance may by order fix, amend or vary the rate of service tax from time to time. The rate of service tax is presently set at 6% of the price, value, premium or takaful contribution of the taxable service, save for credit card or charge card services which are imposed with a fixed amount of RM25 for each card.

Service tax is applicable to (amongst others) professional and consultancy services provided by accountants, advocates and solicitors, engineers, architect, surveyors (including valuers, assessors and real estate agents), advertising agencies, consultancy firms, management service provider, insurance companies, motor vehicle service and repair centres, telecommunication services companies, security and guard services agencies, recreational clubs, estate agents, parking space services operators and courier service firms.

Professional services provided by a company to companies within the same group will be exempted from the current service tax of 6%. Courier services provided from a point within Malaysia to a destination outside Malaysia are also exempted from the service tax of 6%.

Similar to sales tax, taxable services provided within or between designated areas and special areas are not subjected to service tax, save for certain taxable services (within or between designated areas or special areas or both) such as provision of passenger air transport, telecommunication services, accommodation premises, food and beverages and services for clearing of goods from customs control.

Further to that, the Government has proposed for service tax to be charged on imported taxable services in 2 stages, i.e., (i) Effective from 1 January 2019, taxable services imported by businesses (B2B) will be subject to service tax and in this regard, the Malaysian recipient customers would need to account for 6% tax via reverse charge; and (ii) Effective from 1 January 2020, foreign online service providers are required to register and charge 6% service tax to Malaysian consumers (B2C).

Registration for SST

a) Mandatory

In respect of sales tax, a manufacturer of taxable goods and the total sales value of his taxable goods for a 12-month period exceeds or is expected to exceed RM500,000, is required to be registered under the Sales Tax Act 2018.

Manufacturers of certain taxable goods are exempted by order of the Minister of Finance from the registration requirement under the Sales Tax Act 2018. These manufacturing activities include developing and printing photographs and production of film slides, manufacture of ready mixed concrete, preparation of meals, repair of second hand or used goods and the installation of air conditioners in motor vehicles.

As for service tax, a person is liable to be registered under the Service Tax Act 2018 if he is a taxable person providing taxable services and the total value of his taxable services for a 12-month period exceeds or is expected to exceed the prescribed threshold under the Service Tax Regulations 2018. The prescribed total value of taxable service which is liable for registration varies from on taxable person
to another, for example, the registration threshold for operators of hotels, inns, lodging house is RM500,000; whilst the registration threshold for operators of restaurants, bars, snack bars and canteen is RM1,500,000.

b) Voluntary

Any person who is not liable to be registered for sales or service tax may apply to the Director General (“DG”) of Customs for registration as a registered person. The DG of Customs may approve the registration to be effective from a date he determines and subject to conditions he thinks fit.

2. Import Duties

In Malaysia, import duty is mostly imposed ad valorem, but it may also be imposed on a specific basis. However, as Malaysia is moving towards trade liberalisation, import duties on a wide range of raw materials, components and machinery have been abolished, reduced or exempted.

Generally, the value of goods for the purpose of computing import duties is determined largely in accordance with the World Trade Organisation principles of customs valuation. Notwithstanding that, Malaysia being a member state of ASEAN is committed to the ASEAN Common Effective Preferential Tariffs scheme. As such, all industrial goods traded within ASEAN are imposed with import duties of 0% to 5%.

Malaysia is also a party to a number of free trade arrangements in the areas of trade in goods, rules of origin, and investments. To date, Malaysia has concluded 7 bilateral FTAs with Turkey, Japan, Pakistan, New Zealand, India, Chile and Australia and 6 regional FTAs under ASEAN with China, Japan, Korea, Australia/New Zealand and India. Import duties between FTA partners are subject to specific reduction and elimination schedules under these agreements.

3. Excise duties

Excise duties are levied on a selected range of goods manufactured in Malaysia or imported into Malaysia. Goods that are subject to excise duty include beer/stout, cider and perry, rice wine, mead, undenatured ethyl alcohol, brandy, whisky, rum and tafia, gin, cigarettes containing tobacco, motor vehicles, motorcycles, playing cards and mahjong tiles. No excise duty is payable on dutiable goods that are exported. The rates of excise duty are imposed at a combination of specific and ad valorem rates that range from RM 1.50 per litre and 15% for certain types of beverages, to as much as 105% for motorcars (depending on engine capacity).

4. Export duties

Export duties are generally imposed on Malaysia's main export commodities such as crude petroleum and palm oil.

B. Real Property Gains Tax ("RPGT")

RPGT is a tax that is imposed on capital gains arising from the disposal of real property or shares in a real property company. The key elements in determining chargeability for RPGT would be the date of acquisition (“DoA”) and the date of disposal.

With effect from 1 January 2019, the RPGT rates for the disposal of real property and shares in real property companies (“RPC”) are as follows:

<table>
<thead>
<tr>
<th>Category of Disposal</th>
<th>RPGT Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Companies</td>
</tr>
<tr>
<td>Disposal within 3 years after DoA</td>
<td>30%</td>
</tr>
<tr>
<td>Disposal in the 4th year after DoA</td>
<td>20%</td>
</tr>
</tbody>
</table>
Category of Disposal | RPGT Rates
---|---
| Companies | Individual (Citizen & PR) | Individual (Non-citizen)
Disposal in the 5th year after DoA | 15% | 15% | 30%
Disposal in the 6th year after DoA or thereafter | 10% | 5% | 10%

* A RPC is a controlled company which owns real property or shares or both with a defined value of not less than 75% of its total tangible assets. A controlled company is a company owned by not more than 50 members and controlled by not more than 5 persons.

The RPGT rates have been designed to curb speculation in real property and not expected to burden genuine property owners. Exemptions are available in some cases, such as RPGT exemption on chargeable gains from the disposal of one unit residential property once in a lifetime by an individual who is a citizen or a permanent resident of Malaysia.

C. Corporate Tax

Section 8(1)(b) and (c) of the ITA provide that a company is considered to be a resident company in Malaysia for tax purposes if the control and management of its business or affairs are exercised within Malaysia. Some factors which are indicative of the place of management and control are the place at which the directors’ meetings are held or where the superior’s direction and control is exercised.

1. Taxable income

Income is taxed in Malaysia if the income is sourced in Malaysia (i.e., accrued in or derived from Malaysia) or received in Malaysia from outside Malaysia (subject to certain exemptions). Foreign sourced income received in Malaysia by a resident company is exempted from tax (save for a company carrying on the business of banking, insurance, shipping or air transport).

Presently, the rate of income tax for resident and non-resident companies (save for small and medium enterprises (“SMEs”) in Malaysia) is 24% (i.e., the maximum rate for residents and flat rate for non-residents).

Effective from YA 2019, resident companies with paid-up capital not exceeding or equal to RM2.5 million (SMEs) are taxed at a rate of 17% on the initial RM500,000 of its chargeable income while the remaining chargeable income is taxed at 24%.

2. Capital gains

Capital gain is where there is an increase in the value of capital asset which is higher than its original purchase price. Tax is incurred when the value of the capital assets is realised. Aside from RPGT, Malaysia currently has no existing capital gains tax in place.

3. Withholding tax

Withholding tax represents the portion of payment to a non-resident payee which is withheld by a payer in Malaysia as tax to be paid directly to the IRB. It is not applicable to resident payees.

Payments which are subject to withholding tax include the following:

<table>
<thead>
<tr>
<th>No.</th>
<th>Relevant sections in the ITA</th>
<th>Withholding tax rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>107A – service portion of the contract payment</td>
<td>10% of the contract payment on account of tax payable by the non-resident contractor;</td>
</tr>
</tbody>
</table>
### Withholding tax rates and 3% of the contract payment on account of tax payable by non-resident employees of that non-resident contractor

<table>
<thead>
<tr>
<th>No.</th>
<th>Relevant sections in the ITA</th>
<th>Withholding tax rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>109 – interest derived from Malaysia</td>
<td>15%</td>
</tr>
<tr>
<td>3.</td>
<td>109 – royalty derived from Malaysia</td>
<td>10%</td>
</tr>
<tr>
<td>4.</td>
<td>109B – special classes of income (i.e., technical or management service fees etc.)</td>
<td>10% (N.B. from 17 January 2017 to 5 September 2017, services rendered by non-residents are subject to tax regardless of whether such services are rendered within or outside Malaysia (save for prescribed circumstances**))</td>
</tr>
<tr>
<td>5.</td>
<td>109D – distribution of income from a real estate investment trust or property trust fund</td>
<td>Tax rate varies according to the following unit holder: other than a resident company – 10%; non-resident company – 25%; and foreign institutional investor – 10%.</td>
</tr>
<tr>
<td>6.</td>
<td>109E – distribution of profits out of family fund, family re-takaful fund or general fund</td>
<td>25%</td>
</tr>
<tr>
<td>7.</td>
<td>109F – income under section 4(f)</td>
<td>10%</td>
</tr>
</tbody>
</table>

**Based on Practice Note No. 1/2017 issued by the IRB on 23 June 2017:

a) where contracts for services which are **signed before** 17 January 2017 and the **services are performed outside of Malaysia before or after** 17 January 2017, payments to non-residents for these services are not subject to withholding tax;

b) where contracts are **signed and services performed outside of Malaysia before** 17 January 2017, but the **payments made after** 17 January 2017, payments to non-residents are not subject to withholding tax; and

c) where contracts are **signed and payment made before** 17 January 2017 but **services performed outside of Malaysia after** 17 January 2017, the payments to non-residents are not subject to withholding tax.

It is important to note that withholding tax rates may differ from country to country according to the Double Taxation Agreements ("DTA") entered into between the Malaysian government and the respective countries that the payee is resident in.

With effect from 6 September 2017, non-resident shall be exempted from paying income tax in relation to sections 4A(i) and 4A(ii) payments (i.e., services for use of property or rights and technical service, etc.), where the services are performed outside of Malaysia.

#### 4. Thin Capitalisation

Thin capitalisation refers to a situation where a company’s capital is made up of a significantly higher level of debt than equity. Countries which have a thin capitalisation regime generally set a limit on the deduction of interest expense by reference to the fixed capital of a company.

In Malaysia, the concept of thin capitalisation is introduced via Section 140A(4) of the ITA which provides that where the IRB is of the opinion that the value of financial assistance granted by a person to an associated person who is a resident, is excessive in relation to the fixed capital of such person, any interest, finance charge, other consideration payable for or losses suffered in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive, be disallowed as a deduction.

In Budget 2018, it was announced that the Earning Stripping Rules ("ESR"), i.e., similar rules to those proposed by the Organisation for Economic Cooperation and Development (OECD) in Base Erosion and Profit Shifting project (BEPS) Action 4, will replace the existing thin capitalisation legislation.
Effective 1 January 2019, no deduction will be allowed in respect of any interest expense in connection with or any financial assistance in a controlled transaction which is in excess of the maximum amount of interest. Under the previous Budget 2018, it was announced that the maximum amount would be in the region of 10% to 30% of the company’s profits before tax, using either the Earnings Before Interest and Taxes (EBIT) or the Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA). The interest expense subject to ESR includes interest on all forms of debt or payments economically equivalent to interest (excluding expenses incurred in connection with the raising of finance).

Transfer Pricing

Section 140A of the ITA provides for transfer pricing requirement in Malaysia. Under the ITA, where a person enters into a transaction with an associated person for the acquisition or supply of property or services, then that person shall determine and apply the arm’s length price for such acquisition or supply.

The Income Tax (Transfer Pricing) Rules 2012 and Transfer Pricing Guidelines 2012 provide guidance on the application of arm’s length principle under section 140A of the ITA. A recent development also saw the introduction of country-by-country reporting into Malaysia through the enactment of the Income Tax (Country-by-Country Reporting) Rules 2016.

In light of the increasing development of transfer pricing law and audits conducted by the IRB into companies with related party transactions (“RPTs”), businesses with RPTs are strongly encouraged to ensure that their RPTs are conducted at arm’s length price and the required transfer pricing documentation is complied with in order to justify the arm’s length nature of their RPTs.

Income Tax on Expatriates in Malaysia

Expatriates are non-Malaysian citizens who are qualified to hold key posts or term posts within a company. A key post is one which can be held indefinitely by an expatriate. A term post refers to either an executive post, which requires professional qualifications or a non-executive post which requires technical skills and experience. Term post can be held for a maximum of 5 years. Employment of expatriates for term posts is subject to the condition that Malaysians are being trained to take over the same posts in the future.

1. Taxable Income

A. Tax rate

a) Tax rate for an expatriate in Malaysia is dependent on his or her tax resident status and not by the nationality or citizenship. An expatriate will be considered as a resident for purposes of taxation if his duration of stay in Malaysia is 182 days or more in a calendar year. Different tax rates apply to resident and non-resident individuals. The maximum income tax for a resident is 28% (after claims of reliefs) for the YA 2016 while income tax for non-resident is at a flat rate of 28% (without any reliefs or rebates accorded).

a) A non-resident employee who has exercised employment in Malaysia is exempted from income tax if, amongst other factors, he / she has exercised his / her employment in Malaysia for a period not exceeding 60 days in a calendar year; is employed on board of a Malaysian ship; is 55 years old and a pensioner from Malaysian employment; is receiving tax-exempted dividends or receiving interest from banks etc.

B. Types of Taxable Income

Section 4 of the ITA lists out following types of income upon which tax is chargeable:
Taxation

a) gains or profits from a business;
b) gains or profits from an employment;
c) dividends, interests or discounts;
d) rents, royalties or premiums;
e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs; and
f) gains or profits not falling under any of the foregoing paragraphs.

The expatriate employee will be subject to monthly tax deduction scheme where employers are required to deduct and remit tax deducted from the employee's monthly remuneration to the IRB.

Employment income under the ITA is inclusive of the following:

a) salary and wages;
b) remuneration;
c) leave pay;
d) fees and commission;
e) bonus and gratuities;
f) perquisite; and

g) allowance (whether in money or otherwise) in respect of having or exercising the employment.

2. Concession

If an expatriate employee falls under the category of resident for purpose of taxation, he is entitled to any tax deduction and/or tax relief as provided under the ITA.

There are specific concessions which are applicable only for expatriates who are employed in Labuan. A non-Malaysian citizen employed in a managerial capacity with a Labuan entity in Labuan, co-located office or marketing office in Labuan is exempted from payment of income tax on 50% of gross income received by the expatriate until the YA 2020.

Under the Income Tax (Exemption) (No.8) Order 2011, a co-located office is defined as "a co-located office of a Labuan entity approved by the Labuan Financial Services Authority which operates in other parts of Malaysia to perform the functions assigned by the Labuan entity", whereas a marketing office is defined as "a marketing office of a Labuan entity approved by the Labuan Financial Services Authority which is located in other parts of Malaysia to facilitate meetings with clients and establish contacts with potential clients except exercising trading activities on behalf of the Labuan entity".

In addition, the Income Tax (Exemption) (No. 7) Order 2011 exempts a non-Malaysian citizen from payment of income tax in respect of fees received by that individual in his capacity as a director of a Labuan entity from the YA 2011 until the YA 2020.

The Public Ruling No.12/2011 issued by the IRB on 20 December 2011 provides for different tax treatment for non-citizens who are employed in any operational headquarters company, regional office, international procurement centre company or regional distribution centre company in Malaysia as approved by the Minister of Finance. Any non-citizens who are working at the abovementioned companies are taxed only based on their portion of chargeable income which is attributed to the number of days they work in Malaysia and any income derived from their employment exercised outside of Malaysia is tax-exempted.
8. Banking & Finance

The banking and financial services sector in Malaysia is primarily made up of commercial banks, Islamic banks, international Islamic banks, investment banks and other financial institutions. As at December 2018, there are some 26 commercial banks, 16 Islamic banks, 2 international Islamic banks and 11 investment banks in Malaysia, a number of which are foreign-owned. These financial institutions provide a whole suite of conventional, Islamic banking, and investment banking services.

There are also several development financial institutions ("DFIs") in Malaysia set up to develop and promote strategic sectors such as agriculture, SMEs, and the export sector. These DFIs provide credit, financial guarantees, and advisory services to their respective target sectors.

1. Commercial Banks

The list of licenced commercial banks in Malaysia as published on BNM’s website is as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Commercial Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Affin Bank Berhad</td>
</tr>
<tr>
<td>2</td>
<td>Alliance Bank Malaysia Berhad</td>
</tr>
<tr>
<td>3</td>
<td>AmBank (M) Berhad</td>
</tr>
<tr>
<td>4</td>
<td>BNP Paribas Malaysia Berhad</td>
</tr>
<tr>
<td>5</td>
<td>Bangkok Bank Berhad</td>
</tr>
<tr>
<td>6</td>
<td>Bank of America Malaysia Berhad</td>
</tr>
<tr>
<td>7</td>
<td>Bank of China (Malaysia) Berhad</td>
</tr>
<tr>
<td>8</td>
<td>CIMB Bank Berhad</td>
</tr>
<tr>
<td>9</td>
<td>China Construction Bank (Malaysia) Berhad</td>
</tr>
<tr>
<td>10</td>
<td>Citibank Berhad</td>
</tr>
<tr>
<td>11</td>
<td>Deutsche Bank (Malaysia) Berhad</td>
</tr>
<tr>
<td>12</td>
<td>HSBC Bank Malaysia Berhad</td>
</tr>
<tr>
<td>13</td>
<td>Hong Leong Bank Berhad</td>
</tr>
<tr>
<td>14</td>
<td>India International Bank (Malaysia) Berhad</td>
</tr>
<tr>
<td>15</td>
<td>Industrial and Commercial Bank of China (Malaysia) Berhad</td>
</tr>
<tr>
<td>16</td>
<td>J.P. Morgan Chase Bank Berhad</td>
</tr>
<tr>
<td>17</td>
<td>MUFG Bank (Malaysia) Berhad</td>
</tr>
<tr>
<td>18</td>
<td>Malayan Banking Berhad</td>
</tr>
<tr>
<td>19</td>
<td>Mizuho Bank (Malaysia) Berhad</td>
</tr>
<tr>
<td>20</td>
<td>OCBC Bank (Malaysia) Berhad</td>
</tr>
<tr>
<td>21</td>
<td>Public Bank Berhad</td>
</tr>
<tr>
<td>22</td>
<td>RHB Bank Berhad</td>
</tr>
<tr>
<td>23</td>
<td>Standard Chartered Bank Malaysia Berhad</td>
</tr>
<tr>
<td>24</td>
<td>Sumitomo Mitsui Banking Corporation Malaysia Berhad</td>
</tr>
<tr>
<td>25</td>
<td>The Bank of Nova Scotia Berhad</td>
</tr>
<tr>
<td>26</td>
<td>United Overseas Bank (Malaysia) Bhd</td>
</tr>
</tbody>
</table>

2. Islamic Banks

The list of licensed Islamic banking institutions in Malaysia as published on BNM's website is as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Islamic Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Affin Islamic Bank Berhad</td>
</tr>
<tr>
<td>2.</td>
<td>Al Rajhi Banking &amp; Investment Corporation (Malaysia) Berhad</td>
</tr>
<tr>
<td>3.</td>
<td>Alliance Islamic Bank Berhad</td>
</tr>
<tr>
<td>4.</td>
<td>AmBank Islamic Berhad</td>
</tr>
<tr>
<td>5.</td>
<td>Bank Islam Malaysia Berhad</td>
</tr>
<tr>
<td>6.</td>
<td>Bank Muamalat Malaysia Berhad</td>
</tr>
<tr>
<td>7.</td>
<td>CIMB Islamic Bank Berhad</td>
</tr>
<tr>
<td>8.</td>
<td>HSBC Amanah Malaysia Berhad</td>
</tr>
<tr>
<td>9.</td>
<td>Hong Leong Islamic Bank Berhad</td>
</tr>
<tr>
<td>10.</td>
<td>Kuwait Finance House (Malaysia) Berhad</td>
</tr>
<tr>
<td>11.</td>
<td>MBSB Bank Berhad</td>
</tr>
<tr>
<td>12.</td>
<td>Maybank Islamic Berhad</td>
</tr>
<tr>
<td>13.</td>
<td>OCBC Al-Amin Bank Berhad</td>
</tr>
<tr>
<td>14.</td>
<td>Public Islamic Bank Berhad</td>
</tr>
<tr>
<td>15.</td>
<td>RHB Islamic Bank Berhad</td>
</tr>
<tr>
<td>16.</td>
<td>Standard Chartered Saadiq Berhad</td>
</tr>
</tbody>
</table>

3. Foreign International Islamic Banks

In addition to the abovementioned Islamic banking institutions, there are foreign international Islamic banks which are licenced to conduct Islamic banking business in international currencies other than Ringgit with residents and non-residents. The list of licenced international Islamic banks in Malaysia as published on BNM's website is as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>International Islamic Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Alkhair International Islamic Bank Bhd</td>
</tr>
<tr>
<td>2.</td>
<td>PT. Bank Muamalat Indonesia, Tbk</td>
</tr>
</tbody>
</table>

4. Development Financial Institutions

Other financial institutions licenced by BNM providing banking services would be the development financial institutions ("DFIs"), which are institutions governed by the Development Financial Institutions Act 2002, established by the Malaysian government with a view to developing and promoting key sectors of strategic importance to the development objectives of the country.

The list of DFIs published by BNM on its website are as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>DFIs prescribed under Development Financial Institutions Act 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bank Pembangunan Malaysia Berhad</td>
</tr>
<tr>
<td>2.</td>
<td>Bank Perusahaan Kecil &amp; Sederhana Malaysia Berhad (SME Bank)</td>
</tr>
<tr>
<td>3.</td>
<td>Export-Import Bank of Malaysia Berhad (EXIM Bank)</td>
</tr>
<tr>
<td>4.</td>
<td>Bank Kerjaama Rakyat Malaysia Berhad</td>
</tr>
<tr>
<td>5.</td>
<td>Bank Simpanan Nasional</td>
</tr>
<tr>
<td>6.</td>
<td>Bank Pertanian Malaysia Berhad (Agrobank)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>DFIs not prescribed under Development Financial Institutions Act 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Malaysian Industrial Development Finance Berhad</td>
</tr>
<tr>
<td>2.</td>
<td>Credit Guarantee Corporation Berhad</td>
</tr>
<tr>
<td>3.</td>
<td>Lembaga Tabung Haji</td>
</tr>
<tr>
<td>4.</td>
<td>Sabah Development Bank Berhad</td>
</tr>
<tr>
<td>5.</td>
<td>Sabah Credit Corporation</td>
</tr>
</tbody>
</table>

B. Governing Authorities & Functions

There are a number of governing bodies that are tasked with overseeing the banking and financial services industry and the activities carried out in the

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sector. Chief amongst those bodies are BNM, which is Malaysia's central bank, and the SC, which regulates activities in the debt and equity markets.

1. **Bank Negara Malaysia**

BNM is the Central Bank of Malaysia established in 1959 under the then Central Bank of Malaya Act 1958 (now known as the Central Bank of Malaysia Act 2009 (“CBMA”)) to act as the authority responsible, amongst others, to:

a) act as financial adviser, banker and financial agent of the Malaysian government;

b) regulate the banking and financial services industry and ensure stability of the country's financial system;

c) ensure prudent conduct of monetary policy; and

d) manage domestic liquidity and exchange rates.

BNM is the key regulator for most if not all financial institutions in Malaysia and wields a wide range of powers, from issuing general guidelines to all financial institutions to specific directions to a specific entity, to maintain the stability of the financial system. It reports to the Minister of Finance, Malaysia (“Minister”) and keeps the Minister informed of matters pertaining to monetary and financial sector policies and issues.

2. **Securities Commission Malaysia**

The SC is a statutory body established in 1993 under the Securities Commission Act 1993 to regulate fund raising activities (debt and equity) and to encourage and promote the development of the securities and derivatives markets in Malaysia. The SC's regulatory functions include:

a) supervising exchanges, clearing houses and central depositories;

b) acting as the registering authority for prospectuses of corporations;

c) being the approving authority for corporate bond issues;

d) regulating all matters relating to securities and derivatives contracts;

e) regulating the take-over and mergers of companies;

f) regulating all matters relating to unit trust schemes;

g) licensing and supervising all licensed persons;

h) encouraging self-regulation; and

i) ensuring proper conduct of market institutions and licensed persons.

The SC is vested with investigative and enforcement powers and it reports to the Minister.

3. **Labuan Financial Services Authority**

The LFSA was established in 1996 under the Labuan Financial Services Authority Act 1996. The LFSA is the statutory body responsible for the development and administration of the Labuan International Business and Financial Centre (“Labuan IBFC”). Labuan IBFC offers a wide range of business and investment structures facilitating cross-border transactions, business dealings and wealth management needs.

C. **Legislation**

1. **Financial Services Act 2013**

The principal legislation governing the banking and financial services industry in Malaysia is the Financial Services Act 2013 (“FSA”), which sets out the provisions relating to the banking and financial services industry and the exchange control regime of Malaysia. BNM is empowered under the FSA to issue guidelines, standards, and notices on a wide range of matters relating to the industry, from capital adequacy frameworks to prudential limits and standards (e.g. statutory reserve requirements, liquidity framework, and best practices for credit risk management) to financial reporting. The guidelines,
standards, and notices may contain guidance which are encouraged to be adopted or requirements which must be complied with.

Under the FSA, persons who wish to operate commercial or investment banks must apply for a licence from the Minister, while those who wish to carry on business of money-broking or financial advisory must apply to BNM to do so. Under the FSA, the Minister’s approval is required if the acquisition/disposal of shares in a licensed person (such as a bank) exceeds any multiple of 5%, or if such acquisition or disposal of interest in shares of the licensed person will result in the interest in shares of the acquirer exceeding 50% or the person disposing of the same, falling below 50% or in any way results in a loss of control over the licensed person.

The FSA also introduces the concept of a financial holding company and empowers BNM to exercise oversight over financial groups for the purposes of promoting the safety and soundness of the banking and financial services industry. Certain prudential requirements that apply to licensed institutions (such as banks) now also apply to financial holding companies, and BNM may specify standards on prudential matters to the holding company. There are currently 16 financial holding companies in Malaysia.

BNM is also empowered to safeguard the balance of payments position and the value of the currency of Malaysia. In addition to the provisions of the FSA, BNM issues exchange control notices to regulate the money market and foreign exchange market.

2. Islamic Financial Services Act 2013

The Islamic Financial Services Act 2013 ("IFSA") is a significant legislation in Islamic banking, finance and investment in Malaysia, which sets out the regulatory framework for Malaysia’s Islamic financial sector with the principal regulatory objectives of promoting financial stability and compliance with Shariah. Similar to the FSA, IFSA equips the BNM with regulatory and supervisory powers. Islamic financial institutions are regulated by the IFSA to promote financial stability and compliance with Shariah principles. Under the IFSA, all persons undertaking Islamic banking business are required to hold valid licences issued by the Minister.

In promoting compliance with Shariah, IFSA imposes a duty on Islamic financial institutions to ensure compliance with Shariah at all times and also empowers the BNM to issue standards on Shariah requirements to facilitate institutions in complying with Shariah. The Islamic financial institutions are required to comply with the rulings of the Shariah Advisory Council established under the CBMA.

Under the IFSA, all licenced Islamic financial institutions are required to establish an internal Shariah committee to ensure that all the relevant activities, business and affairs are Shariah-compliant. Any person appointed to the Shariah committee of any financial institution must meet certain requirements set by BNM and must also have obtained the prior approval of BNM. All Islamic financial products offered by any financial institution must be approved by its internal Shariah committee.


The Capital Markets and Services Act 2007 ("CMSA") is one of the main pieces of legislations governing fund raising activities in the debt and equity markets in Malaysia. It is a comprehensive piece of legislation which prescribes the law inter alia on who may offer capital market services and the licensing regime, prohibited conduct in the market, and regulations on the issuances of securities and take-overs and mergers.

The SC is empowered under the CMSA to issue guidelines and practice notes that the SC considers desirable. The SC has continuously issued such guidelines and practice notes and have consistently updated those guidelines to ensure that they are market standard and also reflect international best practices.
D. Services

Sources of financing available to businesses include loan funding, development finance, export credit, and funding from debt issuances.

The types of loan funding offered by local financial institutions are no different from those generally offered in other jurisdictions – this includes bilateral and syndicated loans, trade finance, development finance, and export credit. It is to be noted that foreign currency facilities may be subject to certain thresholds and requirements set out in the FSA and the relevant exchange control notices issued by BNM.

Debt issuances (bond and sukuk) in Malaysia are required to be made in accordance with the relevant guidelines and practice notes issued by the SC.
Islamic Finance / Banking

Malaysia's unique financial system is of a dual nature, comprising both the Islamic financial system and the conventional financial system that operate in parallel. A main feature of the conventional system is the interest payable on money deposited in banks and on loans granted by banks, which is a feature prohibited under Shariah principles (Islamic principles). The Islamic financial system, which has been operating in Malaysia for over 30 years, strives to provide an interest-free banking system regulated by Shariah principles as an alternative to the conventional system. BNM is the regulator for both the Islamic and conventional systems in Malaysia and allows for a level playing field for both systems to operate.

A. Other governing bodies

1. Shariah Advisory Council

The Shariah Advisory Council ("SAC") is a reference body which serves as an advisor to BNM on all Shariah matters pertaining to Islamic banking and Islamic finance. It was established by BNM pursuant to the CBMA and is the highest Shariah authority in Islamic finance in Malaysia. The members of SAC comprise of qualified Shariah scholars with authority to issue religious rulings on financial transactions. Its main functions are to ascertain the position on any financial matters based on Shariah law and issue a ruling upon reference made, to advise BNM on any Shariah issues relating to Islamic financial business and provide advice to any Islamic financial institution. All rulings made by the SAC prevail over any rulings made by any other Shariah body or committee constituted in Malaysia.

2. Malaysia International Islamic Financial Centre

The Malaysia International Islamic Financial Centre ("MIFC") was launch in 2006 with a primary objective to promote Malaysia as an international Islamic finance hub through strategic initiatives with the focus area of sukuk origination, international Islamic banking, international Takaful, human capital development and Islamic fund and wealth management. MIFC plays a vital role in the development of Islamic finance in Malaysia by facilitating relationship between the international Islamic financial markets, bridging and expanding investment and trade relations between the Middle East, West Asian and North African regions with East Asia.

3. Bursa Suq Al-Sila

A commodity trading platform launched by Bursa Malaysia, the Malaysian stock exchange, in collaboration with BNM and the SC to facilitate Islamic financial transactions, particularly those involving the application of commodity Murabahah. This electronic web-based platform provides a
means of conducting commodity trades necessary for the operation of Islamic financial products based on the *Murabahah* principle.

**B. Shariah concepts in Islamic finance**

Some common *Shariah* concepts in Islamic finance are as follows:

**Wadiah (Safekeeping)**

In this contract or arrangement, a person leaves or deposits his property with the financial institution for safekeeping or protection. This concept is commonly used in deposit-taking activities, custodial services and safe deposit boxes.

**Wakalah (Agency)**

*Wakalah* refers to a contract whereby a person (the principal) appoints another person as his agent to act on his behalf, usually for a fee. An illustration of this type of contract is in property financing, where the buyer is required to pay the seller and the financial institution, as the agent for the buyer (as principal), pays the purchase price to the seller in return for a fee for services rendered. This concept is usually employed along with other *Shariah* concepts when Islamic financial institutions structure their products.

**Mudarabah (Trade Partnership)**

This is a type of contract where one of the parties contributes the capital (the investor) and the other party provides the expertise, labour and entrepreneurial skill (the entrepreneur). Profit earned is split between the parties, but any losses suffered are borne by the investor. This concept is present in certain types of deposit-taking activities, where the investor is the depositor and the financial institution is the entrepreneur. Profit is divided based on a pre-agreed ratio and any loss is borne by the depositor as investor.

*Musharakah (Joint Venture)*

In this concept, both parties contribute or invest capital. Profit is shared based on a pre-agreed ratio, and losses are borne by both parties based on the proportion of capital contribution. This concept is present in contract financing and may be used as part of the *Shariah* structure for home financing (that is, the portion where the capital is contributed by both the financial institution and the customer in the form of 90% purchase price and 10% down payment, respectively).

*Murabahah (Cost plus Profit)*

*Murabahah* involves the sale of goods at a price including a profit margin, with both cost price and profit disclosed and agreed between the parties before entering into the transaction. Financing by way of this concept involves the sale of an asset by the financial institution to the customer in return for deferred payments consisting of both cost and profit, and the asset is then sold by the customer for the cost price equivalent to the amount of financing required. This concept is commonly employed in *sukuk* (Islamic bond) issuances, with a commodity as the underlying asset, and all commodity trades conducted via a dedicated electronic platform called the Bursa Suq Al-Sila.

*Ijarah (Lease)*

*Ijarah* is where an asset is purchased by the financial institution and leased to the customer, who has to pay periodic payments to the financial institution in return for the use of the asset. This is a common concept in motor vehicle financing products.

**C. Types of financing**

The types of financing provided by Islamic financial institutions in Malaysia are substantially similar to those provided by commercial banks, and may be broadly categorised as follows:
a) deposit facilities, such as current accounts and savings accounts based on Wakalah or Mudarabah;

b) trade financing facilities such as letters of credit based on Wakalah contracts, Musharakah contracts and Murabahah contracts, letters of guarantee and working capital financing based on Murabahah contracts.

c) corporate financing facilities such as project financing based on Mudarabah, floating facilities based on Ijarah, sukuk issuances based on Murabahah; and

d) consumer financing such as home financing involving the principles of Musharakah and Ijarah and vehicle financing based on Ijarah.

All Islamic banking and finance products offered by Islamic financial institutions operating in Malaysia must first be approved by the SAC.

In addition, offering of certain corporate financing products such as ringgit or foreign currency denominated private debt securities, sukuk, structured products or asset-backed securities have to comply with additional guidelines issued by the SC. The Guidelines on Unlisted Capital Market Products Under the Lodge and Launch Framework issued by the SC set out the requirements that must be observed for purposes of making available the securities. For instance, the name of ringgit denominated sukuk must not be misleading and must reflect the underlying Shariah principle, such as sukuk that are structured under the Murabahah principle must be named Sukuk Murabahah and a Shariah adviser must be appointed.

D. Incentives for Islamic financing

The Malaysian government has introduced certain incentives to promote the development of the Islamic financial market and to encourage growth in the Islamic banking sector. Some of the incentives are as set out below:

*Income Tax (Deduction For Expenditure On Issuance Or Offering Of Sustainable And Responsible Investment Sukuk) Rules 2017*

A Company shall be given a revenue deduction on an amount equal to the expenditure incurred on the issuance or offering of a Sustainable and Responsible Investment Sukuk approved or authorised by or lodged with the SC under the CMSA. This deduction shall apply where 90% of the proceeds raised from the issuance or offering of the Sustainable and Responsible Investment Sukuk are used solely for the purpose of funding the Sustainable and Responsible Investment Project specified in the guidelines relating to sukuk issued by the SC. This applies from assessment year 2016 until 2020.

*Stamp Duty (Exemption) (No. 3) Order 2016*

Instruments relating to Islamic banking, takaful activities and Islamic capital markets under a scheme to promote Malaysia International Islamic Financial Centre, such as:- (i) instruments on transactions in currencies other than ringgit relating to Islamic banking or takaful activities executed on or after 1 January 2017 but not later than 31 December 2020 and (ii) instruments relating to issuance of Islamic bonds in ringgit or foreign currencies approved by the SC on or after 1 January 2017 but not later than 31 December 2020, are exempted from stamp duty.

*Income Tax (Exemption) (No. 3) Order 2016*

The Minister exempts an individual resident in Malaysia from the payment of income tax in respect of the profits from an investment received by it within the period of 3 consecutive years of assessment starting from the first year of assessment the profits are received provided, *inter alia*, that the investment is made starting from 1 April 2016 to 31 March 2019 through an investment account platform established by a licensed Islamic bank or prescribed institution to finance any venture or project in Malaysia in any industry or sector undertaken by a small and
medium enterprise in accordance to the criteria stated in the order.

**Income Tax (Deduction For Expenditure On Issuance Of Sukuk) Rules 2015**

A company shall be given a revenue deduction on an amount equal to the expenditure incurred on the issuance of sukuk approved or authorised by, or lodged with, the SC or approved by the LFSA. This applies from assessment year 2016 until 2018.

**Stamp Duty (Remission) Order 2011**

The stamp duty on any instrument relating to an Islamic financing facility executed between a customer and a financier for the purpose of rescheduling or restructuring any existing Islamic financing facility is remitted to the extent of the duty that shall be payable on the balance of the principal amount of the existing Islamic financing facility.

**Stamp Duty (Exemption) (No. 2) Order 2011**

All instruments executed between a customer and a financier in accordance with the principles of Shariah as approved by the SAC on Islamic Finance established under the CBMA for the purpose of renewing any Islamic revolving financing facility are exempted from stamp duty if the instrument for the existing Islamic revolving financing facility had been duly stamped.

**Stamp Duty (Remission) Order 2010**

The duty on any instrument executed between a customer and a financier in accordance with the Shariah as approved by the SAC on Islamic Finance as established under the CBMA pursuant to the change of scheme for financing an existing loan from conventional to Shariah is remitted to the extent of the duty that would be payable on the balance of the principal amount of the existing loan.

**Income Tax (Exemption) (No.14) Order 2007**

A special purpose company incorporated solely for the issuance of the Islamic securities which adopt the principles of Mudharabah, Musyarakah, Ijarah or Istisna approved by the SC, shall be exempted from the payment of income tax in respect of statutory income derived from the issuance of Islamic securities.

**Income Tax (Exemption) (No.15) Order 2007**

The Minister exempts a company resident in Malaysia in a basis period for a year of assessment from the payment of income tax in respect of statutory income derived from a business of providing Shariah fund management services to foreign investors in Malaysia from assessment year 2007 until the assessment year 2020. The fund managed shall be in accordance with Shariah principle certified by the SC.

**Stamp Duty (Exemption) (No. 2) Order 2004**

All instruments executed between a customer and a financier under an Asset Sale Agreement or an Asset Lease Agreement made under the principles of the Shariah for the purpose of renewing any Islamic revolving financing facility are exempted from stamp duty.

**Stamp Duty (Exemption) (No. 3) Order 2004**

All instruments relating to a purchase of property by any financier for the purpose of lease back under the principles of the Shariah, or any instrument by which the financier shall assume the contractual obligations of a customer under a principal sale and purchase agreement, are exempted from stamp duty.

**Stamp Duty (Exemption) (No. 23) Order 2000**

All instruments relating to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures approved by the SC and the transfer of such debentures, are exempted from stamp duty.
E. Dispute settlement in Islamic Finance

1. Jurisdiction of the courts

The Malaysian civil courts have jurisdiction with regard to Islamic banking and finance cases. The civil courts have jurisdiction to decide on all matters aside from Shari`ah matters, which must be referred to the SAC. Any dispute involved issues concerning Shari`ah is referred to the SAC for consultation. All rulings on any Shari`ah matters made by the SAC will be binding on the courts.

2. Alternative dispute resolution

Arbitration – parties may choose to refer their dispute to arbitration which involves the final and binding determination of the dispute by one or more impartial persons, often having the necessary expertise. In Malaysia, the AIAC was established as a forum for the settlement of disputes through arbitration and provides institutional support as a neutral and independent venue for arbitration proceedings. Arbitration of Islamic banking and finance disputes comes under the purview of the i-Arbitration Rules of the AIAC, which are a specialised set of Shari`ah compliant rules governing the arbitration process.

Mediation – a method of conflict resolution whereby a mediator facilitates both parties to negotiate a voluntary solution to the dispute. There are certain centres offering mediation services in Malaysia, such as the AIAC and the Malaysian Mediation Centre established by the Bar Council of Malaysia. The AIAC has come up with its Mediation Rules, which cover all procedural aspects of the mediation process.

3. Financial ombudsman scheme

The financial ombudsman scheme introduced by the IFSA provides a fair and efficient avenue for financial consumers to resolve complaints/disputes against financial service providers, as part of BNM’s efforts to strengthen financial consumer protection and to create awareness of matters relating to the Islamic finance industry. It is described in the IFSA as a scheme for ensuring effective and fair handling of complaints and for the resolution of disputes between an eligible complainant and a financial service provider (who is required to be a member of the approved financial ombudsman scheme) in respect of financial services or products. Once a complaint/dispute has been formally referred to the scheme, the eligible complainant is not entitled to lodge a claim on such dispute with the Tribunal Consumer Claims. On 1 October 2016, the Ombudsman for Financial Services ("OFS") has commenced operations as the operator for the financial ombudsman scheme pursuant to the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015. Financial consumers can now refer eligible disputes involving members such as licensed Islamic banks, takaful operators, prescribed development financial institutions, designated Islamic payment instrument issuers, takaful brokers, and Islamic financial advisers, to the OFS for resolution, where the scope and jurisdiction will be subject to its terms of reference. The services of the OFS are offered free of charge to eligible complainants, without having to engage the service of a lawyer for a complaint/dispute to be filed with the OFS. Complaints/disputes filed with the OFS must not exceed RM250,000. Lower limits will apply to disputes on motor third party property damage, insurance claims and unauthorised transactions involving Islamic payment instruments and payment channels. The complaint/dispute must be lodged with OFS within six (6) months from the date of the final decision of the relevant member, or after sixty (60) calendar days from the date the complaint/dispute was first referred to the member concerned in respect of which no response has been received from that member. The decision of OFS is final and is only binding on the member if the complainant accept the decision.
Taking Security in Malaysia

Security can be taken over various types of assets in Malaysia and guarantees may be granted by individuals and corporate entities. Security or guarantee granted in favour of non-residents may be required to be registered with, or may require the prior written approval of, BNM (see Chapter 9 – Foreign Exchange Administration).

A. Forms of security over assets

The forms of security defer from one asset to another. The types of assets and the common forms of security over these assets are set out below.

1. Real estate

Real estate is land, which is statutorily defined (land) to include the surface of the earth and all substances forming that surface; the earth below the surface and substances therein; buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface); all vegetation and other natural products, whether or not requiring the periodical application of labour to their production (whether on or below the surface); standing timber, trees, crops and other vegetation growing on land; and land covered by water.

The most common forms of security over real estate are as follows:

Charges

Charges can be created over real estate to secure a debt, annuity or any other amount other than a debt. Where a charge is created over land, the chargee acquires a legal interest in the land. However, the chargor retains ownership of the land. A chargee can enforce his security by way of a sale of the land if the chargor defaults. Charges are the predominant form of security taken by banks and financial institutions when financing the purchase and development of real estate.

Statutory liens

Liens are usually used when the loan is for a small amount and is required for a short duration. A lien is created when the registered owner or lessee of land has an intention to create the lien, and as security for a loan, deposits the issue document of title or duplicate lease with the lender. The lender then applies for entry of a lien-holder's caveat.

Assignments

Absolute assignments of the borrower's rights, title and interests in a sale and purchase agreement are usually effected in favour of banks and financial institutions financing the purchase of real estate,
where the title documents to the real estate were not yet issued.

2. Tangible movable property

Examples of tangible movable property include aircraft and ships; motor vehicles; plant and machinery; stock-in-trade; and equipment.

The most common forms of security over tangible movable property are as follows:

Mortgages

Security is created over aircraft and ships by a statutory mortgage in accordance with the Civil Aviation Regulations 2016 and the Merchant Shipping Ordinance 1952 (as amended by Merchant Shipping Ordinance (Amendment) Act 2016).

Debentures

A debenture is a security document that is usually entered into when creating a fixed and floating charge over the assets and undertaking of a borrower. It is common for tangible movable property such as plant and machinery, motor vehicles (which are not the subject of a hire-purchase agreement) and equipment to be charged by way of a fixed charge in a debenture. However, stock-in-trade is charged by way of a floating charge to enable the borrower to continue to deal with it. Where specific property is the subject of a charge, it is common for a list containing details of such property to be attached to the debenture.

Fixed charges

The creation of a fixed charge has the immediate effect of appropriating a specific asset to the satisfaction of a debt in the event of a default by the borrower/chargor. It deprives the chargor of the right to deal with the appropriated asset without the consent of the chargee.

Floating charges

A floating charge is a charge on the assets that allows the assets to be dealt with in the ordinary course of business until some event occurs that causes the floating charge to crystallise into a fixed charge. When a floating charge crystallises into a fixed charge, the chargor then can no longer deal with those assets. A crystallised floating charge fastens on all assets presently owned as well as all future assets from the moment the company acquires an interest in the assets.

3. Financial instruments

The financial instruments over which security is most commonly granted are shares and debt securities (for example, bonds). Security can be granted over the security provider’s rights in shares, both certificated (for example, unlisted shares in private companies) and non-certificated (for example, shares in listed companies), owned by the security provider, and bonds and other tradable/untradeable debt securities. A fixed charge cum assignment is the most common form of security created over certificated and non-certificated (listed) shares and debt securities.

4. Claims and receivables

Common types of claims and receivables include debts and other rights to the payment of money; rights to require (in project financing, for example) performance of a non-financial obligation; rights to claim under insurances; and cash deposited with banks. Security is created over claims and receivables by an assignment by way of security.

5. Cash deposits

It is common to grant security over cash deposits by charging and assigning the bank accounts that contain the deposit in favour of the lender/security holder. Where the lender is the account bank, it is common to reinforce that charge by granting set-off rights to the lender with respect to the deposit. Where the deposit is in the form of a fixed deposit,
6. Intellectual property

The common types of intellectual property in Malaysia are industrial designs; patents; trade marks; and copyright. Security over intellectual property can be taken by either assignment; or fixed charge. A registered industrial design can be the subject of a security interest in the same way as other personal or movable property (section 29(5), Industrial Designs Act 1996). There is no equivalent legislation for patents, trade marks and copyright. It appears that similar legislation to the Industrial Design Act has been proposed and is in the drafting stage; however, it is many years away from becoming law. Intellectual property as a separate security class has not to date been generally taken as security in Malaysia. It is most commonly captured by debentures creating fixed and floating charges over the assets of the party providing the debenture.

B. Guarantees

Guarantees are commonly used in Malaysia and can be granted by individuals or corporate entities. A guarantee's main terms must be in writing and signed by or on behalf of the guarantor to be enforceable. The beneficiary of the guarantee must also provide consideration for the guarantor's promise.

C. Release of Security over Assets

In order to release a charge registered over real property, a lender must execute a discharge of charge form prescribed by the relevant real estate legislation and file the form at the relevant registry or land office. Notification must also be lodged with CCM for the release of the charge through the filing of forms prescribed by the CA 2016.
9. Foreign Exchange Administration

Foreign exchange control in Malaysia is implemented under the Financial Services Act 2013 ("FSA") and administered by BNM.

History

On 1 September 1998, the Malaysian government, as part of its package of policy responses to the 1997 economic crisis in South East Asia, announced and introduced new selective exchange control measures to curb the internationalisation of the Ringgit, and to regain monetary policy independence. The exchange control measures imposed have been liberalised throughout the years. The introduction of the FSA, which replaces both the Banking and Financial Institutions Act, 1989 and the Exchange Control Act, 1953, have made the legislative instruments regulating exchange control more concise and easier to reference.

BNM has indicated that foreign exchange rules will be progressively liberalised. This remains to be confirmed by the future actions of the Malaysian government.

Statutory Instruments

The foreign exchange control rules are governed under notices issued by BNM pursuant to the FSA. These notices set out the prudential measures governing the monetary and financial rules applicable to both "Residents" and "Non-Residents". The version of the notices, as at the date of this document can be found at BNM's website.

Currently, there are 7 notices in the following categories:

- a) Dealings in Currency, Gold and Other Precious Metals
- b) Borrowing and Guarantee
- c) Investment in Foreign Currency Asset
- d) Payments
- f) Import and Export of Currency
- g) Export of Goods

BNM had on 2 December 2016 issued a Supplementary Notice on the foreign exchange administration rules which came into force on 5 December 2016 ("Supplementary Notice 1"). The objectives of Supplementary Notice 1 are to further facilitate foreign exchange risk management,
promote settlement of trade and investment in ringgit and enhance the depth and liquidity of the onshore financial market. Subsequently on 2 May 2017, BNM issued a Supplementary Notice (No.2) to amend the Supplementary Notice 1 and definitions of the notices ("Supplementary Notice 2"). The Supplementary Notice 2 is effective as of 2 May 2017.

"Residents" and "Non-Residents"

The definition of "Resident" and "Non-Resident" can be found in Section 213 of the FSA, the relevant extracts of which are as follows:

"Non-Resident" means:

a) any person other than a Resident;

b) an overseas branch, a subsidiary, regional office, sales office or representative office of a Resident company;

c) Embassies, Consulates, High Commissions, supranational or international organisations; or

d) a Malaysian citizen who has obtained permanent Resident status of a country or territory outside Malaysia and is residing outside Malaysia.

"Resident" means:

a) a citizen of Malaysia, excluding a citizen who has obtained permanent Resident status in a country or a territory outside Malaysia and is residing outside Malaysia;

b) a non-citizen of Malaysia who has obtained permanent Resident status in Malaysia and is ordinarily residing in Malaysia;

c) a body corporate incorporated or established, or registered with or approved by any authority, in Malaysia;

d) an unincorporated body registered with or approved by any authority in Malaysia; or

e) the Government or any State Government.

For the avoidance of doubt, any company which is registered under SSM is considered a "Resident" company, regardless of the composition of its shareholders.

Notices on Foreign Exchange Administration Rules ("Exchange Control Notices")

The following sets out the foreign exchange control rules as described in the Exchange Control Notices, and also the summary of rules prepared by BNM in its website. The following summaries are divided into those applicable to Residents and Non-Residents.

Supplementary Notice 1 has renamed the existing Foreign Currency Account I and Foreign Currency Account II to Trade Foreign Currency Account and Investment Foreign Currency Account respectively. Residents may only apply the funds in the Trade Foreign Currency Account for limited purposes, such as import payments and foreign currency loan repayments, whereas for an Investment Foreign Currency Account, they are free to use the foreign currency funds for any purpose.

Pursuant to the Declaration on Entities Created, Incorporated, etc. in Labuan, BNM declares that all Labuan entities (save and except for a Labuan entity which carries on (a) Labuan banking business or (b) Labuan insurance or takaful business) are Non-Residents for purposes of, amongst others, the Exchange Control Notices.

A. Rules Applicable to Residents

Investment

Residents are free to undertake any amount of investment in foreign currency assets offered in Malaysia by a Resident or abroad with foreign currency funds sourced from abroad. If a Resident with domestic ringgit borrowing wishes to invest, abroad or in foreign currency assets onshore, there is a limit of RM 50 Million (in aggregate) for the group of Resident entities with parent-subsidiary
relationship per calendar year via its Investment Foreign Currency Account, or up to RM 1 million (in aggregate) for individual Residents per calendar year using funds from conversion of ringgit, swapping of financial assets and transfers from trade foreign currency accounts.

Resident unit trust companies and other types of intermediaries may invest abroad on behalf of both Residents and Non-Residents for up to 100% of Net Asset Value (NAV) belonging to the Resident client without domestic ringgit borrowing, Non-Resident clients, and Shariah compliant funds, and 50% NAV for Resident clients with domestic ringgit borrowing. Licensed Takaful operators may invest abroad up to 100% of the NAV of ringgit or foreign currency investment-linked funds of their clients.

**Borrowing**

Resident entities may obtain any amount of foreign currency borrowing subject that a RM 100 million equivalent in aggregate prudential limit is in place for Resident entities borrowing from a Non-Resident. For Resident individuals, an RM 10 million equivalent in aggregate limit is imposed for foreign currency borrowing from any licensed onshore bank and Non-Resident, other than immediate family members.

There is an RM 1 million in aggregate limit for borrowing in ringgit from Non-Residents and the RM 1 million shall be based on the aggregate borrowing of the resident entity and other resident entities within its group of entities with parent-subsidiary relationship. Resident entities however may obtain any amount of ringgit borrowing to finance activities in the real sector in Malaysia from Non-Resident entities within its group, or their Non-Resident direct shareholders. Resident individuals may obtain any amount of ringgit borrowing from immediate family members.

In addition, Resident entities are allowed to borrow in ringgit in any amount from a non-resident through the issuance of:

a) **ringgit private debt securities or Islamic private debt securities under the Private Debt Securities Guidelines or Islamic Private Debt Securities Guidelines (superseded by the Unlisted Capital Market Products under the Lodge and Launch Framework Guidelines and the Issuance of Corporate Bonds and Sukuk to Retail Investors Guidelines) issued by the Securities Commission Malaysia and such private debt securities or Islamic private debt securities shall exclude non-tradable private debt securities or Islamic private debt securities issued to:**

i. Non-Resident which is not part of its group of entities; or

ii. Non-Resident entities within its group of entities or its non-resident direct shareholder other than for the purposes of financing activities in the real sector in Malaysia from a Non-Resident entity within its group of entities or its non-resident direct shareholder; or

b) ringgit debt securities or Islamic debt securities by the Federal Government.

**Payment and Receipts**

With respect to foreign currencies, making and receiving payments may be made between a Resident and a Non-Resident under the following circumstances:

a) a derivative denominated in foreign currency offered by the Resident unless it has been approved by BNM;

b) a derivative denominated in foreign currency offered by the Non-Resident; o

b) ringgit debt securities or Islamic debt securities by the Federal Government.

Notwithstanding the above, payment in foreign currency is allowed for:
a) a derivative denominated in foreign currency, other than exchange rate derivative with reference to ringgit, purchased by a licensed onshore bank for its own account;

b) an interest rate swap denominated in foreign currency between a Resident and Labuan banks to manage interest rate exposure arising from borrowing in foreign currency; or

c) a derivative denominated in foreign currency, other than exchange rate derivatives, offered on a Specified Exchange stipulated under the CMSA undertaken through a Resident futures broker by a Resident with firm commitment.

For the purpose of payment arising from the settlement of services, a Resident is allowed to receive such payment in foreign currency from a Non-Resident in any manner.

All settlement of domestic trade in goods or services between Residents shall be made only in ringgit, including where payment is made by another party on behalf of the Resident.

If the payment between Resident and Non-Resident or between Residents are for purposes not as set out above, the parties would be required to obtain the express written consent of BNM to proceed with such payment.

Sale and Purchase of Currency

There are no restrictions save that with respect to purchase and sale of ringgit against foreign currencies, Residents must do so with a licensed onshore bank. A Resident is also allowed to sell RM on spot or forward basis with a licensed onshore bank up to its 6 months foreign currency obligations.

“Foreign currency obligation” refers to foreign currency import payment, foreign currency loan repayment and other current account transactions in foreign currency with a Non-Resident.

Export of Goods

A Resident exporter is allowed to retain in its Trade Foreign Currency Account held with a licensed onshore bank, foreign currency proceeds from its export of goods up to the higher of:

a) 25% of foreign currency export proceeds; or

b) the Resident exporter’s six (6) months foreign currency obligations that exist on the date of receipt of the export proceeds provided that the aggregate amount of existing balance in the Resident exporter’s Trade Foreign Currency Account and proceeds retained under paragraph (a) above is insufficient to meet the Resident exporter’s six (6) months foreign currency obligations that exist on the date of the export proceeds.

Accordingly, a Resident exporter is required to convert the balance of its foreign currency export proceeds into ringgit with a licensed onshore bank.

A Resident with annual gross exports of goods exceeding RM 50 million is required to report to BNM on a quarterly basis all goods exported in that quarter, within 21 days after the end of each reporting quarter in the calendar year. The report shall be submitted to BNM whether or not there is any export of goods in that quarter.

The settlement with Non-Residents can be undertaken in both ringgit and foreign currency.

Where the settlement for export is to be made by a Non-Resident in ringgit in Malaysia, the ringgit shall be sourced from the following:

a) the buying of ringgit as set out in the notices;

b) an external account of the Non-Resident;

c) an external account of any Non-Resident financial institution or appointed overseas office, on behalf of the Non-Resident (the settlement between the Non-Resident financial institution or
the appointed overseas office and the Non-Resident shall be in foreign currency and there shall be no ringgit financing provided by the Non-Resident financial institution or the appointed overseas office); or

d) a ringgit trade financing facility as allowed under the notices.

“Appointed overseas office” means the appointed overseas parent company, subsidiary company, sister company, head office or branch of a licensed onshore bank’s banking group, excluding a licensed international Islamic bank.

Foreign Currency Accounts

There are no restrictions on the opening and maintaining of foreign currency accounts with licensed onshore banks and Non-Resident banks.

Guarantees

Approval is only required for the obtaining of financial guarantees from Non-Residents exceeding RM 100 million equivalent in aggregate (unless such Non-Resident is part of its group of entities, in which case approval is not required), and the issuing of financial guarantees exceeding RM 50 million equivalent in aggregate to a Non-Resident which is not part of its group of entities. Financial guarantees exceeding RM 50 million equivalent in aggregate that do not require approval must be registered within seven business days after issuing or obtaining the financial guarantee.

Securities

Residents may issue securities or Islamic securities in foreign currency to any person, or in ringgit in Malaysia to Non-Residents.

Import and Export

There is no restriction on the import and export of foreign currencies. However, Residents may only carry a maximum of ringgit equivalent to USD 10,000 when travelling in and out of Malaysia.

Hedging

A Resident is allowed to hedge its foreign currency exposure and cancel its hedging position for USD/MYR, CNH/MYR, GBP/MYR, EUR/MYR and JPY/MYR currency pairs with a licensed onshore bank without documentary evidence up to an aggregate net open position limit of RM 6 million per licensed onshore bank subject to a one-off declaration in writing by the Resident to the licensed onshore bank prior to entering into any forward contract. For hedging exceeding RM 6 million, the normal due diligence process by the onshore bank applies.

For the purposes of managing its foreign currency exposure, a Resident entity registered with BNM is allowed to engage with any licensed onshore bank based on firm commitment or anticipatory basis, to unwind up to 100% of its forward contracts entered with a licensed onshore bank for underlying foreign currency-denominated asset, foreign currency-denominated borrowing or current account transactions in foreign currency with a Non-Resident. Prior to entering into such transaction, a licensed onshore bank is required to sight registration letter from the registered entity and undertake the necessary customer due diligence.

B. Rules Applicable to Non-Residents

Investment

Non-Residents may invest in any form of ringgit assets either as direct or portfolio investments, and the investments can be funded through:

a) conversion of foreign currency to ringgit with licensed onshore banks (other than licensed international Islamic banks) or through their appointed overseas office of the licensed onshore bank’s banking group;
b) foreign currency borrowings from licensed onshore banks; or

c) ringgit borrowing from licensed onshore banks (other than licensed international Islamic banks) for real sector activities and for the purchase of residential and commercial properties in Malaysia except for the purchase of land only.

Non-Residents may remit out divestment proceeds, profits, dividends or any income arising from investments in Malaysia, although repatriation must be made in foreign currency.

**Borrowings**

Non-Residents are free to obtain and issue, respectively, foreign currency financing from licensed onshore banks and foreign currency denominated sukuk/bonds, to be used in and outside Malaysia.

With respect to ringgit financing, the following applies:

<table>
<thead>
<tr>
<th>Borrower</th>
<th>Lender</th>
<th>Limit/Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Resident other than financial institution</td>
<td>Licensed onshore banks (excluding licensed international Islamic banks)</td>
<td>Free to obtain any amount to finance real sector activities in Malaysia; the settlement for the purchase of goods or services with a Resident; or the purchase of residential and commercial properties in Malaysia except for the purchase of land only.</td>
</tr>
<tr>
<td>Resident stockbroking corporation</td>
<td>Licensed onshore banks with stockbroking license</td>
<td>Free to obtain margin financing</td>
</tr>
<tr>
<td>Licensed insurer or a licensed Takaful operator</td>
<td></td>
<td>Up to the attained cash surrender value of any life insurance policy or family takaful certificate purchased by the Non-Resident</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Borrower</th>
<th>Lender</th>
<th>Limit/Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident</td>
<td>Free to obtain any amount to finance real sector activities in Malaysia</td>
<td></td>
</tr>
<tr>
<td>Individuals who are immediate family member of the Employer</td>
<td>Any amount pursuant to the terms and conditions of the services with the Employer</td>
<td></td>
</tr>
</tbody>
</table>

Non-Residents can be undertaking in both foreign currency and ringgit.

**Payments and Receipt**

Settlement for trade in goods and services with Residents can be undertaken in both foreign currency and ringgit.

**Sale and Purchase of Currency**

Non-Residents are free to buy or sell foreign currency against another foreign currency in Malaysia with a licensed onshore bank. For the purchase and sale of ringgit against foreign currency, Non-Residents (other than a non-resident financial institution acting on behalf of its non-resident client) may do so with licensed onshore banks (excluding licensed international Islamic banks) freely on spot and forward basis (for financial account transaction based on firm commitment, or for current account transaction based on firm commitment or anticipatory basis), or with an appointed oversea office on spot or forward basis based on firm commitment, for the settlement of an international trade in goods or services with a Resident or ringgit assets.
A Non-Resident financial institution appointed by a licensed onshore bank and approved by BNM is allowed to under the following transactions:

a) buying or selling of ringgit on forward basis with a Non-Resident based on firm commitment for financial account transactions;

b) opening of ringgit account for book-keeping purposes for a Non-Resident; or

c) providing ringgit trade financing to a Non-Resident for settlement of international trade in goods and services with a Resident.

**Foreign Currency Accounts**

There are no restrictions on the opening and maintaining of ringgit accounts and foreign currency accounts with licensed onshore banks. Funds in these accounts are free to be remitted abroad in foreign currency.

**Securities**

Non-Residents may issue securities or Islamic securities denominated in foreign currency in Malaysia to any person.

**Import and Export**

There is no restriction on the import and export of foreign currencies on Non-Residents. However, Non-Residents may only carry a maximum of ringgit equivalent to USD 10,000 when travelling in and out of Malaysia.

**Hedging**

For the purposes of managing its RM exposure, a Non-Resident entity registered with BNM is allowed to engage with:

a) any licensed onshore bank based on a firm commitment or anticipatory basis; or

b) an appointed overseas office on a firm commitment basis only, to unwind up to 100% of its forward contracts entered with a licensed onshore bank or an appointed overseas office for underlying ringgit-denominated asset, ringgit-denominated borrowing, or current account transaction in RM with a Resident for the purpose of managing its RM exposure.

Prior to entering into such transaction, a licensed onshore bank is required to sight the registration letter of the registered entity with BNM and undertake the necessary customer due diligence.

BNM had on 8 September 2017 issued a Supplementary Notice (No. 3) ("Supplementary Notice 3") that sets out the additional hedging flexibility in relation to forward hedges of crude palm oil futures and options on crude palm oil futures for non-bank Non-Resident market participants. The Supplementary Notice 3 came into force on 11 September 2017.

A non-bank Non-Resident market participant registered with BNM:

a) is allowed to enter into forward contracts with a licensed onshore bank or an appointed overseas office up to the net open position (NOP) of its ringgit-denominated Crude Palm Oil Futures (FCPO) or Options on Crude Palm Oil Futures (OCPO) contracts undertaken on Bursa Malaysia Derivatives Berhad for the purpose of managing its ringgit exposure arising from the FCPO or OCPO contracts; and

b) shall unwind the excess forward contracts with the same licensed onshore bank or appointed overseas office referred to in paragraph (a) in the event that the notional value of such forward contracts exceeds the NOP of the underlying FCPO or OCPO contracts.

“Market participant” refers to crude palm oil producer, crude palm oil consumer, crude palm oil merchant, individual trader and intermediary.

Prior to entering into the forward contract, a licensed onshore bank or an appointed overseas office is
required to undertake the necessary customer due diligence and verify the registration status of a non-bank Non-Resident market participant with BNM.

On 17 August 2018, BNM issued a Supplementary Notice (No. 4) ("Supplementary Notice 4") which aims to facilitate operational efficiencies and risk management by business and financial institutions when hedging.

The Supplementary Notice 4 which took effect on 17 August 2018 introduces, *inter alia*, the following changes:

a) allows greater flexibility in hedging foreign currency obligations by providing for application to BNM for residents to hedge (i) foreign currency obligations beyond 6 months; and (ii) foreign currency exposures arising from invoices issued in foreign currency under international pricing practices for domestic trade in goods and services; and

b) gives wider access for non-residents to the onshore financial market as non-resident corporations are now allowed to trade in ringgit-denominated interest rate derivatives through appointed overseas offices, subject to back-to-back arrangements with licensed onshore banks.
10. Capital Markets

The Bursa Malaysia or Malaysia Exchange, code MYX, is an exchange holding company approved under section 15 of the Capital Markets and Services Act 2007 ("CMSA"). It was previously known as Kuala Lumpur Stock Exchange ("KLSE") which dates back to 1930 when the Singapore Stockbrokers' Association was set up as a formal organisation dealing in securities in Malaya. In 1937, it was re-registered as the Malayan Stockbrokers' Association, but it still did not trade public shares.

In 1960, the Malayan Stock Exchange was formed and public trading of shares began on 9 May. In 1961, the Board system was introduced whereby two trading rooms, one each in Singapore and Kuala Lumpur, were linked by direct telephone lines into a single market with the same stocks and shares listed at a single set of prices on both boards.

The Stock Exchange of Malaysia was officially formed in 1964 and in the following year, with the secession of Singapore from Malaysia, the common stock exchange continued to function under the name Stock Exchange of Malaysia and Singapore ("SEMS").

In 1973, with the termination of currency interchangeability between Malaysia and Singapore, the SEMS was separated into The Kuala Lumpur Stock Exchange Bhd ("KLSEB") and the Stock Exchange of Singapore ("SES"). Malaysian companies continued to be listed on SES and vice-versa. In 1994, it was re-named KLSE. KLSE took over operations of KLSEB as the stock exchange in 1976 as a company limited by guarantee.

On 14 April 2004, KLSE was renamed Bursa Malaysia Berhad, following their demutualisation exercise, the purpose of which was to enhance their competitive position and to respond to global trends in the exchange sector by making themselves more customer-driven and market-oriented.

On 18 March 2005, Bursa Malaysia Berhad was listed on the Main Board of its own exchange, Bursa Malaysia Securities Berhad ("Bursa Securities"). It operates a fully-integrated exchange, offering a comprehensive range of exchange-related facilities including listing, trading, clearing, settlement and depository services. Bursa Securities is a single consolidated group comprising equities, derivatives and offshore markets.

After a revamp in August 2009, its Main and Second Boards were unified to become the Main Market of Bursa Securities while the alternative sponsor-driven ACE Market replaced the Malaysian Exchange of Securities Dealing and Automated Quotation Market which only focused on technology and high growth sectors. With the revamp, the Main Market of Bursa Securities consists of established companies with strong track records while the ACE Market facilitates the listing of emerging companies with growth potential.
On 15 June 2017, Bursa Securities announced the issuance of new listing requirements for the Leading Entrepreneur Accelerator Program ("LEAP") Market. The LEAP Market aims to provide small and medium-sized enterprises ("SMEs") with a new platform to raise funds from sophisticated investors. It addresses the funding gap faced by SMEs and the over-dependency of SMEs on financial institutions.

The Labuan International Financial Exchange ("LFX") is an international financial exchange based in Labuan and is wholly owned by Bursa Malaysia Berhad. LFX was established to complement the various business financial services available in Labuan. LFX is a one-stop financial exchange offering full services from the submission of application to approval, listing, trading and settlement of the instruments listed.

According to the Annual Report 2017 by Bursa Malaysia Berhad, securities market capitalisation rose to RM1.9 trillion from RM1.7 trillion in 2016, with over 900 entities listed on Bursa Securities, consisting of 788 companies on the Main Market, 115 companies on the ACE Market and 2 companies on the LEAP Market.

**Primary Listing for Local Companies**

The table below summarises key listing criteria on the Main Market, ACE Market and LEAP Market respectively.

<table>
<thead>
<tr>
<th>Bursa Stock markets</th>
<th>Main Market</th>
<th>ACE Market</th>
<th>LEAP Market</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mode of Listing</strong></td>
<td>The Issuer should satisfy one of the following tests for listing:</td>
<td>No minimum operating track record or profit requirement</td>
<td>No minimum operating track record or profit requirement</td>
</tr>
<tr>
<td>a. Profit test</td>
<td>Cumulative consolidated profit after tax of at least RM20 million for the latest 3 to 5 financial years prior to listing;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Market capitalisation test</td>
<td>Total market capitalisation of at least RM500 million calculated based on the issue or offer price as stated in the listing prospectus and post-listing enlarged issued and paid up share capital;</td>
<td>Issuer must have been incorporated and generated operating revenue for at least a full financial year</td>
<td></td>
</tr>
<tr>
<td>c. Infrastructure project corporation test</td>
<td>Have the right to build and operate an infrastructure project within or outside Malaysia, with project costs of not less than RM500 million; The concession or licence for the infrastructure project has been awarded by the relevant government or state agency, with remaining concession or licence period of at least 15 years</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Public Shareholding Spread | At least 25% of its post-listing share capital has to be in the hands of minimum 1,000 shareholders holding not less than 100 shares each | At least 25% of its post-listing share capital has to be in the hands of 200 shareholders holding not less than 100 shares each | At least 10% of the total number of ordinary shares for which listing is sought are in the |
## Regulatory framework

Listings on Bursa Securities are regulated under the CMSA which is the primary legislation governing Malaysian capital market, together with various equity-related guidelines issued by the SC such as Equity Guidelines, Business Trust Guidelines and Real Estate Investment Trust Guidelines.

As a self-regulated organisation under the CMSA, Bursa Securities has also issued its Listing Requirements for the Main Market, ACE Market and LEAP Market respectively to regulate the capital market conducts of the listed companies.

### Other types of listings on Bursa Main Market

1. **Primary listing of foreign corporations on Main Market or ACE Market**

A foreign corporation seeking primary listing on Bursa Securities ("Foreign Applicant") must fulfil the following listing criteria prior to its listing on the Main Market or ACE Market:

   a) Standards of laws and regulations

   The Foreign Applicant must be incorporated in a jurisdiction that is subject to corporate and other appropriate laws which have standards at least equivalent to those in Malaysia, in particular those relating to corporate governance, shareholders and minority interest protection and regulation of takeovers and mergers. Otherwise, listing of the applicant may still be approved if such foreign corporation varies its constituent documents so as to comply with such local standards.

   b) Approval of foreign regulatory authorities

   The Foreign Applicant must obtain approval of all relevant regulatory authorities of its country where it is incorporated or carries out its business before its issuance of listing prospectus in Malaysia.

   c) Local registration under the CA 2016

<table>
<thead>
<tr>
<th>Bursa Stock markets</th>
<th>Main Market</th>
<th>ACE Market</th>
<th>LEAP Market</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval</td>
<td>The listing has to be approved by the SC</td>
<td>Only the approval of Bursa Securities is necessary</td>
<td>Only the approval of Bursa Securities is necessary</td>
</tr>
<tr>
<td>Native Equity Require ment</td>
<td>Allocation of 50% of the public shareholding spread to Malaysian native investors on best effort basis</td>
<td>No such requirement upon listing. Allocation on best effort basis of 12.5% of the Issuer’s enlarged share capital to native investors, within 1 year after achieving Main Market profit track record, or 5 years after being listed on ACE Market, whichever is earlier.</td>
<td>No such requirement upon listing.</td>
</tr>
</tbody>
</table>
The Foreign Applicant must be registered with the ROC as a registered branch under the CA 2016.

d) Accounting and auditing standards
The accounting standards of the Foreign Applicant shall be in accordance with the Financial Reporting Act 1997 which include International Accounting Standards, while the auditing standards adopted by the Foreign Applicant shall be that applied in Malaysia or International Standards in Auditing.

e) Valuation of assets
Standards for valuation of assets shall be that applied in Malaysia or in accordance with International Valuation Standards.

f) Translation of documents
All documents for application of listing that are submitted to the SC and Bursa Securities (including financial statements), which are in a language other than English, must be accompanied by a certified English translation.

g) Currency denomination
Applicant is required to consult Bursa Securities and obtain approval of the Controller of Foreign Exchange for quotation of securities in a foreign currency.

h) Resident directors
Companies with predominantly Malaysia-based operations are required to have majority of directors whose principal or only place of residence is in Malaysia, while companies with predominantly foreign-based operations must have at least two directors whose principal or only place of residence is in Malaysia. At least one of these directors must be a member of the applicant's audit committee.

2. Secondary listing of foreign corporations on Main Market

In addition to compliance with paragraph (1) above, a foreign corporation seeking a secondary listing on the Main Market of Bursa Securities is required to fulfil the following listing criteria prior to its listing:

a) It must already have a primary listing on the main market of a foreign stock exchange which is a member of World Federation of Exchanges and be in full compliance with the listing rules of such foreign stock market; and

b) The stock market where the foreign corporation is primarily listed must have standards of disclosure at least equivalent to those on Bursa Securities.

A foreign corporation seeking listing on Bursa Securities must be incorporated in a jurisdiction that is subject to corporation laws and other laws and regulations where appropriate which have standard at least equivalent to those in Malaysia, particularly with respect to corporate governance, shareholders and minority interest protection and regulation of take-overs and mergers. Where the jurisdiction in which the applicant is incorporated does not provide laws and regulations which are at least equivalent to those provided in Malaysia, it is possible to provide those standards by means of varying the applicant's constituent documents. The SC may approve the listing of the applicant, subject to the applicant making such variations to its constituent document. In relation to this, the applicant must submit a comparison of such standards of laws and regulations of the jurisdiction in which the applicant is incorporated and those provided in Malaysia, together with the proposed variations to its constituent documents to address any deficiency in such standards, in its listing applications to the SC and Bursa Securities.

The applicant must have been registered with the ROC under Part V Division 1 of the CA 2016 and must obtain the approval of all relevant regulatory authorities of the jurisdiction in which it is
incorporated and carries out its core business, as may be required, before issuing its listing prospectus.

With regard to accounting and auditing standards, the applicant must prepare its financial statements and reports in accordance with the approved accounting standards as defined in the Financial Reporting Act 1997, which include International Accounting Standards. In this regard, a professional accountant qualified under the Accountants Act 1967 and from an international accounting firm must confirm that the applicant's financial statements comply with the said approved accounting standards.

In the event that the applicant prefers its securities to be quoted in a currency other than Ringgit, the applicant has to consult Bursa Securities and obtain approval of the Controller of Foreign Exchange.

3. Special Purpose Acquisition Company ("SPAC")

A SPAC is a company that is initially listed on stock market without existing business operations but formed exclusively to make acquisitions using proceeds raised from its listing on stock market. Funds are raised by SPACs based primarily on the prior track record of the individuals forming the management team who promote the investment venture, with a minimum fund size to be raised of RM150 million. The key features of a SPAC are as follows:

a) Incorporation of SPAC
   A SPAC seeking listing on Bursa Securities must be incorporated in Malaysia.

b) Credible Management
   A SPAC is required to have a credible management team who can identify and acquire appropriate target assets that will meet the business strategy as disclosed in the prospectus, based on their relevant track record, qualifications, competence and experience relevant to specific industries. Members of the management team are required collectively to have sufficient and relevant technical and commercial experience and expertise in corporations within the same industry and business activity.

c) Investor Protection
   A SPAC must place at least 90% of its gross proceeds from the Initial Public Offering ("IPO") in a trust account managed by an independent custodian. Such proceeds may only be invested in low-risk securities such as those issued by the Malaysian government, before it is utilised for any acquisitions to achieve the SPAC's business strategy. The acquisitions to be carried out must have an aggregate fair market value equal to at least 80% of the amount in the trust account ("Qualifying Acquisition"), which must be completed within a permitted timeframe of no later than 36 months from the date of listing. If the SPAC does not complete Qualifying Acquisition within the 36-month timeframe from listing, the SPAC must liquidate and return all proceeds to its IPO investors.

d) Minimum Management Team Ownership and Moratorium
   The management team is required to collectively own at least 10% of the SPAC at its listing. Furthermore, the shares and warrants of the SPAC held by the management team are not allowed to be sold, transferred or assigned until the completion of the Qualifying Acquisition. Upon completion of the Qualifying Acquisition, sell down by the management team is allowed on a staggered basis over a period of 2 years.

4. Business trust ("BT")

BT is a unit trust scheme by which underlying assets constitute an on-going business. Essentially a BT is a trust that functions through a trustee-manager to own and operate a business for the benefit of unit
holders. The trustee-manager is required to manage the fund in a prudent manner and will be accountable to the unit holders, failing which it could be removed as the trustee-manager. A BT structure offers greater flexibility when compared with a company incorporated in Malaysia since a BT is able to make distributions to its investors from its operating cash flow, subject to solvency requirements, while a Malaysia-incorporated company can only make distributions out of profits. A BT’s total market capitalisation must be at least RM1 billion based on issue or offer price in order to obtain a primary listing on the Main Market of Bursa Securities. Where the listing of a BT is sought based on strength of the BT group of companies, the BT and its subsidiary entities must have common controlling unit holders or controlling shareholders of at least one full financial year prior to submission to the SC. Further, for purposes of listing, the core business underlying the BT must have been in operation and generating operating revenue for at least one full financial year prior to submission to SC. A foreign BT established outside Malaysia could be recognised under CMSA for application of listing on Bursa Securities. Units in BTs listed on Bursa Securities can be traded like equity stocks.

5. Real Estate Investment Trust ("REIT")

REIT is a fund or trust with the underlying assets of income-producing commercial real estate such as shopping complexes, industrial properties, hotels and office blocks, being managed by a management company. The management company for a REIT is allowed to deduct distribution paid to its unit holders directly from its corporate taxable income. In order to enjoy this tax-free status in distribution of profits to unit holders, the REIT is required to have most of its assets and income to be tied to real estate and distribute at least 90% of its total income to unit holders on annum basis. Units in REITs listed on Bursa Securities can be traded like equity stocks.

6. Minority Shareholders’ Watchdog Group (“MSWG”)

The MSWG was setup in August 2000 as a non-profit government initiative to spearhead shareholder activism, particularly to protect the interests of retail and minority shareholders in Malaysia. The objective of the MSWG is to encourage good governance amongst public listed companies, to preserve shareholder rights, to minimise risks to shareholders, and ultimately to enhance value of the shareholders and the capital market over time.

MSWG’s objectives are set out in a Charter under its Memorandum and Articles of Association. These objectives include:

a) To become the Forum on minority shareholders’ experiences.

b) To become the Think-Tank and Resource Centre for minority interest and corporate governance matters in Malaysia.

c) To develop and disseminate the educational aspects of corporate governance.

d) To become the platform to initiate collective shareholder activism on questionable practices by management of public listed companies.

e) To influence the decision making process in public listed companies as the leader for minority shareholders’ legitimate rights and interests.

f) To monitor for breaches and non-compliance in corporate governance practices by public listed companies.

g) To initiate where appropriate, reports to regulatory authorities and transforming MSWG into an effective deterrent of such events or
activities that can be against the interest of the minority shareholders\(^9\).

In recognition of its public mandate to spearhead shareholder activism – which is one of the key tenets of corporate governance – the Capital Market Development Fund has been supporting the MSWG since 2005.

To date, the MSWG has been successful in building up their credibility by their active participation in AGMs and EGMs, where the MSWG highlight concerns and issues relevant to retail and minority shareholders.

7. **Capital Markets Promotion Council\(^{10}\)**

The Capital Markets Promotion Council was established in 2012 as part of the efforts by the Malaysian Government and the SC to promote the country's value proposition across various segments of the capital market both in the domestic and international arena. In 2014, SC launched the Capital Markets Malaysia (CM2) brand, representing the multi-faceted Malaysian capital market with its wide range of conventional and Islamic products, supported by a strong governance infrastructure. With a tagline "Financing the Future", it showcases the significance of capital market in facilitating future financial growth, innovation and wealth creation.

CM2 serves as a platform to ensure consistency and coordination between various stakeholders of the capital market in promoting the offerings and expertise of the market and through different communication channels. An integrated international agenda facilitates the promotion of the Malaysian capital marketplace, bringing together investors and investment opportunities.

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\(^9\) Minority Shareholder Watchdog Group, Who we Are <http://www.mswg.org.my/objective-vision-mission>

\(^{10}\) Capital Markets Malaysia (CM2) Official Website <http://www.capitalmarketsmalaysia.com>
introduction of a new framework for digital asset exchanges and initial coin offerings (ICOs); a Co-Investment Fund to enable the government to co-invest with private investors in financing the development of new businesses; and introduction of property crowdfunding platforms regulated under a crowdfunding framework.

Below are brief details of each item above:

**New framework for ICOs**

The SC will put in place a regulatory framework to regulate digital asset exchanges and initial coin offerings (ICOs) to facilitate a fair and orderly development of this nascent market. In a joint press statement issued by the SC and BNM, SC has clarified that they will regulate the issuances of digital currencies and tokens via ICO and the trading at digital asset exchanges in Malaysia. Regulations are currently being put in place to bring digital assets within the remit of securities laws to promote fair and orderly trading and ensure investor protection.

ICO issuers and digital asset exchanges which are involved in the issuance or dealing of digital assets with a payment function will need to comply with relevant BNM laws and regulations relating to payments and currency matters. BNM had reiterated that members of the public are advised to carefully evaluate the risks associated with dealings in digital assets.

In order to implement the regulatory framework on digital assets, the SC and BNM will enter into coordination arrangements to ensure compliance with laws and regulations under the purview of both regulators. These regulations are expected to come into effect in the first quarter of 2019.

**Co-Investment Fund**

A Co-Investment Fund, with a grant of RM50 million, will be established to enable the government to co-invest with private investors the micro, small and medium enterprise segment. Such investment will be carried out through equity crowdfunding and peer-to-peer financing platforms.

**Property crowdfunding platforms**

SC has announced that they will be reviewing the property crowdfunding framework and the Guidelines on Recognised Markets to facilitate the establishment of property crowdfunding platforms. Such platforms which will be regulated by the SC under a crowdfunding framework, will provide alternative financing options to first-time home buyers and give investors exposure to the property sector through smaller investment amounts. This initiative forms part of a series of Budget 2019 measures to facilitate home ownership. To ensure proper governance of this scheme, platform operators are required to register with the SC and fulfill eligibility, transparency and financial requirements. The property crowdfunding framework is expected to come into effect in the first quarter of 2019.
11. Employment Law

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

A. Employment Act 1955

The Employment Act 1955 ("EA 55") applies throughout West Malaysia and the Federal Territory of Labuan. It applies only to employees whose wages do not exceed RM2,000 a month and certain categories of employees irrespective of their wages such as manual labourers, supervisors of manual labourers, drivers, domestic servants, etc. For those who do not fall under this category, their rights are dependent on their contract of employment. The rationale behind this is that those with a higher earning capacity possess an equal bargaining power with their employers in the negotiation of the terms of their contract. The EA 55 requires certain minimum benefits and rights to be granted to employees. Failure to do so may amount to a breach on the part of the employer, although such a breach would not nullify the employment contract itself but rather the EA 55 benefits would apply instead of the lower benefits conferred by the employment contract.

An employment contract may be in a form of a contract of service which is pre-condition for an employer-employee relationship or a contract for service. The former is a contract where an employee is engaged to perform for an employer who exercises control and discretion over the said employee. It is here that an employer-employee relationship is established. The latter is quite simply a contract with an independent contractor.


<table>
<thead>
<tr>
<th>Section</th>
<th>Subject</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
<td>Work on a rest day</td>
<td>Employees are not required to work on a rest day unless he is engaged in work which is required to be carried on continuously by 2 or more shifts.</td>
</tr>
<tr>
<td>60A</td>
<td>Hours of work</td>
<td>Employees are not required to work for the periods below except with overtime payments.</td>
</tr>
</tbody>
</table>
## Employment Law

<table>
<thead>
<tr>
<th>Section</th>
<th>Subject</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a)</td>
<td>more than 5 consecutive hours without a period of leisure of not less than 30 minutes duration;</td>
</tr>
<tr>
<td></td>
<td>(b)</td>
<td>more than 8 hours in a day;</td>
</tr>
<tr>
<td></td>
<td>(c)</td>
<td>in excess of a spread over period of 10 hours in a day;</td>
</tr>
<tr>
<td></td>
<td>(d)</td>
<td>more than 48 hours in a week.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>There is an exception in situations such as emergencies and urgent work to be done to machinery or plant. Also, no employer shall require an employee under any circumstances to work for more than 12 hours in any one day.</td>
</tr>
<tr>
<td>60D</td>
<td>Holidays</td>
<td>Employees are entitled to a paid holiday at his ordinary rate of pay on 11 of the gazetted public holidays, 5 of which is pre-set with the other 6 to be selected by the employer at their discretion. If any of the public holiday falls on a rest day; or any other public holiday, the working day following the rest day or the other public holiday shall be a paid holiday in substitution of the first mentioned public holiday.</td>
</tr>
<tr>
<td>60(3)</td>
<td>Overtime</td>
<td>Employees shall be paid at a rate of 1.5 times his hourly rate for any overtime work. Employees shall not be required to work more than 104 hours a month on overtime. For any overtime work in excess of the normal hours of work on a paid public holiday, the employee shall be paid at a rate which is no less than 3 times his hourly rate of pay. For overtime work carried out by an employee on his rest day, he shall be paid at a rate which is no less than 2 times his hourly rate of pay. For overtime work carried out by an employee employed on piece rates in excess of the normal hours of work on any paid holiday, the employee shall be paid no less than 3 times the ordinary rate per piece.</td>
</tr>
<tr>
<td>60D(3)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section</th>
<th>Subject</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>60E</td>
<td>Annual Leave</td>
<td>An employee shall be entitled to paid annual leave of:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) 8 days if employed for a period of less than 2 years;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) 12 days if employed for a period of 2 years or more but less than 5 years;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) 16 days if employed for a period of 5 years or more,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For employees who have not completed 12 months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service.</td>
</tr>
<tr>
<td>60F</td>
<td>Sick Leave</td>
<td>An employee shall be entitled to paid sick leave where no hospitalisation is necessary:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) 14 days if employed for less than 2 years;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) 18 if employed for 2 years or more but less than 5 years;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) 22 days if employed for 5 years or more; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If hospitalisation is necessary, entitlement is to 60 days each calendar year.</td>
</tr>
</tbody>
</table>
| 37      | Maternity Leave / Allowance* | Female employees are entitled to 60 consecutive days for each confinement. A female employee shall not be entitled to any maternity allowance if at
Employment Law

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

* The government had previously announced that private sector employees should be granted a 90-day maternity leave instead of the current 60-day maternity leave as provided by Section 37 of the EA 55. However, as at the date of this article, the EA 55 has yet to be amended to reflect the foregoing changes.

B. Sabah Labour Ordinance and Sarawak Labour Ordinance

The employment law in East Malaysia is regulated by the Sarawak Labour Ordinance for Sarawak and the Sabah Labour Ordinance for Sabah. The protection and benefits granted mirrors that of the EA 55 with a few differing provisions. The Ordinances provide the conditions under which a "child" (below 15 years) and "young person" (15 years and above but having not attained 18 years) may be employed. Further there is a requirement for any employer wishing to employ any "non-resident employee" (a person not from Sabah or Sarawak) to obtain a licence to employ from the Director of Labour Sabah/Sarawak. Both the Ordinances cover employees on a contract of service with an employer and whose wages do not exceed RM2,500 a month (as opposed to RM2,000 in the EA 55).

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

At common law an employer owes a duty of care towards his employees to ensure as far as reasonably possible the good health and safety of the employees. The OSHA 94 provides the framework to secure the safety, health and welfare among workforce and to protect others against risks to safety or health in connection with the activities of persons at work. Employers with more than 5 employees are required to formulate a written Safety and Health Policy. The OSHA 94 specifies the general duties of employers, manufacturers, suppliers and employees. Pursuant to Section 30 of the OSHA 94, every employer shall establish a Safety and Health Committee at workplace if there are 40 or more persons employed at the place of work.

D. Factories and Machinery Act 1967

Sections 10 to 25 of the Factories and Machinery Act 1967 impose on the occupier of a factory certain minimum standards of safety and welfare for employees who work within factory premises. Examples include foundations and floors to be of sufficient strength, roofs to be of sufficient strength, provisions against fire, etc.
E. Employees’ Social Security Act, 1969

Employers and employees are also obligated to contribute to this insurance fund. The contribution rate is set out in the Third Schedule of the Employees’ Social Security Act 1969 and is dependent on the monthly salary of the employee. As the ceiling rate for contribution is RM4,000 a month, employees who earn more than the ceiling rate are deemed to be earning RM4,000 a month for the purposes of contribution to this insurance fund.

F. Workmen’s Compensation Act 1952

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

G. Trade Unions Act 1959

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

Pursuant to Section 10 of the TUA 1959, any group of seven or more workers may form a trade union. Once a decision is made to form a union, the application for registration with the Director General of Trade Unions must be made within a month. The application is to be signed by at least seven members and accompanied by the prescribed fees and a copy of the rules of the union. The application shall include the name of the union with its address. Further, the names, addresses and occupation of the members making the application along with the union’s officers should be mentioned on the application. Finally, Section 2 of the TUA 1959, states that for a union to be registered, its intended members must come from the same or similar trade, occupation or industry.

H. Immigration Requirements

For employers who are desirous of hiring expatriates, an employment pass would have to be applied for from the Immigration Department. Depending on their basic monthly salary and duration of their employment contracts, an expatriate would be eligible to the following categories of employment pass:

a) Category I (Expatriate)
   A basic monthly salary of RM10,000 together with an employment contract for a period of up to 5 years;

b) Category II (Expatriate)
   Applicant must have a salary range of RM5,000 to RM9,999 together with an employment contract for a period of up to 2 years; or

c) Category III (Knowledge/Skilled)
   Applicant must have a salary range of RM3,000 to RM4,999 together with an employment contract for a period not exceeding 12 months.

The number of expatriate posts granted is based on the merits of each case and the employer will need to justify the reason for employing the expatriates. Companies will also be required to comply with the following minimum paid-up share capital if they wish to apply for expatriate post:

<table>
<thead>
<tr>
<th>Equity held</th>
<th>Minimum share capital (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Malaysian-owned</td>
<td>250,000</td>
</tr>
<tr>
<td>Jointly-owned by Malaysian and foreigner</td>
<td>350,000</td>
</tr>
<tr>
<td>100% foreign-owned</td>
<td>500,000</td>
</tr>
<tr>
<td>Foreign-owned companies (foreign equity of 51% and above) operating in the</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>
Companies regulated by any of the following approving agencies must first obtain an approval letter for the relevant employment pass:

a) MOHA;

b) MIDA for manufacturing and its related services sectors;

c) MDeC for information technology sector, specifically companies awarded with the Multimedia Super Corridor ("MSC") Status;

d) BNM for the financial, insurance and banking sectors;

e) SC for securities and futures market;

f) PSD for government contractual positions;

g) Iskandar Regional Development Authority for specific companies operating within Iskandar Malaysia;

h) ECERDC for specific companies operating within East Coast Economic Region;

i) Talent Corporation Malaysia Berhad for specific key employers under ICAEQ/ACCA/NKEA sectors;

j) MaGIC for approved programs under its purview; or

k) Expatriate Committee ("EC") for expatriate posts in sectors other than those mentioned above.

In addition to that, companies in the sector which are under the purview of the following Regulatory Body must obtain a supporting letter from the relevant Regulatory Body, as listed in the table below.

<table>
<thead>
<tr>
<th>No.</th>
<th>Regulatory Bodies</th>
<th>Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ministry of Education</td>
<td>Education</td>
</tr>
<tr>
<td>2.</td>
<td>Ministry of Health (Traditional &amp; Complementary Medicine)</td>
<td>Healthcare</td>
</tr>
<tr>
<td>3.</td>
<td>Ministry of Tourism and Culture</td>
<td>Tourism</td>
</tr>
<tr>
<td>5.</td>
<td>Ministry of Agriculture and Agro-based Industries</td>
<td>Agriculture</td>
</tr>
<tr>
<td>6.</td>
<td>Malaysian Bioeconomy Development Corporation Sdn Bhd (Bioeconomy)</td>
<td>Biotechnology</td>
</tr>
<tr>
<td>7.</td>
<td>Department of Civil Aviation, Ministry of Transport</td>
<td>Aviation</td>
</tr>
<tr>
<td>8.</td>
<td>Department of Mineral and Geoscience, Ministry of Natural Resources and Environment</td>
<td>Mining</td>
</tr>
<tr>
<td>9.</td>
<td>Unit PUSPAL (Central Agency for Application of Filming and Performance by Foreign Artistes), Ministry of Communications and Multimedia</td>
<td>Entertainment &amp; Performance</td>
</tr>
<tr>
<td>10.</td>
<td>Construction Industry Development Board (CIDB)</td>
<td>Construction</td>
</tr>
<tr>
<td>11.</td>
<td>Equestrian Association of Malaysia</td>
<td>Equestrian</td>
</tr>
</tbody>
</table>

The approval and/or supporting letters as stated above are to be submitted for each Employment Pass application.

I. Industrial Relations Act 1967

The Industrial Relations Act 1967 ("IRA 67"), unlike the EA 55, applies to throughout Malaysia. It deals with trade union matters, trade disputes (amongst employers, employees and trade unions) and collective agreements amongst others. The IRA 67, protects the rights of employers and employees to form trade unions as well as procedural provisions for recognition of trade unions along with the overseeing the collective bargaining process in reaching a collective agreement which is to be deposited with the Court to be granted cognisance. Further, trade disputes may be referred by the
Minister of Human Resources to the Industrial Court. These include anything from constructive dismissal to retrenchment matters. Section 29 of the IRA 67 provides the powers granted to the Industrial Court which includes the jurisdiction to hear trade disputes with the decision of the Industrial Court being final though there is a statutory right to appeal to the High Court on questions of law pursuant to Section 33A of the IRA 67. The IRA 67 further provides that an employee may only be dismissed by his employer with just cause and excuse. The concept of termination at will only to employment contracts does not apply in Malaysia.

J. Employees Provident Fund Act 1991

Every employer is required to contribute to this fund at the specified rates. As of July 2014, the contribution rates are as below:

<table>
<thead>
<tr>
<th>Category of Employees</th>
<th>Employer's Rate</th>
<th>Employee's Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly salary of RM5,000 or below</td>
<td>13%</td>
<td>8% - 11%</td>
</tr>
<tr>
<td>Monthly salary of above RM5,000</td>
<td>12%</td>
<td>8% - 11%</td>
</tr>
</tbody>
</table>

Note: For employees aged 60 years and above the rate is at 50% if the rate mentioned above depending on the amount of salary

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

Malaysians who are employed abroad may also opt to contribute to this fund.

K. Employment Insurance System Act 2017

Every employer and employee are required to contribute to this employment insurance scheme ("Scheme") which is administered by the Social Security Organisation. The Scheme seeks to provide short term financial assistance as well as reskilling and upskilling for employees who face imminent retrenchment by their employers. The contribution rate is set out in the Second Schedule of the Employment Insurance Act 2017 and is dependent on the monthly salary of the employee. As the ceiling rate for contribution is RM4,000 a month, employees who earn more than the ceiling rate are deemed to be earning RM4,000 a month for the purposes of contribution to the Scheme.

L. Termination of Employment

An employer may exercise their right to terminate an employee's employment contract for reasons such as a misconduct under Section 14 of the EA 55, in breach of contracts by the employee, retrenchment, retirement (60 years), end of a probation period (if performance is not satisfactory) or for fixed term contracts it ends when the contractual period comes to an end. Termination at will as mentioned is not allowed in Malaysia due to the 'just cause and excuse' provision in the IRA 67. Hence, an employer can terminate a contract by giving notice with valid reasons. An employee has 60 days to report dismissal if he is of the opinion it was not made with just cause and excuse. As for misconducts, an employer may punish an employee only after due inquiry has been made (for example a domestic inquiry). The employer shall investigate the alleged misconduct and provide the employee with a fair opportunity to be heard and to defend himself in front of an independent panel. Failure to comply with such requirements may provide the employee with a right to claim for unfair dismissal against the now former employer.
Termination on Grounds of Redundancy

The Industrial Courts generally recognise that retrenchment of an employee on grounds of redundancy is sufficient cause and excuse to dismiss the employee. Redundancy is a situation where there has been a cessation of, or diminution in, the requirements of the business as a result of various factors such as closure of business, re-organisation, reduction in production, etc. In order to lawfully retrench its employees on grounds of redundancy, an employer must comply with each of the following requirements, failing which a retrenched employee could claim for unfair dismissal against the former employer:

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

b) The services of the employee affected must be made redundant; and

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

The Code provides that if retrenchment of employees becomes necessary despite having taken appropriate measures, the employer should amongst others, give as early a warning, as practicable, to the employees concerned and introduce schemes for voluntary retrenchment and retirement and for payment of redundancy and retirement benefits. The employer should select employees to be retrenched in accordance with objective criteria such as applying the Last-In-First-Out principle (LIFO) or taking into account their nationality, age, ability, experience, skill, family situation, etc.

To effect a retrenchment exercise, the Employment (Termination and Lay-Off Benefits) Regulations 1980 requires statutory minimum notice period and statutory termination benefits to be provided to all employees covered under the EA. Employees who are not covered under the EA are not entitled to any statutory benefits but they are however entitled to their contractual notice period and any contractual severance payments.

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

M. National Wages Consultative Council Act 2011

The National Wages Consultative Council Act 2011 ("NWCCA 2011") was enacted to establish a National Wages Consultative Council ("NWCC"). The NWCC is the main platform for the determination of wages, including determining the rate and mechanism for the implementation of the minimum wage in Malaysia. Pursuant to Section 23 of the NWCCA 2011, the Minimum Wages Order 2018 (the "Order") came into force on 1 January 2019 replacing its preceding orders issued under the NWCCA 2011. The Order applies across the board, covering both local and foreign employees, with the singular exclusion of those who are classified as domestic servants under the EA 55 (for example: maids, gardeners, private chefs and drivers). The minimum wage for employees is set at RM1,100 per month.

N. Minimum Retirement Age Act 2012

This Minimum Retirement Age Act 2012 provides for the minimum retirement age of an employee at 60 years old. Although the minimum retirement age has been fixed at 60 years, an employee may choose to retire earlier than 60 years of age provided that this has been agreed upon in their contract of service or collective agreement.

O. Self-Employment Social Security Act 2017

The Self-Employment Social Security Act 2017 ("SESSA 2017") came into force on 13 June 2017. The SESSA 2017 is aimed at safeguarding the welfare of self-employed individuals via social
security benefits from the Social Security Organisation.

The SESSA 2017 applies to self-employed drivers of e-hailing service providers such Uber and Grab, though its application may be widened in the future. Under the SESSA 2017, contributions at the rate of 1.25% of the self-employed driver’s monthly income is required by both the self-employed individual as well as the e-hailing service provider.
12. Foreign Investment in Real Property

A. Background to Malaysian Land Law

1. Torrens System in Malaysia

a) The ‘Torrens system’ was named after Sir Robert Torrens and introduced in South Australia in 1858. The Torrens system is a system of registration of titles to land (as distinct from registration of deeds). The Torrens system is basically a system of recognition of titles to and dealings in land to improve efficiency and effectiveness of land administration. The courts have taken cognisance of this as in this passage from the case of Poh Yang Hong v Ng Lai Hin & Ors [2013] 8 CLJ 964:

"The system of land registration adopted by Parliament and codified in the NLC 1965 is based on the Torrens system of registration. The core principle of this system of registration is that the register is everything. The Torrens system strives for simplicity and certitude in transfers of Torrens system land or registered land".

b) The main characteristics of the Torrens system are:

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

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

c) Two principles flow from the Torrens system as follows:

i. Mirror Principle – the register reflects accurately and completely the current facts about a registered owner and all details of a piece of land. This means if a person were to sell a piece of land, the new title has to be identical to the old one in terms of description of land, except for the owner’s name; and

ii. Curtain Principle – one does not need to go behind the Certificate of Title as it contains all the information about the title. This means that all the necessary information regarding the ownership of the land is on the Certificate of Title and if a person were to sell a piece of land, the purchaser could depend on the information provided on the Certificate of Title.

2. Indefeasibility of title

One of the most important advantages of the Torrens system is the indefeasibility of title as provided under section 340(1) of the NLC. According to section 340(1) of the NLC, upon registration, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land. Abdul Malik Ishak J in the case of
Muthammah a/p Govindan v Masri bin Mohamed & Anor [2000] 5 MLJ 518 defined the phrase 'indefeasible title' as a title of an interest which is free of all adverse claims or encumbrances not noted in the register. It is quite obvious that the effect of registration is to defeat all prior unregistered claims. However, being a general principle, the concept of indefeasibility is not absolute because under certain circumstances a registered title or interest may be set aside or defeated by a person who has a better claim. In law, these circumstances are amply spelt out under section 340 of the NLC and by case laws.

B. Foreign Investment in Real Property

Malaysia continues to attract interest from foreign investors and one of the most popular investments is in the real estate sector. As part of the effort to facilitate greater foreign investments in property transactions, the Malaysian government and its state governments have put in place various measures and guidelines. As such, our focus in this chapter will be on the guidelines introduced by the Malaysian government as well as restrictions imposed on foreign interests while investing in the Malaysian real property sector.

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

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

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

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

EPU Guideline

Prior to this, the Malaysian government has introduced a Guideline on the Acquisition of Properties by Local and Foreign Interests issued by the FIC ("FIC Guideline") to regulate and administer foreign investment in Malaysia. Under the FIC Guideline, any acquisition of property by a foreign interest, including permanent resident, requires the approval of the FIC. However, many feel that the FIC Guideline was no longer relevant because of its restrictive nature. Therefore, in an effort to attract foreign investors, the Malaysian government has decided to repeal the FIC Guideline and to replace it with the EPU Guideline effective on 30 June 2009. The EPU Guideline was subsequently amended on 1 March 2014.

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

with before the transfer of the property’s ownership, whereas for indirect acquisition of property, the equity and paid-up capital conditions must be complied with within one (1) year after the issuance of written approval.

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

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

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

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

a) Johor

i. Johor has its own policy on the acquisition of property by foreign interest which was effective on 1 May 2014. Under this policy, foreign interest in Johor is only allowed to acquire property in secondary market (sub-sales) from existing property owned by foreign interest. If the foreign interest would like to acquire property owned by Malaysians, it will be considered on a case-to-case basis.

ii. Other than that, unlike the restriction on the acquisition of Bumiputera Lot imposed under the EPU Guideline, a foreign interest in Johor may be allowed to own Bumiputera Lot in a housing project after the said units obtained approval from Johor State Secretary Office (Housing Division) subject to the existing balance of the foreign interest quota. Foreign interest may also own Bumiputera Lot duly registered in the name of Bumiputera in sub-sales after obtaining the approval from the State Authority. However, the Johor government restricts the type of properties that can be acquired by a foreign interest. For example, a foreign interest in Johor cannot acquire a single storey terrace unit or 1½ storey terrace unit, single or two storey of shop or office lot, stall or service workshop among others.

iii. The Straits of Johor Development Corridor 2025 Master Plan showed that Tanjung Bin, Tanjung Pelepas, Nusajaya (now known as Iskandar Puteri), Johor Bahru city centre, Pasir Gudang, Tanjung Piai, Sungai Sekudai and Sungai Tebrau are international zones. The minimum threshold for acquisition of property by foreign interest within the international zones is RM2 million per unit for landed properties with individual titles and RM1 million per unit for properties with strata titles. For properties outside the international zones, the minimum threshold is RM1 million for properties with individual titles and strata titles.

b) Selangor

i. Selangor has issued its own guideline on acquisition of properties by foreign interests or permanent residents in Selangor which came into effect on 1 September 2014.
ii. The areas in Selangor have been divided into three Zones under this guideline as follows:

<table>
<thead>
<tr>
<th>Zone 1</th>
<th>Zone 2</th>
<th>Zone 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daerah Petaling</td>
<td>Daerah Kuala Selangor</td>
<td>Daerah Hulu Selangor</td>
</tr>
<tr>
<td>Daerah Gombak</td>
<td>Daerah Kuala Langat</td>
<td>Daerah Sabak Bernam</td>
</tr>
<tr>
<td>Daerah Sepang</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daerah Hulu Langat</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daerah Klang</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

iii. Under the guideline, foreign interests and permanent residents are only allowed to acquire residential properties valued more than RM 2 million in areas categorised as Zone 1 and Zone 2 whereas residential properties in the area classified in Zone 3 can be acquired if the residential properties are valued at RM 1 million or above. Besides that, foreign interests can only acquire commercial and industrial properties in Selangor in all three zones if the values of the properties start from RM 3 million. Furthermore, there are also restrictions against foreign interests from acquiring landed properties, agricultural lands and properties sold through public auction in Selangor.

iv. Apart from Selangor, foreign interests are only allowed to acquire properties in Penang, if the properties are valued at RM 2 million or more on the island and RM 1 million or more on the mainland. This applies to all types of property in Penang effective from 1 February 2014.

c) Malacca

Malacca also introduced its own guideline on acquisition of properties by foreign interests entitled "Malacca State Guidelines on Acquisition of Properties by Foreign Interests" where foreigners are only allowed to acquire not more than 3 units of commercial properties while applications made by foreign companies will be considered on a case to case basis. In addition, the purchase price for each property to be acquired by foreign companies must be more than RM1 million per unit for landed properties with individual titles and RM500,000 per unit for properties with strata titles.

d) Negeri Sembilan, Perlis and Putrajaya

Negeri Sembilan, Perlis and Putrajaya have adopted the EPU guideline on the acquisition of property by foreign interest.

e) Kedah

i. In Kedah, a foreign interest is allowed to acquire certain type of residential properties, for instance, double storey houses and bungalows if the properties are valued at RM1 million or above. Foreign interest is not allowed to acquire residential properties categorised as single storey terrace house, low cost apartment, properties built on Malay reserved land and Bumiputera Lot. Besides that, foreign interests do not need to apply for State Authority approval for the acquisition of industrial lands in Kedah if the minimum price is RM1million.

ii. For commercial properties, foreign interests are allowed to acquire three storey shops and office units subject to minimum price of RM1million. Foreigners are not allowed to acquire single or two storey shops, stalls or service workshops.

f) Penang

i. Since 1 July 2012, the minimum price of a strata property to be acquired by a foreign interest on the island and Seberang Perai area is RM1million. If a foreign interest intends to acquire a landed property on the island or the Seberang Perai area, the price of that landed property must be a minimum of RM2million. All purchases of properties by
foreign interest will be subjected to 3% levy on the transacted price. The 3% levy on foreign buyers is targeted to significantly deter foreign speculators on bulk buying. However, a permanent resident in Penang is allowed to acquire properties in Penang subject to a minimum price of RM250,000.

ii. In addition, a foreign interest is not allowed to acquire the following properties:

1. low cost and low-medium cost terrace house;
2. low cost and low-medium cost flat;
3. property allocated to Bumiputera interest in any property development project; and
4. property built on a Malay Reserve Land.

iii. A foreign interest is also not allowed to acquire agricultural lands in Penang. However, in the event that the foreign interest intends to acquire at least 5 acres of the agricultural land, the State Authority will consider the application provided that:

1. the foreign interest is involved in a commercial agricultural activity using modern and high technology;
2. the foreign interest is involved in producing agricultural products to be exported;
3. the foreign interest is involved in developing agricultural activities with modern technology and approved by PORLA, PORIM or MARDI;
4. if the agricultural land to be developed as agro tourism, golf course, holiday homes and others;
5. if the agricultural land is situated in a zoning area other than agriculture; or
6. if the State Authority considers that a project to be developed on that agricultural land needs to be executed.

g) Kelantan
In Kelantan, a foreign interest is only allowed to purchase a commercial unit, industrial land or agricultural land if the property is valued at RM500,000 or above. Similarly, a foreign interest can only purchase a residential unit in Kelantan if the minimum price of the unit is RM500,000.

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

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

3. Real Property Gains Tax ("RPGT")

RPGT is a tax on chargeable gains derived from disposal of property based on the RPGT Act 1976. Effective from 1 January 2019, the RPGT rates imposed on non-citizens and foreign companies are as follows:

| < 3 years | 30% | 30% |
| < 4 years | 30% | 20% |
| < 5 years | 30% | 15% |
| > 5 years | 10% | 10% |

As amended and effective from 1 January 2018, the amount to be retained by a purchaser for the purposes of RPGT has been increased from 3% to 7% of the purchase price where the vendor is neither a Malaysian citizen nor a permanent resident.

4. Stamp Duty

Stamp duty is payable on the instrument to effect a transfer of land. The following are the rates of stamp duty payable effective from 1 January 2019:
C. Conclusion

Premised on the foregoing, one may note that the Malaysian government has over the years increased the relevant thresholds for foreign investment in real property. It would therefore be pertinent for a foreign investor to consider the various conditions before investing in the Malaysian real property sector.
13. Environmental Laws

In promoting sound and sustainable development for environment preservation in Malaysia, the Malaysian Government has established legal and institutional frameworks to ensure that environmental factors are considered at the early stages of project planning. Legal and institutional arrangements for environmental protection fall under the purview of the Malaysian Department of Environment ("DOE") which is under the jurisdiction of the Ministry of Energy, Science, Technology, Environment and Climate Change ("MESTECC").

In Malaysia, Section 34A of the Environmental Quality Act 1974 ("EQA") provides that Environmental Impact Assessment ("EIA") is required for activities prescribed under the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015. Those industrial activities that are not subject to the mandatory EIA requirements are nevertheless subject to various regulations under the Environmental Quality Act, 1974. The EIA is conducted with the aim of achieving the following objectives:

a) To examine and select the best project options available;
b) To identify and incorporate into the project plan appropriate abatement and mitigating measures;
c) To predict significant residual environmental impacts;
d) To determine/predict the amount of residual environmental impacts; and
e) To identify the environmental costs and benefits of a particular project to the community.

1. Environmental Requirements

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

a) EIA reports - under Section 34A of the EQA (for prescribed activities);
b) Site suitability evaluation (for non-prescribed activities);
c) Written permission to construct - under Section 19 of the EQA (for prescribed premises-scheduled wastes treatment and disposal facilities, crude palm oil mills and raw natural rubber processing mills);
d) Written approval for installation of incinerator, fuel burning equipment and chimney – under Regulation 4 and the First Schedule of the Environmental Quality (Clean Air) Regulation, 1978; and

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

2. Environmental Impact Assessment for Prescribed Activities

Prescribed Activities

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

b) If the proposed activity is categorised as a "prescribed activity" under the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, an EIA study needs to be conducted and thereafter, the EIA report has to be submitted to the Director General of Environmental Quality for approval. Depending on the type of prescribed activity, an EIA report will also be required for public display and public comment at place and within the time determined by the Director General of Environmental Quality, to obtain public comment in relation to that report.

EIA Study and Report

An EIA Study has to be conducted by competent individuals who are registered with the DOE under the EIA Consultant Registration Scheme. The DOE will reject EIA reports which are conducted by individuals who are not registered with the DOE.

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

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

a) Iron and steel industry
b) Pulp and paper mills
c) Cement plant
d) Construction of coal-fired power plant
e) Construction of dams for water supply and hydroelectric power schemes
f) Land reclamation
g) Incineration plant for schedule wastes and solid wastes
h) Construction of municipal solid wastes landfill facility

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

DOE may from time to time issue EIA guidelines for specific activities. On 1 November 2017, DOE has issued the following guidelines for development of:

a) national and state parks;
b) slope and hill areas; and
c) coastal areas and marine parks.

3. Site Suitability Evaluation for Non-Prescribed Activities

a) All potential industrial sites for the establishment of new industrial activities which are not subject to EIA Order, particularly the small and medium scale industries ("SMI"), are also advised to refer to the DOE for consideration and advice on site suitability.
b) In considering the site suitability, the DOE will take into account the gazetted structure/local plans, surrounding land use, provision of setbacks or buffer zones, the capacity of the area to receive additional pollution load, and waste disposal requirements.

c) For potentially hazardous type of industries, the project proponent may be required to submit a Risk Assessment Study to the DOE as part of the site consideration, in accordance with the EIA Guidelines for Risk Assessment 2004, as published by the DOE.

4. Written Permission

Any person intending to carry out activities as listed below shall obtain prior written permission from the Director General of Environmental Quality:

Construction on any land or any building; or carrying out works that would cause the land or building to become prescribed premises as stipulated under Section 19 of the EQA:

a) scheduled wastes treatment and disposal facilities;

b) crude palm oil mills; and

c) raw natural rubber processing mills.

Any person intending to carry out any work on any vehicle or ship, or premises that would cause the vehicle or ship or premises to become a prescribed conveyance or prescribed premises as stipulated under Section 19 of the EQA.

5. Written Approval

Any person intending to carry out activities as listed below shall obtain prior written approval from the Director-General of Environment Quality:

a) New installation near dwelling area as detailed out in Regulation 4 and First Schedule of the Environmental Quality (Clean Air) Regulations 1978.

b) Any erection (including incinerators), installation, resiting or alteration of fuel burning equipment that is rated to consume pulverised fuel or solid fuel at 30 kg or more per hour, or liquid or gaseous fuel at 15 kg or more per hour as stipulated in Regulation 36 of the Environmental Quality (Clean Air) Regulations 1978.

c) Any erection, installation, resiting, or alteration of any chimney from or through which air impurities may be emitted or discharged as stipulated in Regulation 38 of the Environmental Quality (Clean Air) Regulations 1978, save for a chimney serving a private residence.

6. Licence to Occupy Prescribed Premises and Prescribed Conveyances

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

i. crude palm oil mills,

ii. raw natural rubber processing mills, and

iii. treatment and disposal facilities of scheduled wastes

b) Application shall be made after obtaining written permission and written approval. Licensing fee will be charged for every licence issued for palm oil, raw natural rubber processing mills and facilities for treatment and disposal of schedule waste, and prescribed conveyances.

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

i. propelled by a mechanism contained within itself;

ii. constructed or adapted to be used on land or water; and
iii. used for the movement, transfer, placement or deposit of scheduled wastes.

7. Environmental Requirements on Scheduled Wastes

a) Section 34B of the EQA states that the DOE’s prior written approval is required for a person to place, deposit or dispose of Scheduled Wastes, except at prescribed premises approved by the DOE. Any person who contravenes this section shall be punishable with imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding RM500,000.

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

c) Every waste generator shall within 30 days from the date of generation of scheduled wastes, notify the Director General of Environmental Quality of the new categories and quantities of scheduled wastes which are generated.

d) Land farming, incineration, disposal and off-site facilities for recovery, storage and treatment can only be carried out at prescribed premises licensed by the DOE.

8. Non-Compliance with the EQA

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

For example, where a person breaches Section 31(1) and (2) of the EQA (Order to require owner or occupier to install, operate, repair etc.) and fails to remedy the breach within a certain period, Section 31(3) EQA states that the offender shall be guilty of an offence and liable to a fine not exceeding RM25,000 and/or imprisonment for a period not exceeding 2 years. In addition, the offender shall pay a further fine of RM1,000 per day so long as the offence continues.

Section 41 of the EQA states that the general penalty for breaches of provisions within the EQA shall result in a fine not exceeding RM10,000 and/or imprisonment for a period not exceeding 2 years.

Section 43 of the EQA states that breaches of provisions of the EQA or any of its Regulations committed by a company, the director, officer or individual(s) acting in such capacity shall be deemed to be guilty of that offence unless he or she is able to prove that the offence was committed without his consent. If found guilty, the director will not only be subject to a penalty in the form of a fine but possibly to imprisonment for such contravention of the EQA.

9. New Policies

In view of emergence of complex global environmental issues, the Ministry of Natural Resources and Environment (now MESTECC) in 9 November 2017 has expressed that a new Environmental Protection Act ("EPA") will replace the current EQA in 2018. Under the new EPA, a total of 91 sections, of which 41 are new, will enhance the power of enforcers to prosecute and to impose heavier penalties on any person who is found to cause damage to the environment.

Among the salient changes in the law include:

a) The EIA will be revamped to be more comprehensive;

b) Disinterested third party to approve or nix projects that might have considerable impact on the environment;

c) The Ministry’s special investigators will be empowered to conduct search and seizure on premises;

d) Rights to force illegal factories to relocate or shut down;

e) Compulsory obligations for certain industries and development sectors to self-regulate; and
f) Expand to regulation of animal husbandry industry.

**Incentives for Environmental Management**

With a view to encouraging investments on the environmental sector into Malaysia, various tax incentives have been allocated pursuant to the Promotion of Investments Act 1986 and the ITA companies actively engaging in environmental management services.

Depending on the activity and subject to the terms and conditions imposed by the relevant authorities, the incentives that these companies are entitled to may include:

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

f) ITA –

i. 100% of the qualifying capital expenditure incurred on a green technology project from the year of assessment 2013 (where the date on which the first qualifying capital expenditure incurred is not earlier than 25 October 2013) until the year of assessment 2020. The allowance can be offset against 70% of statutory income in the year of assessment. Any unutilised allowances can be carried forward until they are fully redeemed.

ii. 100% of qualifying capital expenditure incurred on purchasing green technology asset from the year of assessment 2013 (where the date on which the first qualifying capital expenditure incurred is not earlier than 25 October 2013) until the year of assessment 2020. The allowance can be offset against 70% of statutory income in the year of assessment. Any unutilised allowances can be carried forward until they are fully redeemed.

Projects relating to renewable energy, energy efficiency, green building, green data centre, and waste management can qualify for this tax incentive.

g) Green Technology Services – income tax exemption of 100% of statutory income from the year of assessment 2013 until the year of assessment 2020.

h) Exemption from Import Duty – exemption from import duty can be considered for imported machinery and equipment that are used for the provision of waste management services, provided the machinery/equipment are not available locally.

a) Accelerated Capital Allowance – companies using environmental protection equipment are eligible for an initial allowance of 40% and an annual allowance of 20% on the qualifying capital expenditure.

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

Malaysia is a signatory to or member of the following international conventions and treaties:

a) Paris Convention;

b) Berne Convention;

c) Agreement on Trade Related Aspects on Intellectual Property Rights;

d) World Intellectual Property Organisation;

e) WTO; and

f) Patent Cooperation Treaty ("PCT").

Malaysia is also committed to the ASEAN Economic Community Blueprint which requires Malaysia to accede to and enforce the Madrid Protocol and the Hague Agreement by 2015.

MyIPO is responsible for the registration of trade marks, patents, copyrights and industrial design. MyIPO's website can be found at the following address: www.myipo.gov.my

A. Trade Marks

A trade mark is a mark used in relation to a business and it includes a "device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof." Proprietors of trade marks may assert their rights to the trade marks either through the legal recourses made available to them for registration under the Trade Marks Act 1976, or for non-registered trade marks, through the tort of passing off.

1. Unregistered Trade Marks

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

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

a) there is goodwill and reputation of the business of the proprietor;

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

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

An action in passing off is essentially an action seeking a remedy for damage caused to the goodwill and reputation of the plaintiff's business. The basis of the action lies on the misrepresentation of the
wrongdoer. It is worth noting that such misrepresentation may be express or implied. For example, the misrepresentation may be implied through the packaging of the goods. The scope of an action in passing off is therefore wider than infringement of a registered trade mark.

2. Registered Trade Marks

Registration of trade marks under the Trade Marks Act 1976 grants a proprietor the exclusive right to use the trade mark in Malaysia. A certificate of registration provides easy prima facie evidence of ownership of the trade mark. Under the Trade Descriptions Act 2011, a proprietor is required to have a registered trade mark in order to apply for a trade description order from the High Court – a declaratory order declaring that a trade mark or get-up used by an infringer is false – to initiate enforcement.

In order for a trade mark to be registrable, it must be considered “distinctive”, which should comprise at least one of the following:

a) the name of an individual, company or firm represented in a special or particular manner;

b) the signature of the applicant for registration or of some predecessor in his business;

c) an invented word or words;

d) a word having no direct reference to the character or quality of the goods or services not being, according to its ordinary meaning, a geographical name or surname; or

e) any other distinctive mark.

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

Once an application is made, MyIPO will examine the application. MyIPO may object to the application on grounds that the trade mark is not registrable for failure of being distinctive (or any other reason under law), or there are other similar registrations and applications that are identical or confusingly similar. If the application is accepted, the application will be advertised in the Malaysian government Gazette for a period of 2 months. If there are no successful oppositions by third parties within such gazette period, the trade mark will be successfully registered, whereupon the applicant will be granted a certificate of registration for the trade mark.

Under the Trade Marks (Amendment) Regulations 2011, trade mark applicants may, for a fee, file for expedited examination provided the request is submitted within four months from the initial trade mark application date.

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

B. Patents

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

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

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

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

c) it is capable of industrial application in any kind of industry.
An invention is not novel if there had been prior disclosure of essential elements of the invention anywhere in the world, including prior patent applications.

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

a) where prior disclosure of the invention was made in confidence; or

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

Inventions that consist any of the following are not patentable:

a) discoveries, scientific theories and mathematical methods;

b) plant or animal varieties or essentially biological processes for the production of plants or animals, other than man-made living microorganisms, micro-biological processes and the products of such micro-organism processes;

c) schemes, rules or methods for doing business, performing purely mental acts or playing games;

d) methods for the treatment of human or animal body by surgery or therapy, and diagnostic methods practised on the human or animal body.

Applications for registration of a patent may be filed at MyIPO. The applicant will have to lodge, amongst others, the specification of the invention which comprises the description of the invention, drawings and a set of claims that define the invention for the purpose of patent protection. In addition, the applicant will have to lodge an abstract which is a summary of the invention that includes the most essential elements of the invention. The abstract is not part of the specification but is used in the publication of the application. A successful patent registration in accordance to the above would grant the applicant patent protection within Malaysia.

In addition to the above registration, the applicant may also opt to file an international application under the PCT system, which makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application.

As the PCT is in force in Malaysia, patent protection may also be obtained by either entering the national phase of a PCT application 30 months from the earliest priority date.

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

C. Copyright

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

Copyright is granted to the following works:

a) musical works;

b) literary works;

c) artistic works;

d) dramatic works;

e) films;

f) sound recordings;

g) broadcasts; and

h) published editions.

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

a) it belongs to one of the categories of copyright-protected works as set out above;
b) the work complies with the requirement as to form in that it has been written down, recorded or reduced to or in any other material form;

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

d) the work complies with qualifications for copyright as follows:

e) the author is a permanent resident of Malaysia or member country of the Berne Convention;

f) the work is first published in Malaysia or in any member country of the Berne Convention; and

g) the work was created in Malaysia or in any member country of the Berne Convention.

The duration of copyright protection granted is as follows:

a) For literary, musical or artistic works, a copyright subsists during the life of the author plus 50 years after his death.

b) For published editions, copyright subsists for 50 years from the beginning of the calendar year in which the work was first published.

c) For sound recordings, copyright subsists for 50 years from the beginning of the next calendar year following the year which the recording was first published.

d) For broadcasts, copyright in a broadcast subsists for 50 years from the beginning of the next calendar year following the year in which the broadcast was first made.

e) For films, copyright in a film subsists for 50 years from the beginning of the next calendar year following the year which the film was first published.

Copyright owners will have the exclusive right to control the doing of the following acts in Malaysia in relation to the work:

a) reproduction of the work in any material form;

b) communication to the public;

c) performance, playing or showing to the public;

d) distribution of copies of the work to the public by sale or other transfer of ownership;

e) commercial rental and lending to public.

A copyright infringement occurs when any of the activities under the exclusive control of the copyright owner are conducted without his authorisation.

D. Industrial Design

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

Industrial design does not include the following:

a) method or principle of construction; or

b) features of shape or configuration of an article which:

i. are dictated solely by the function which the article has to perform.

ii. are dependent upon the appearance of another article of which the article is intended by the author of the design to form an integral part.
Registered industrial designs are protected in that it may not be lawfully copied or imitated without the registered owner’s authorisation.

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

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

An application to register an industrial design may be filed with MyIPO. Upon successful completion of a formal examination, the design will be registered and a registration certificate will be issued.

E. Geographical Indication

Protection of a geographical indication is accorded by the Geographical Indication Act 2000 and Geographical Indications Regulations 2001. A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

The geographical indication must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

A geographical indication indicates where the goods are produced and has characteristics that are attributable to the place of the geographical origin. e.g. ‘Sabah Tea’. Geographical indications can be used on natural or agricultural products.

When an application for registration of a geographical indication complies with the requirements and is not contrary to public order or morality, a certificate of registration will be issued to the applicant.

Such a certificate shall be prima facie evidence of the facts stated in the certificate and of the validity of the registration.

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

F. Integrated Circuit Layout-Designs

A layout-design of an integrated circuit is the three-dimensional disposition of the elements of an integrated circuit and some or all of the interconnections of the integrated circuit or such three-dimensional disposition prepared for an integrated circuit intended for manufacture.

The protection of layout-designs of integrated circuits is governed by the Layout-Designs of Integrated Circuits Act 2000.

A layout-design is automatically eligible for protection upon the fulfilment of the following conditions:

a) it is original, i.e. the result of its creator’s own intellectual effort and not commonplace among creators and manufacturers of integrated circuit;

b) it has been fixed in a material form or incorporated into an integrated circuit at the time of its creation;

c) the right holder was a qualifying person at the time the layout-design was created.

A layout-design shall be protected for a period of 10 years from the date the layout-design is first commercially exploited in Malaysia or elsewhere.
G. Plant Variety Protection

The Protection of New Plant Varieties Malaysia Act 2004 and the Protection of New Plant Varieties Regulations 2008 provides a filing system to protect plant breeder’s rights over new plant varieties.

A plant variety is considered new if the propagating or harvested material of the plant variety has not been sold or commercialized either earlier than 1 year in Malaysia or 4 years for outside of Malaysia, prior to the filing date. In respect of trees and vines, the exemption is 6 years.

In order to be eligible for registration as a new plant variety and granted a breeder’s right, a newly developed plant variety must fulfil four conditions, i.e. new, distinct, uniform and stable.

However, there is a lower standard for a plant variety which is bred, or discovered and developed by a farmer, local community or indigenous people, it is entitled for registration if it satisfies three conditions, i.e. new, distinct and identifiable.

Any application for registration of a new plant variety which may affect public order or morality or where there is reasonable ground to believe that the cultivation, reproduction or use of the plant variety may produce a negative impact on the environment will not be approved.

A registered plant variety will have a maximum term of 20 years calculated from the filing date of the application and a maximum term of 25 years from the filing date for varieties of tree and vines. Whilst, the maximum term of protection for registered plant varieties bred or discovered and developed by a farmer, local community or indigenous people is 15 years.
15. Infrastructure

A. Public Private Partnerships

1. Introduction

In Malaysia, the Government undertakes several forms of Public-Private Partnerships ("PPP"). The two main forms of PPP in Malaysia are Privatisation and Private Finance Initiative ("PFI").

Collaboration between the private and public sector in Malaysia can be traced back to 1981 when the Government introduced the Malaysian Incorporated Policy. This meant that the nation was to be run like a corporation with the private sector forming the commercial and economic arm of the national enterprise, whilst the government made policies, gave directions and provided support.

The Privatisation Policy was launched in 1983 to support the Malaysia Incorporated Policy through various policies and guidelines such as the Privatisation Policy 1983, Guidelines on Privatisation 1985 and Privatisation Master Plan 1991.

The Ninth Malaysian Plan ("9MP") introduced the PFI as a new measure under the privatisation programme in Malaysia. Changes in privatisation brought about by the PFI include focusing on projects proposed by the Government based on national development priorities. The 9MP also hoped to increase opportunities for the private sector to participate in the development of the infrastructure and utilities division through the PFI.

In the Tenth Malaysian Plan ("10MP"), the government reinforced its commitment to PPP and identified 52 high-impact PPP projects worth RM63 billion for implementation. Under the 10MP, the private sector could also participate in several projects led by Government-linked companies ("GLCs"). To help the private sector finance these projects, a facilitation fund of RM20 billion ("Facilitation Fund") was set up to assist the private sector bridge the viability gap for projects that have strategic impact and huge economic spill overs.

In 2015, the Malaysian Government introduced the Eleventh Malaysian Plan ("11MP"). The 11MP plans to strengthen the infrastructure sector to support economic expansion. In their plans to strengthen infrastructure, the Government will focus amongst others, on building an integrated need-based transport system. Some of these infrastructures will be undertaken through PPP. The 11MP also provides strategies which will be formulated in consultation with the private sector.

The Prime Minister of Malaysia when addressing the Jeddah Economic Forum in 2016, where the theme was "Public-Private Partnerships: Catalysing Growth Through Smart Partnerships – The Malaysia Way", said that as of December 2015, Malaysia has implemented 754 PPP projects. According to the
Prime Minister of Malaysia, overall, the Government has saved a total capital expenditure of RM203.45 billion, total operating expenditure of RM9.25 billion and the total proceeds from sales of Government equity and assets stands at RM6.5 billion.

The terms PFI and PPP are often used interchangeably. Based on the definition provided in the 9MP, PFI means:

“...the transfer to the private sector of the responsibility to finance and manage a package of capital investment and services including the construction, management, maintenance, refurbishment and replacement of a public sector asset...which creates a stand-alone business. The private sector will create the asset and deliver a service to the public sector client. In return, the private sector will receive payment...commensurate with the levels, quality and timeliness of the service provision throughout the concession period. The structure of the lease rental payment for the PFI projects will guarantee a total return to the concessionaire’s capital investment expenditures including financing cost repayment and profit to investment. The asset and facilities will be transferred to the public sector at the expiry of the concession period”.

According to the Public-Private Partnership Guidelines (2009) drafted by the Public-Private Partnership Unit otherwise known as UKAS (the “UKAS Guidelines”), the PFI principles form a subset of the PPP principles.

UKAS is a government agency within the Prime Minister's Department responsible for PPP in Malaysia and was established in April 2009. It has the following main functions:

a) carrying out PPP projects through privatisation and PFI;

b) managing the Facilitation Fund;
c) consulting on the terms and conditions for PPP and Facilitation Fund concessions;
d) inspecting and evaluating technical and financial proposals of the PPP projects; and
e) developing strategic collaborations with foreign agencies.

UKAS maintains a website at the following link: http://www.ukas.gov.my and all matters related to PPP implementation including tender advertisements, policies and guidelines are posted on the website.

2. Guidelines and Publications on PPP

There are no legislations governing PPP projects. However, the following are key publications released on PPP:

a) Malaysian Incorporated Policy 1983;
b) Privatisation Policy 1983;
c) Guidelines on Privatisation 1985;
d) Privatisation Master-plan 1991;
e) Private Finance Initiative under the Ninth Malaysia Plan;
f) Public-Private Partnership Guidelines 2009;
g) Private Finance Initiative under the Tenth Malaysia Plan; and

3. Structure of PPP

The UKAS Guidelines sets out the key principles of Malaysia’s PPP programmes as embodied in the 9MP. The UKAS Guidelines acknowledged that the terms "PPP" and "PFI" may be used interchangeably and that "PFI" is a subset of "PPP".

The UKAS Guidelines defines PPP as involving “the transfer to the private sector of the responsibility to finance and manage a package of capital investment
and services including the construction, management, operation, maintenance, refurbishment and replacement of public sector assets such as buildings, infrastructure, equipment and other facilities, which creates standalone business.” This definition has been taken from the definition of PFI under the 9MP.

According to the UKAS Guidelines, in these PPP projects, the private party contracts to deliver public infrastructure-based services over a long period of time. The private party will raise its own funds to finance the whole or part of the assets that will deliver the services based on agreed performances. The public sector will, in turn, compensate the private party for these services.

Some of the key features of PPP projects are as follows:

a) The public sector specifies the output of a service while the private sector determines the required input to achieve the specified output as set out by the public sector;

b) Payment for services of the private sector is based on pre-determined targets and standards of performance as set out by the public sector;

c) The private sector is responsible for the design, construction, finance and maintenance of the assets of the PPP project;

d) The ownership of the assets of the PPP project will be transferred to the Government at end of concessionaire;

e) The risk is allocated between both public and private sectors depending on who is best able to manage the risk; and

f) Projects awarded are based on lowest total cost over concession period, known as Whole Life Cycle Costing (“WLCC”).

The UKAS Guidelines states that the main driver of the PPP Programme is Value for Money (“VfM”), which is the optimum combination of whole life cost and quality to meet the users’ requirements. Generally, VfM may be achieved through:

a) allocation of risks between the private and public sector;

b) long term nature of contracts which embodies WLCC;

c) the use of output specification which allows bidders of PPP projects to innovate to reduce costs;

d) competition that provides fair value of the project;

e) performance-based payment mechanism; and

f) private sector management expertise and skills.

4. Parties involved in a PPP contract

There are several parties involved in a PPP contract, roles and responsibilities of which are set out in the table below:
Infrastructure

Public Sector | Special Purpose Vehicle ("SPV") | Financiers | Contractors
---|---|---|---
and scoping of the projects, output specifications, payment mechanism and KPIs. | the public sector according to the levels, quality and timeliness of the service provision throughout the contract period. | Ensures the assets are well maintained and available for use throughout the concession period. | Ensures that revertible assets/facilities are transferred in good working order to the public sector at the end of the concession period.

- **Responsibility to ensure equitable and optimal allocation of risks.**
- **Responsibility for contract management and performance monitoring.**
- **Responsibility for safeguarding public interests.**

5. Submission of PPP Proposals

PPP proposals can originate from either the private sector and Government agencies. PPP proposals initiated by Government and submitted by ministries/governmental agencies are known as Solicited Proposal where else PPP proposal initiated and submitted by private sector are known as Unsolicited Proposal.

The UKAS Guidelines states that a PPP proposal will only be considered if there is a need on the part of the Government for the project after taking into account the benefits/probity as a whole including socio-economic impacts, value for money and costs savings to the Government, quick delivery of the project and service enhancement and increased level of accountability, efficiency and effectiveness.

The UKAS Guidelines also states that the selection of PPP projects involves a "filtering process" whereby certain general criteria should be met and they are set out as follows:

- Output specification can be clearly identified and quantified;
- Economic life of the asset or service should be at least 20 years;
- Projects with technological obsolescence risk (technology used which will be superseded in short term) will not be considered; and
- Project sponsor must be financially strong with a paid-up capital of the SPV to be at least 10% of the project value.

All PPP proposals should be submitted directly to the relevant ministry/agency. Information required for submission of PPP proposals include the following:

- An executive summary of the submission;
- Evidence of financial stability and statement of financial capability, including access to capital (debt and equity) and Letters of Support from potential lenders;
- Evidence of performance capability and expertise;
- A detailed business plan and financial plan;
e) PPP modality options and the preferred option, concession period, risk analysis and allocation and financing scheme; and
f) proposed payment mechanism based on service-delivery output specifications and KPIs.

6. Tender Advertisements and Process Flow of PPP Projects

Tender advertisements are posted on the UKAS website and also advertised on various media outlets. According to the UKAS Guidelines, once bidding is closed, the relevant ministry or agency will shortlist 3 companies for submission to UKAS. The PPP Committee in UKAS will then evaluate and endorse the best company and approval in principle must be obtained from the Cabinet. Once the terms and conditions with the selected company has been negotiated and finalised, a memorandum is presented to the Cabinet on the finalised terms and conditions. The PPP Agreement is then signed and the PPP project is implemented.

The PPP Committee comprises of representatives from:

a) the Prime Minister Department;
b) the MOF;
c) Attorney General's Chamber;
d) EPU;
e) Department of Director General of Lands and Mines;
f) Department of Valuation and Property Services; and
g) the respective ministries or agencies.

UKAS adopts a decentralized approach in project implementation and contract management of PPP projects where UKAS plays the lead role in coordinating and processing project proposals from inception to signing of concession agreement where else the relevant ministry/agency will monitor the implementation of the project and manage the concession agreement. Nonetheless, UKAS will continue to monitor large scale PPP projects through a project monitoring unit which receives regular reports from the ministries/agencies concerned.

7. Models for Implementing PPP projects

According to the Official Portal of the PPP Unit, some of the models of implementing PP projects adopted in Malaysia are as follows:

a) Build-Operate-Transfer ("BOT")
This model is adopted for projects which are traditionally implemented by the Government such as public works projects. A private company will be granted a concession (generally around 30 to 50 years) to undertake the financing and construction of a project and operate it for a designated period during which it is entitled to the revenue such as user charges. At the end of the concession period, the facility will be transferred to the Government at no cost. To date, a total of 31 toll highways and toll bridges have been constructed using the BOT model.

b) Build-Operate-Own ("BOO")
This model is similar to a BOT project except at the expiration of the concession period, the asset is not transferred to the Government. This model is more common in power plants developed by Independent Power Producers (IPPs).

c) Build-Lease-Transfer ("BLT")
A private company is granted a concession to finance and build public facilities which upon completion will be leased to the Government. The private company will be entitled to the lease rental for the duration of the concession period but similar to the BOT model, at the expiration of the concession period, the facilities will be
transferred to the Government. An example of a BLT project is the development of the Government complex in Putrajaya.

d) Build-Lease-Maintain-Transfer ("BLMT")
This is similar to the BLT model above, a private company is granted a concession to finance, build and maintain public facilities which upon completion will then be leased to the Government. However, in this model, the payment of the lease rental by the Government to the private company is contingent upon the private company meeting service quality level or key performance indexes (KPIs) which are agreed upon in the concession agreement. At the end of the concession period, the facilities will be transferred to the Government. An example of development using this model is the Universiti Teknologi MARA (UiTM) campuses.

Recently, the Government has also introduced the Build, Lease, Operate, Maintain and Transfer approach.

The Official Portal of the PPP Unit summarises the forms of PPP adopted in Malaysia and the models generally adopted as follows:

8. Facilitation Fund

The Facilitation Fund proposed under the 10MP is a Government initiative to facilitate the funding of PPP projects. The Government has set up a Facilitation Fund with an initial size of RM20billion to support development projects implemented by the private sector. The Official Portal of the Economic Transformation Programme states that a total of RM100million from the Facilitation Fund has been allocated to each economic corridor in order to decentralise the fund, as well as to enable the economic corridors to identify projects that are qualified for the grant.

Based on the Facilitation Fund Guidelines published in May 2015, the objectives of the Facilitation Fund are to:

a) provide support to new private investments as an incentive to help investments become a reality;

b) focus on strategic prioritised areas of the State;

c) create strategies and implement medium and large-scale projects with significant economic benefits;

d) enhance investor confidence and make Malaysia a preferred destination for investments; and

e) ensure the best ideas of the private sector be given due attention to promote innovation and competition.

The Facilitation Fund is to be utilised to finance the development of basic infrastructure of a project such as access roads, bridges, utilities as well as land acquisitions for highway projects. Through the Facilitation Fund, the Government will provide support in the form of grant or conditional adjustable grant as a tipping point to bridge project viability gap. Distribution of the Facilitation Fund will be made on reimbursable basis or progressive payment. Generally, the funding limit through the Facilitation
Fund is the lower of (i) 10% of the total project cost or (ii) RM200 million.

Key characteristics of projects that will be considered under the Facilitation Fund include:

a) new investments that have high impact or contribute significantly to the economic growth of Malaysia including projects in sectors which have been identified as one of the National Key Economic Areas or as an initiative under the Malaysian Five Year Development Plan or projects with strategic value in line with the initiatives outlined under the Five Year Malaysia Plan where the physical progress does not exceed 10% of the total project development/new project;

b) potential to create sustainable employment opportunities to Malaysian citizens particularly at the management and professional levels;

c) potential to contribute towards enhancing the country’s economic competitiveness;

d) projects shall be technically feasible and commercially viable on a standalone basis;

e) value of the project’s fixed investment (not including the land cost) is as follows:
   i. not less than RM100 million; or
   ii. RM 50 million and above for health services and logistics sectors; or
   iii. in respect of Bumiputera investments, worth between RM 50 million to RM 200 million, such applications may be made through Unit Peneraju Agenda Bumiputera ("TERAJU") of the Prime Minister’s Department; or
   iv. for domestic investments involving the maintenance and conservation of the environment or green technology, worth at least RM 20 million; and

a) mixed development projects or development projects related to abandoned tourism that is free of any legal action. Such applicants will also need to prove that the investment to be implemented is a new investment.

Projects with the following characteristics are not eligible to be considered for the Facilitation Fund:

a) projects in the financial/banking sector;

b) projects involved in property development except for:
   i. Perumahan Rakyat 1Malaysia ("PR1MA");
   ii. green field real estate development projects and less developed residential areas that do not have any basic infrastructures;
   iii. Program Perumahan Penjawat Awam 1Malaysia ("PPA1M") which have been approved or recommended by the Special Committee of PPA1M;
   iv. property development by Malay or Bumiputera companies above Malay reserved lands;
   v. projects in the incubator stage or research and development (R&D) stage;
   vi. projects which involve the acquisition of assets from existing corporations where there is no new investment;
   vii. projects that have received other government allocation and/or funded by other funds provided by the Government;
   viii. government procurement projects;
   ix. investment in foreign countries;
   x. projects that are highly dependent on financial support from the Government;
   xi. projects where the Government needs to bear a significant portion of the risks; and
   xii. any application for additional funding for projects which were previously approved for to receive grants from the Facilitation Fund.
c) The Official Portal of the PPP Unit states that the corporations that qualify to apply for grants from the Facilitation Fund must:

i. be incorporated under the relevant companies’ law of Malaysia (as at the date of publication, the Official Portal of the PPP Unit states that the company must be incorporated under the Companies Act 1965 but the Companies Act 1965 has since been repealed by the CA 2016);

ii. for new projects, have equity in the project equivalent to at least 10% of the total grant requested;

iii. have ownership of the land on which the project is to be developed on or right to carry out development on the land (such as a joint venture agreement, power of attorney or lease over the land);

iv. have the capacity, ability and skill/expertise to carry out the proposed project; and

v. have strong financial position and the ability to procure commercial financing to carry out the project.

Application for grant must be submitted to UKAS. Some of the information which must be set out in the project proposals are as follows:

a) the profile of the company;

b) an executive summary;

c) a detailed business plan (which sets out the executive summary of the project, the objective of the project, the background and scope of the project, current statues of the project development, the project cost, information of the site/land involved, marketing strategy);

d) investment/implementation impact including information on:

i. the impact on the economy and gross domestic product of Malaysia;

ii. impact on the touch point rakyat. Touch point means components of projects that can provide direct benefits to the public;

iii. employment opportunities that will be created;

iv. increasing the economic competitiveness of Malaysia; and

v. the risk management of the project;

e) details of the component of the Facilitation Fund requested (amount, scope and utilisation);

f) project implementation timeline and Facilitation Fund disbursement schedule; and

g) detailed project financing document including IRR, ROE, ROI and cash flows analysis.

Please see Appendix 2 of the Facilitation Fund Guidelines for the project proposal format.

Some examples of projects which have received grants from the Facilitation Fund are:

a) construction of solar energy farm in Kulim Hi-Tech Park, Kedah;

b) Amanjaya Integrated Bus Termination in Meru Raya, Ipoh, Perak;

c) project to overcome the instability of power supply and connectivity in Samalaju Industrial Park, Sarawak; and

d) Construction of the Plaza Merdeka shopping mall and hotel in Kuching, Sarawak.

9. Financial Procurement

For the private sector to fund these PPP projects, channel of funds may come from internal funding through equity or issuing bonds. Otherwise, getting listed on Bursa Malaysia for equity funding is another option.
It is easier for infrastructure project corporation which core business is that of infrastructure projects ("IPCs") to be listed on Bursa Malaysia as IPCs need not satisfy the profit test or the market capitalisation test, but must satisfy the IPC test as follows:

The applicant, either directly or through its subsidiary company, must have the right to build and operate an infrastructure project, whether located in Malaysia or outside Malaysia:

a) with project costs of not less than RM500 million; and

b) for which a concession or licence has been awarded by a government or a state agency, in or outside of Malaysia, with a remaining concession or licence period of at least 15 years from the date of submission to the SC.

The SC may consider the listing proposal by an applicant with a shorter remaining concession or licence period from the date of submission to the SC, if the applicant fulfils the profit requirements under the profit test.

10. Examples of PPP Projects in Malaysia

Since the introduction of the privatisation programme, hundreds of privatised projects have been implemented throughout the country. Telekom Malaysia ("TM") announced the signing of two PPP agreements with the Government for the implementation of the High-Speed Broadband Project Phase 2 ("HSBB-2") and the Sub-Urban Broadband Project ("SUBB"). Both projects will allow TM to provide a last mile access network to homes and businesses utilising fibre-to-the-home ("FTTH"), Ethernet-to-the-home ("ETTH") and VDSL2 technologies. Other notable projects include infrastructure facilities such as the North-South Highway, the development of the Light Rail Transit ("LRT"), the Tanjung Pelepas Port and the development of the Kuala Lumpur International Airport ("KLIA") projects.

11. Notable Developments

As of 8 October 2018, Malaysian Finance Minister, Lim Guan Eng announced that 45 out of 67 PPP projects which were under review by the current government have been allowed to proceed on the condition that they go through an open tender process.\(^1\)

This is in line with the aims espoused by the Malaysian government in Budget 2019 pertaining to PPP projects. Using the PPP model based on land transfer or land swap, private companies construct facilities such as offices for the government at its own cost. In return, the government will transfer ownership of suitable government land of commensurate value to the company. The government seeks to adopt a new approach of implementing land swap transactions using an open tender mechanism instead of direct negotiations. The weakness identified with the direct negotiation model was where the real value of government land was under-priced and the costs of the public works project was overpriced. To avoid this weakness, the open tender model seeks to achieve the highest revenue for government assets disposed while receiving the best value for the project awarded to the private company.\(^2\)

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B. Rails

1. Introduction to Rail Transport in Malaysia

Rail transport has been in Malaysia since 1885 when the first railway track was built linking Taiping to Port Weld with the aim to speed up transportation of tin mining areas to ports along the coast. From a mere 12.8KM of track, it has grown tremendously over the years to the current 1,677KM linking inter cities of West Coast (between Singapore and the state of Perlis) and East Coast (between the state of Negeri Sembilan and Kelantan) in Peninsular Malaysia. In East Malaysia, there is a 134KM railway linking Tanjung Aru near Kota Kinabalu and Tenom in the interior of Sabah state.

Malaysia Industry-Government Group for High Technology stated in the Malaysian Rail Supporting Industry Roadmap 2030 that, since the 1990s, the Malaysian government has invested more than RM50 billion on rail infrastructure, and in 2010, the rail industry has generated an estimated turnover of RM1.7 billion employing a total workforce of 9,500 people.

Besides the intercity railway network, there are also light rail transit (LRT), mass rapid transit (MRT), monorail, airport rail link and funicular railway line in Malaysia. The current rail operators in Malaysia are:

a) Keretapi Tanah Melayu Berhad ("KTMB");
b) Express Rail Link Sdn Bhd ("ERL");
c) Rapid Rail Sdn Bhd ("Rapid Rail");
d) Sabah State Railway ("SSR"); and

e) Penang Hill Corporation ("PHC").

a) KTMB
KTMB is the main and oldest rail operator in Peninsular Malaysia. The 1,000mm gauge railway network consists of two main lines ( North South Line (West Coast Line) and East Coast Line) and several branch lines. The total length of the network was initially 1,699KM, however due to the partial dismantling work that occurred between Tanjong Pagar and Kranji in Singapore since 17 July 2011, the new total length of the network is 1,677KM.

KTMB offers intercity passenger railway (KTM Intercity) which is intended to carry patrons between stops serving cities, town and village (depending on regions). The West Coast Line was initially single-track but KTMB has embarked on the double-tracking and electrification project to introduce frequent intercity service at 140KM/hour between Gemas and Padang Besar on the Malaysia-Thai border. The Electric Train Service (ETS) was introduced in August 2010 by KTMB when electrification and double tracking works were completed. ETS is currently operated by KTM Intercity Division (previously operated by ETS Sdn. Bhd., a fully owned subsidiary of KTMB). The remainder of the West Coast line from Gemas railway station to Woodlands Train Checkpoint in Singapore and the entire East Coast Line from Gemas railway station to Tumpat railway station remains single track and not electrified.

Since 2018, KTMB also operates the Skypark Link, an airport train service linking KL Sentral to Subang Airport. Skypark Link is the second airport rail link service in Malaysia after the ERL. The RM521 million project was initiated by the Government in 2013 with an initial completion date in 2016 but was later extended to 2018. The 26km Skypark Link commenced operations on 1 May 2018 and runs between KL Sentral and Subang Skypark with a stop in Subang Jaya. The journey time from KL Sentral to Subang Skypark is 30 minutes.

b) ERL
ERL has been awarded the concession on 25 August 1997 to finance, design, construct, operate and maintain the Kuala Lumpur Airport Express ("KLIA Express") and KLIA Transit services, and other ancillary activities related to railway services for 30 years. ERL is a joint venture company
between YTL Corporation Berhad, Lembaga Tabung Haji, SIPP Rail Sdn Bhd and Trisilco Equity Sdn Bhd with 45%, 36%, 10% and 9% shareholding respectively. The KLIA Express which started operation on 14 April 2002 is a non-stop air-rail connection between Kuala Lumpur International Airport (KLIA) and KL Central. The KLIA Express has also extended its line to the new KLIA2 airport when it officially opened on 2 May 2014. The KLIA Transit service stops at three intermediate stations i.e. Bandar Tasik Selatan, Putrajaya & Cyberjaya and Salak Tinggi, with a total journey time between KL Central and KLIA2 of 39 minutes. It commenced operation on 1 June 2002. The train operation and maintenance are managed by ERL’s wholly owned subsidiary, ERL Maintenance Support Sdn Bhd.

c) Rapid Rail
Rapid Rail is a wholly owned subsidiary of Prasarana Malaysia Berhad (formerly known as Syarikat Prasarana Negara Berhad) (“Prasarana”). Prasarana is a 100% Government owned company and it was established to facilitate, undertake and expedite public infrastructure projects approved by the Government. Rapid Rail currently operates three LRT Lines (i.e. Ampang Line, Sri Petaling Line and Kelana Jaya Line), KL Monorail Line and MRT Line 1.

The Ampang and Sri Petaling lines run on a common route between Sentul Timur station and Chan Sow Lin station. The lines diverge and run separately, with the Ampang line travelling to Ampang station, whereas the Sri Petaling line runs to Putra Heights station, where it meets the Kelana Jaya Line. The Kelana Jaya line is the first fully automated and driverless rail system in the Klang Valley. The line runs from Putra Heights through Kelana Jaya to Gombak and has 37 stations.

The MRT Line 1 (also known as SBK Line), is the second fully automated and driverless rail system in Klang Valley. Phase one of the MRT Line 1 between Sungai Buloh and Semantan commenced service on 16 December 2016, while phase two between Muzium Negara and Kajang began operations on 17 July 2017.

The KL Monorail Line was opened on 31 August 2003, with 11 stations running on two parallel elevated tracks which connects the KL Sentral transport hub in the south and Titiwangsa in the north. It is the only operational monorail system in Malaysia.

d) SSR
SSR is under the arm of the Sabah’s state administration. SSR operates the only rail transport in East Malaysia. The railway began operations in 1896 and consists of a single 134 km line from Tanjung Aru, to the town of Tenom and. It was formerly known as North Borneo Railway.

e) PHC
PHC operates the Penang Hill Funicular Railway which is located in Air Itam on Penang Island, Malaysia. The 2,007m long funicular railway travels directly from the base station to the top of Penang Hill. It was officially opened on 1 January 1924. It was the second mode of transport established for access to the summit. The first railway was constructed in 1901 and completed in 1905 but was rendered useless due to technical faults. In February 2010, the funicular railway was closed for an upgrade to a new system and resumed its service in April 2011. The new system is able to carry 1,000 passengers per hour compared to 250 under the old system.

2. Applicable Laws and Regulations governing Rail Transport

a) Peninsular Malaysia
The principal act governing the rail transport in Peninsular Malaysia is the Land Public Transport Act 2010 (“LPTA”) which came into force on 31 January 2011. The Railways Act 1991 (“RA”) ceased to apply to Peninsular Malaysia on 15 September 2010. Notwithstanding the non-application of RA to
Peninsular Malaysia, all subsidiary legislation made or having effect under RA, in so far as they are not inconsistent with LPTA, continue to be in force and have effect in Peninsular Malaysia until they are amended or revoked by any subsidiary legislation made under the LPTA. The LPTA does not apply to the Penang Hill Funicular Railway.

The passing of the LPTA was aimed at improving the entire transportation sector by streamlining all regulatory operations under a single body i.e. the SPAD. The SPAD is a statutory body created under the Suruhanjaya Pengangkutan Awam Darat Act 2010, that carries wide range of powers to plan, regulate and enforce all matters relating to land public transport including railways. The SPAD has jurisdiction over Peninsular Malaysia. In respect of rail transport, the SPAD is the regulator that reviews railway schemes and licence applications before making recommendations to the Prime Minister. On 1 January 2019, the SPAD was abolished and replaced by the APAD. The APAD is under the purview of the Transport Ministry and will take over most of the functions of the SPAD.

The LPTA provides that any person who is intending to construct a railway would need to make an application and deposit a railway scheme which must contain, amongst others: (a) the type and system of the proposed railway, (b) the proposed routes, (c) the safety aspects, and (d) the proposed fare of the proposed railway system. Under the LPTA, constructing railways without ministerial approval or a licence is an offence, with penalties of up to RM500,000 and/or imprisonment for a term not exceeding 3 years. Besides that, there are mandatory requirements under the LPTA for railway train drivers to hold vocational licence, and for licenced operators to keep a copy of timetables for the time being in force and a list of general fares chargeable for travelling from the railway stations.

b) East Malaysia

In Sabah, the principal legislation governing the rail transport is Railways Enactment 2017 (“RE”) which came into operation on 2 January 2018. RE was enacted to replace the over 100 years old Railways Ordinance 1914 that had been in force since 1914. Under the RE, the director of railways has been given wide range of powers such as, to issue licence, to advise the minister charged with the responsibility for railways in Sabah on policy and planning, and to regulate railway operations.

In Sarawak, the RA and Railways Ordinance 1914 remain as the applicable laws in respect of rail transport. The Railways Ordinance 1914 only specifies the rules relating to the operation of railway but does not specify any licensing requirement for constructing a railway.

3. Recent, on-going and potential rail projects

a) LRT3 project

The Light Rail Transit 3 (LRT3) is the third light rail line planned to be developed in Malaysia. Prasarana has been appointed to develop and operate the line upon completion. The 37KM-long LRT 3 line was initially planned to run from Bandar Utama to Klang with 26 stations, including one underground station; and to be completed by 2020. The cost of the LRT3 project was estimated at RM9 billion. The LRT3 project was proposed to be on a Project Delivery Partner (“PDP”) concept. The tender documents for the PDP role have been issued and Prasarana has awarded the role of PDP to MRCB George Kent Sdn Bhd, a joint venture between Malaysian Resources Corporation Berhad (MRCB) and George Kent (M) Berhad.
As a result of the 14th General Election which was held on 9 May 2018, Malaysia witnessed a change of government since independence in 1957. Mega projects initiated by the previous administration were reviewed with a view to reduce government expenditure as well as debts. The newly formed Government revealed that the projected total cost for LRT3 line had increased drastically from RM9 billion to RM31.65 billion. LRT3 line was subsequently restructured and the overall cost was reduced to RM16.63 billion. The key steps proposed by the Government to reduce the cost of LRT3 line include remodelling the PDP concept to a fixed price contract and cancelling a 2km tunnel and the underground station. The timeline to complete LRT3 line has also been extended from 2020 to 2024 to reduce construction cost.

b) Klang Valley Mass Rapid Transit Project ("KVMRT")
The proposal for KVMRT project was announced in June 2010 and was approved by the Malaysian government in December 2010. It is a mass rapid transit system in the Klang Valley region comprising three lines namely MRT Line 1, MRT Line 2 and MRT Line 3. Mass Rapid Transit Corporation Sdn Bhd ("MRT Corp") has been appointed by the Malaysian government as the official and asset owner of the project. MMC Gamuda KVMRT (T) Sdn Bhd ("MMC-Gamuda"), a joint-venture between Gamuda Bhd and MMC Corp Bhd, has been appointed as the project delivery partner.

MRT Line 1 begins from Sungai Buloh and runs through the city centre of Malaysia’s capital city before ending in Kajang. The line has 31 stations, out of which seven are underground. The construction of the MRT Line 1 was carried out in two phases. The first phase Sungai Buloh to Semantan began operations on 16 December 2016 and the second phase from Semantan Station to Kajang Station commenced its operations on 17 July 2017.

The MRT Line 2 (also known as SSP Line) will run from Sungai Buloh to Putrajaya passing through Serdang. The line is now under construction and has reached 30% completion as at July 2018. The first phase from Sungai Buloh to Kampung Batu is expected to be operational by July 2021, while the second phase from Kampung Batu to Putrajaya Sentral is expected to be operational in July 2022. The MRT Line 2 stands at 52.2km long with a total of 35 stations.

MRT Line 2 was reviewed by the newly formed Government to reduce the overall costs of the project. Following a renegotiation between MMC – Gamuda and the Government, MMC-Gamuda will remain the contractor for the underground works of MRT Line 2, at a lower cost of RM13.11 billion. All above-ground stations will continue to be built as planned, while two proposed underground stations in Bandar Malaysia have been cancelled, cutting the total number of stations from the original 35 to 33. With the agreed cost reduction project, the overall MRT Line 2’s construction cost would be reduced by RM8.82 billion or 22.4% to RM30.53 billion, from RM39.35 billion previously.

The MRT Line 3 (also known as MRT Circle Line), once implemented, would form the loop line of the Greater KL/Klang Valley Integrated Transit System, integrating MRT Line 1 and MRT Line 2. The MRT Circle Line was expected to cover the hotspots surrounding the Bandar Malaysia, Ampang, KL Ecocity, Bukit Kiara and Sentul. However, the MRT Line 3 which estimated to cost RM60 billion has been subsequently cancelled, pending the completion of MRT Line 2.

c) High Speed Rail from Kuala Lumpur to Singapore Project ("HSR")
The Kuala Lumpur to Singapore high-speed rail was first announced in February 2013 jointly by Prime Minister of Singapore and former Prime
Minister of Malaysia. Construction of the HSR was planned to begin in 2018, with operations scheduled to begin sometime in 2026. The length of HSR line is 350km long and is expected to reduce travel time between Kuala Lumpur and Singapore to 90 minutes. It will run from Bandar Malaysia in Malaysia and ends Jurong East in Singapore.

The project structure is as stipulated in the table below:

<table>
<thead>
<tr>
<th>Party</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Company Domestic (&quot;OpCo Domestic&quot;)</td>
<td>Responsible for provision of train services.</td>
</tr>
<tr>
<td></td>
<td>The OpCo Domestic would be offering transit services which calls at several stations in Malaysia indicatively Bandar Malaysia, Seremban, Malacca, Muar, Batu Pahat and Nusajaya taking approximately two hours.</td>
</tr>
<tr>
<td></td>
<td>Responsible for provision of train services.</td>
</tr>
<tr>
<td></td>
<td>The OpCo International would offering a non-stop express service between Malaysia and Singapore which would take approximately 90 minutes.</td>
</tr>
<tr>
<td>Assets Company (&quot;AssetsCo&quot;)</td>
<td>Responsible for designing, building, financing and maintaining all rolling stock, as well as designing, building, financing, operating and maintaining all rail assets (e.g. trackwork, power, signalling and telecommunications) for the HSR. The AssetsCo will also coordinate the system’s network capacity for operations and maintenance needs.</td>
</tr>
<tr>
<td>MyHSR Corporation Sdn Bhd (&quot;MyHSR Corp&quot;)</td>
<td>Responsible for provision of civil infrastructure, including stations and maintenance facilities infrastructure.</td>
</tr>
</tbody>
</table>

MyHSR Corp was incorporated in 2015 to be the project delivery vehicle accountable for the definition of the technical and commercial aspects of the HSR in Malaysia and is a company wholly owned by the MOF of Malaysia. A legally-binding bilateral agreement was executed in December 2017 where both the Government and the Government of the Republic of Singapore have agreed to work towards commencing HSR operations around 2026.

MyHSR has then appointed two consortia as its project delivery partner to assist with the civil works portion of the HSR. The consortium of MRCB and Gamuda Bhd has been selected for the northern portion of the alignment, while the southern portion will be the consortium of Syarikat Pembenaan Yeoh Tiong Lay Sdn Bhd (YTL) and TH Properties Sdn Bhd.

MyHSR Corp and SG HSR have also launched the joint tender for the HSR for the AssetsCo on 20 December 2017 and the bidders have until 28 December 2018 to submit proposals to MyHSR Corp and SG HSR. Through the open, fair and transparent procurement process, MyHSR Corp and SG HSR target to jointly select a qualified bidder by the third quarter of 2019.

On 5 September 2019, an agreement was signed by Malaysia’s Economic Affairs Minister Azmin Ali and Singapore’s Transport Minister Khaw Boon Wan at the Prime Minister’s Office in Putrajaya to postpone the construction of HSR until end-May 2020, with Malaysia having to pay Singapore S$15 million for costs incurred in suspending the project. The HSR will be expected to start by 1 January 2031 instead of the original commencement date December 2026.
d) Penang Transport Master Plan ("PTMP")

The PTMP is the Penang state government’s plan to build a series of transit lines and highways to alleviate the traffic congestion problem. The PTMP, among others, comprises of public transport project, highways and road project, and undersea tunnel project. SRS Consortium was appointed as the Project Delivery Partner (PDP) for the RM27 billion PTMP projects in August 2015. SRS Consortium is a joint venture of Gamuda Bhd (60%), Ideal Property Development Sdn Bhd (20%) and Loh Phoy Yen Holdings Sdn Bhd (20%).

SRS Consortium’s public transport master plan outlines an integrated transit network with appropriate long term capacity to increase public transport adoption in Penang. For the Penang Island, four transit lines have been proposed:

a) Bayan Lepas LRT;

b) Ayer Itam monorail;

c) Tg Tokong monorail; and

d) Tram (in George Town heritage area).

These three main transit corridors of Bayan Lepas, Ayer Itam and Tg Tokong Bungah are only 3km apart.

At the same time, three transit lines have been proposed in Seberang Perai to connect with the newly completed KTM Komuter line:

a) George Town - Butterworth LRT line integrating rail transit lines in Penang Island with those in Seberang Perai;

b) Monorail from Raja Uda to Bkt Mertajam/Alma (with BRT extension to Kepala Batas and Kulim); and

c) Bus Rapid Transit from Permatang Tinggi to Batu Kawan (with extension northwards to Seberang Jaya and southwards to Nibong Tebal).

SRS Consortium’s proposed public transport network takes cognisance of the need to enable efficient multi-modal integration and flexibility in delivery phasing in order to maximise accessibility, future catchment and economic viability. With an integrated approach, the entire transit system will operate effectively as a single ‘unified’ network to provide a seamless and cohesive public transport strategy.

It was reported in July 2016 that the cost for the PTMP has ballooned to RM46 billion. It is currently pending the approvals from the DOE, the federal regulator overseeing Environmental Impact Assessment, and the Transport Ministry. Work on detailed design is expected to start in the first half of 2019 and call for work packages’ tenders in the second half of 2019. Construction is expected to start in 2020.

e) Bayan Lepas LRT Line

The proposed Bayan Lepas LRT line will be about 30 km in length with 27 stations running from KOMTAR to the future reclaimed islands in the south, passing through KOMTAR, Bayan Lepas FIZ and the Penang International Airport. In terms of integration, the line will integrate with the Sky Cab line across the Malacca Straits at the Sky Cab Station, as well as with the George Town-Butterworth LRT line at The Light Station.

f) George Town – Butterworth LRT Line

The 18km George Town-Butterworth LRT Line will begin at The Light Station (on the Bayan Lepas LRT Line) and terminates at Sg Nyiur Station for interchange transfer with Raja Uda-Bukit Mertajam Monorail Line. The line fuses the rail network on both sides for passenger transfer between transit lines. It will be a vital connector and interchange with other rail networks in the state, such as the Raja Uda-Bukit Mertajam Monorail Line and BRT Line from Permatang Tinggi to Batu Kawan. The proposed LRT Line will enable passengers to travel from the Prai Industrial Estate, Penang Sentral and
established housing estates in Seberang Perai towards Gelugor on Penang Island in a single journey.

g) Monorail Lines
The three Monorail Lines proposed under the PTMP are the Ayer Itam Monorail Line, Tanjung Tokong Monorail Line and the Raja Uda-Bukit Mertajam Monorail Line. Ayer Itam Monorail Line will be about 12.8KM with 13 stations will improve transit reach to predominantly low-to-medium income residents in the high-density neighbourhoods in Ayer Itam and Paya Terubong areas, while the Tanjung Tokong Monorail Line will be about 7KM with 8 stations serving a mix of commercial and residential developments. The proposed Raja Uda-Bukit Mertajam Monorail Line is proposed to be about 28KM with 21 stations. The proposed Raja Uda-Bukit Mertajam Monorail Line will provide much-needed connectivity between Raja Uda in the north-western region and Bukit Mertajam in the south-eastern region of Seberang Perai and serve the Penang state administration offices at Seberang Jaya and Bandar Baru Perda.

h) George Town Tram Line
The George Town Tram line will be almost 2km in distance with six designated stops will begin at KOMTAR and end at the Swettenham Pier Cruise Terminal. In compliance with the heritage guideline, the tram line within World Heritage Site will be at-grade (on-ground) and feeds into the KOMTAR interchange station to integrate with the Bayan Lepas LRT and the two monorail lines i.e. Ayer Itam Monorail and Tanjung Tokong Monorail.

i) East Coast Rail Line Project (“ECRL”)
The ECRL is aimed to eventually link Port Klang on the west coast of Peninsular Malaysia to Kuantan Port and all the way to Tumpat in Kelantan on the east coast. On 1 November 2016, China’s state-owned China Communications Construction Company (“CCCC”) and Prasarana Malaysia Sdn Bhd (the project owner) entered into the Engineering, Procurement, Construction and Commissioning Agreement for the RM81 billion project with a total of 668km of rail link. The contract was awarded to CCCC without an open call for international bidders. The ECRL project will be carried out in two phases. The proposed alignment for Phase one of the railway features 22 stations running along a 600.3 km route. It is projected to connect passengers from Kota Bharu in Kelantan to the Integrated Transport Terminal Gombak in Selangor in less than four hours. Phase two of ECRL will have an estimated length of 88 km and will cover the stretch from Gombak North to Port Klang and two more future station located at Puncak Alam and Kapar. A further extension between Kota Bharu and Pengkalan Kubor was also proposed to be built. The construction of ECRL is currently suspended and is pending renegotiation of the cost of the project.

j) Rapid Transit System (“RTS”) Link
In January 2018, the Malaysian Government and the Government of the Republic of Singapore signed a bilateral agreement on the 4km RTS Link between Johor Bahru and Woodlands, Singapore. As reported by mainstream media, when completed in 2024, the RTS Link will be able to carry up to 10,000 passengers per hour in each direction which is much higher than the average 300 passengers per hour in each direction that the KTMB’s Tebrau Shuttle currently ferries. Channel NewsAsia reports that the RTS Link project structure is as below:

<table>
<thead>
<tr>
<th>Party</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure Company (“InfraCo”)</td>
<td>Prasarana Malaysia Berhad</td>
</tr>
<tr>
<td>Will be appointed by the Government to be the InfraCo to fund, build, own, maintain and renew the civil</td>
<td></td>
</tr>
</tbody>
</table>

© Christopher & Lee Ong
<table>
<thead>
<tr>
<th>Infrastructure and stations within Malaysia.</th>
</tr>
</thead>
</table>

**Land Transport Authority**
Will be appointed by the Government of the Republic of Singapore to be the InfraCo to fund, build, own, maintain and renew the civil infrastructure and stations within Singapore.

<table>
<thead>
<tr>
<th>Operating Company (&quot;OpCo&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will be jointly appointed by the Government and the Government of the Republic of Singapore to own, design, build, finance, operate, maintain and renew the RTS Link’s operating assets such as trains, tracks and systems.</td>
</tr>
<tr>
<td>The OpCo will pay a concession fee in exchange for the right to collect fare revenue from operating the RTS Link and it has been reported that the said fares will be set on a commercial basis by the OpCo and not regulated by the 2 governments.</td>
</tr>
</tbody>
</table>

For ease of commute, the RTS Link will also have co-located Custom, Immigration and Quarantine (CIQ) facilities in both the Bukit Chagar station in Johor Bahru and Woodlands North station in Singapore.

Following the acceptance of a Letter of Offer (LO) jointly issued by the Prime Minister’s Department of Malaysia and LTA, Prasarana and SMRT Corporation Ltd ("SMRT") will proceed to form a joint venture company to operate the RTS Link. The LO confirms the commitment of Prasarana and SMRT to form a joint venture corporation to be the Opco for the RTS Link, and their acceptance of the terms and conditions as in the LO. Following the exchange of signed LO, Prasarana and SMRT were expected to work towards executing a joint venture agreement and incorporating a joint venture company before 30 June 2018. However, it did not happen as Prasarana had suspended discussions with SMRT after Malaysia’s 14th General Election. It was subsequently reported that the RTS Link will be under Khazanah Nasional Berhad and will be carried out in a different form which will be announced by the relevant minister in Johor soon.
C. Roads

1. OVERVIEW

It is widely recognised that good road infrastructure is a pre-requisite to the continuing development of a nation. Roads are essential to the nation's economic and social development. For most sectors of the economy, they form vital links between production centres and markets. Their multiple functions of providing access to employment, social and health services and education makes them key elements in stimulating economic and social development.

There are 2 types of roads in Malaysia, namely Federal Roads and State Roads.

2. FEDERAL AND STATE ROADS, TOLLS AND AUTHORITY FOR CONSTRUCTION AND MAINTENANCE OF ROADS IN MALAYSIA

The MOW is responsible to build and maintain Federal Roads. The implementing agency under the MOW is the PWD.

The functions of the MOW include planning the development of the Federal Roads network nationwide; coordinating and monitoring the implementation of the Federal Road projects; regulating the privatised maintenance work of Federal Roads; and monitoring the construction, operation, toll handling and maintenance of the tolled expressways.\(^{13}\)

The construction and maintenance of State Roads, on the other hand, falls under the purview of the respective State Government and the PWD of each state. One of the most important functions of the PWD is to ensure that the road network system is always safe, efficient and comfortable to road users.

a) Federal Roads

Federal Roads are all roads declared to be Federal Roads under the Federal Roads Act 1959 ("Act 376"). This category of roads includes the National Expressways and Highways under the administration of the Malaysian Highway Authority (see sub-section (c) below for further information). Toll Expressways like the North-South Expressway and other toll highways are all classified under the category by an order published in the form of Gazette. Also included are the highways and other roads under the administration of the PWD like the major interurban roads joining the state capitals and roads leading to points of entry to and exit from Malaysia. Other roads classified under this category are the Regional Development Scheme Roads, such as those within the FELDA schemes. FELCRA schemes and other Regional Development Authority Schemes such as Pahang Tenggara Development Authority Scheme etc. Minor roads leading to and within Federal Government Institutions are also classified under this category.

b) State Roads

State Road generally comprises of the primary roads providing intra-state travel between the district administrative centres. Other roads included in this category are the Urban Collector Roads and other minor roads within the villages and rural inhabited areas. Roads within the Federal Territory of Kuala Lumpur and the island of Labuan which are not designated as Federal Roads are classified under this category.

c) Malaysian Highway Authority

MHA is a government agency under the MOW. MHA was established on 24 October 1980 in accordance with the Highway Authority Malaysia (Incorporation) Act 1980 ("Act 231") to supervise and execute the design, construction, regulation, operation and maintenance of inter-urban highways in Malaysia.\(^{14}\)

\(^{13}\) http://www.kkr.gov.my/en/organization/function

\(^{14}\) http://www.llm.gov.my/corporate_info
Act 231 also provides that the functions of MHA are to supervise and execute the design, construction and maintenance of highways and maintenance of rest and service areas and other facilities that may be deemed necessary along highways, to collect toll from users of highway and other dues from facilities along highways to plan and carry out research to ensure efficient utilisation of highways and other facilities along highways; and generally, to do everything for the betterment and proper use of highways and other facilities along highways.\textsuperscript{15}

d) Tolls

The Malaysian government began the implementation of its privatisation policy, sometime in the 1980s, and this included the award of concessions and construction contracts to private developers for the construction, maintenance and operation of infrastructure facilities. In the road transportation sector, the \textit{Federal Roads (Private Management) Act 1984} (\textit{"Act 306"}) was enacted to allow the Malaysian government to grant private developers the right to collect tolls in respect of a Federal Road, bridge or ferry. Act 306 allows the Malaysian government to authorise any person who has agreed to construct, re-construct, upgrade, repair or maintain any road, bridge or ferry which has been declared or is to be declared a Federal road, bridge or ferry under Act 376 or which is in any Federal Territory, to demand, collect and retain tolls for such period as may be specified for the use of such road, bridge or ferry by any person or class of vehicles.\textsuperscript{16} In short, Act 306 enabled private developers to construct, operate and maintain new road systems and thereafter recover the costs of doing so through the collection of tolls.

e) Other relevant laws governing roads in Malaysia

\textit{Tolls (Roads and Bridges) Act 1965} (\textit{"Act 416"})

Act 416 provides that the MOW may impose tolls to be paid for the use by vehicles of such roads or any part thereof or such bridges as may be specified. Here, "roads" and "bridges" refers to Federal Roads and Federal Bridges, respectively.

\textit{Road Transport Act 1987} (\textit{"Act 333"})

Act 333 provides for the regulation of motor vehicles and of traffic on roads and other matters with respect to roads and vehicles thereon; the protection of third parties against risks arising out of the use of motor vehicles; the co-ordination and control of means of and facilities for transport and means of and facilities for construction and adaptation of motor vehicles; and connected purposes. Part III of Act 333\textsuperscript{17}, provides for highway codes, speed limits, restriction of use on specified roads, restriction of vehicles, pedestrian crossings, erection of traffic signs, construction of access and drains and laying of public utility installations to existing roads, restriction of vehicles on bridges and etc.

3. PRIVATE SECTOR CONSTRUCTION AND MAINTENANCE OF ROADS

Traditionally, road development in Malaysia was undertaken and financed by the public sector. The increasing affluence and higher standards of living together with the increase of trading and commercial activities has resulted in immense growth of private vehicles in all major urban centres. This situation has called for an efficient and effective road system, the need to increase road capacities, and the improvement of traffic flow. Due to limited public sector resources, the Malaysian government had adopted a new approach through privatisation by encouraging the private sector to be actively

\textsuperscript{15} Section 11, Highway Authority Malaysia (Incorporation) Act 1980, Act 231

\textsuperscript{16} Section 2, Federal Roads (Private Management) Act 1984, Act 306

\textsuperscript{17} Sections 67 to 88, Road Transport Act 1987, Act 333
involved in the development of road and highway projects.\textsuperscript{18}

Whilst the construction of roads is under the responsibility of the MOW and hence remains in the public sector domain, tolled highways in Malaysia are mostly privatised and are usually effected by means of a concession, typically awarded on a build, operate and transfer ("BOT") basis. Using this method, the private sector would construct the highways using its own funds, operate and maintain the highways for a period of time and eventually, transfer the highways to the Malaysian government at the end of the period. During the concession period, the private concession companies are granted the right to collect toll from the users of the highways.\textsuperscript{19} The term or period of the concession is usually set out and governed by a concession agreement. The concession agreement is a confidential document between the Malaysian government and the private concession companies. In the event the Malaysian government imposes toll for any class of vehicle, during any concession year, which is lower than the agreed toll rates for that class of vehicle under the relevant concession agreement, the Malaysian government may be required to compensate the affected private concession company for any shortfall.

Under the 9th Malaysia Plan, the Malaysian government announced the implementation of public projects using the PPP PFI scheme.\textsuperscript{20} In 2009, a new unit under the Prime Minister's Department known as UKAS was established.\textsuperscript{21} UKAS is the core agency with the responsibility to coordinate privatisation and PPP projects which have made an impact to the country's economy.

An example of a completed PPP project using the BOT model would be the North-South Expressway, operated by PLUS Malaysia Berhad, which was completed 15 months ahead of schedule. The completion of this highway was a significant milestone in the privatisation of road projects in Malaysia. The project has also exposed Malaysia to new skills and expertise in the construction of highways. In addition, collaboration of local construction companies with international specialists/consultants in construction technology has also benefited local companies. Other successful road projects constructed through the privatisation concept using the BOT method includes the New Klang Valley Expressway, the Malaysia-Singapore Second Crossing Expressway, the New Pantai Expressway, the Cheras-Kajang Expressway, and the Ampang Elevated Highway.\textsuperscript{22}

Commencing 15 October 2015, 18 highway concessionaires in Malaysia imposed new toll rates, with increases between 10 cents and RM3. Major highways which introduced include amongst others Damansara-Puchong Highway (LDP), New Pantai Expressway (NPE), Highway Maju Expressway (MEX), Duta-Ulu Kelang Expressway (DUKE), Sungai Besi Expressway (BESRAYA), etc. As of 15 November 2018, Malaysian Minister of Works, Baru Bian, informed that the concession period for two highways would end in 10 years, the concession period for 16 highways would end between 11 and 20 years and the concession period for 11 highways would end in more than 20 years.\textsuperscript{23}

\textsuperscript{18} Risk Management In Build-Operate-Transfer (Bot) For Roads And Highway Projects In Malaysia - Built Environment Journal Vol. 6, No. 1, 1-11, 2009
\textsuperscript{20} ibid
\textsuperscript{21} http://www.ukas.gov.my/en/latar-belakang;jsessionid=8ECE871E82956B2C70C5F9D9486EE833
\textsuperscript{22} Risk Management In Build-Operate-Transfer (Bot) For Roads And Highway Projects In Malaysia - Built Environment Journal Vol. 6, No. 1, 1-11, 2009
4. NOTABLE DEVELOPMENTS

It was reported on 18 January 2017\(^24\) that SILK Holdings Bhd has entered into a conditional share purchase agreement with Permodalan Nasional Bhd ("PNB"), for the disposal of 100% of the paid-up share in Sistem Lingkaran-Kebruaya Kajang Sdn Bhd ("SILK")\(^25\).

SILK is the concession holder of the 37-kilometre Kajang Traffic Dispersal Ring Road, commonly known as SILK Highway. The concession period in respect of SILK Highway expires on 31 July 2037.

SILK Highway is a primary urban road serving the south eastern corridor of Klang Valley, linking Balakong, Sungai Long, Kajang, Bangi, Serdang and Putrajaya as well as these townships to the Sungai Besi Highway, the North South Expressway, Cheras-Kajang Highway, Kajang-Seremban Highway, South Klang Valley Expressway, and in the future, to the East Klang Valley Expressway.

If the transaction completes, PNB (through its wholly-owned subsidiary company known as Projek Lintasan Kota Holdings Sdn Bhd (Prolintas), will add one additional highway into its existing highway portfolio.\(^26\)

During the Budget 2019 presentation on 2 November 2018, the Malaysian Government announced that RM10 million will be allocated to upgrade the Autogate Malaysia Automated Clearance System and the M-BIKE automatic clearance system at both the Johor causeway and the Second Link to ease congestion issues. Aside from that, the Pan Borneo Highway project in Sabah and Sarawak will continue subject to a cost rationalisation exercise.\(^27\) The highway, spanning 2,325km, made history as the first highway project, with a four-lane dual carriageway, to be built toll-free. With an initial estimated cost of RM29 billion, this project was funded by the Malaysian Government. Since then the project has seen a decrease in cost after project costs were reviewed by the current government and due to reported cost-cutting and optimisation measures taken in relation to the Sarawak portion of the project.\(^28\) The project is estimated to be completed in 2023.

There are currently two highway projects under construction in the Klang Valley, namely the Sungai Besi – Ulu Kelang Elevated Expressway (SUKE)\(^29\) and the Damansara – Shah Alam Elevated Expressway (DASH).\(^30\) Both projects which are projects of Prolintas are expected to be completed by the end of 2019 and open to road users in 2020.

\(^{24}\) http://www.bursamalaysia.com/market/listed-companies/company-announcements/5318497
\(^{25}\) Sistem Lingkaran-Kebruaya Kajang Sdn Bhd is a wholly owned subsidiary company of SILK Holdings Bhd
\(^{26}\) Prolintas currently also operates Ampang Kuala Lumpur Elevated Highway, Guthrie Corridor Expressway and Keburaya Kemuning Shah Alam
D. Renewable Energy

1. Feed in Tariffs ("FiT") System

The FiT system is a system which allows approved electricity producers to sell electricity produced from renewable energy resources, namely biomass (inclusive of municipal solid waste), biogas (inclusive of landfill/sewage), small hydro and solar photovoltaic, to power utilities at a prevailing FiT rate for a specific duration.

The following table indicates the total approved capacity (in MW) of renewable energy facilities granted FiT approvals under the FiT system, which have started generating renewable energy for commercial sale.

<table>
<thead>
<tr>
<th>Year</th>
<th>Biogas (Landfill/Agriculture Waste)</th>
<th>Biogas (Solid Waste)</th>
<th>Biomass</th>
<th>Small Hydro</th>
<th>Solar PV</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>2.00</td>
<td>3.16</td>
<td>36.90</td>
<td>8.90</td>
<td>11.70</td>
<td>31.54</td>
</tr>
<tr>
<td>2013</td>
<td>3.38</td>
<td>3.20</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>106.99</td>
</tr>
<tr>
<td>2014</td>
<td>1.10</td>
<td>9.00</td>
<td>12.50</td>
<td>0.00</td>
<td>0.00</td>
<td>84.89</td>
</tr>
<tr>
<td>2015</td>
<td>0.00</td>
<td>5.40</td>
<td>12.00</td>
<td>7.00</td>
<td>6.60</td>
<td>60.33</td>
</tr>
<tr>
<td>2016</td>
<td>0.00</td>
<td>15.46</td>
<td>19.50</td>
<td>0.00</td>
<td>12.00</td>
<td>76.45</td>
</tr>
<tr>
<td>2017</td>
<td>0.00</td>
<td>22.54</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>20.51</td>
</tr>
<tr>
<td>2018</td>
<td>0.00</td>
<td>3.60</td>
<td>0.00</td>
<td>5.85</td>
<td>0.00</td>
<td>1.61</td>
</tr>
<tr>
<td>Cumulative</td>
<td>6.48</td>
<td>53.36</td>
<td>80.90</td>
<td>21.75</td>
<td>30.30</td>
<td>381.54</td>
</tr>
</tbody>
</table>

The FiT system, including the FiT rates, is administered and implemented by the authority known as SEDA.

In order to participate in the FiT system, an interested party must first make an application to be a Feed-in Approval Holder ("FiAH") by submitting a written application to SEDA together with such fees as may be determined by SEDA. The application Feed-in Approval can only be submitted, processed and granted through a quota system (known as the "E-FiT System") during a specified period, as may be determined and announced by SEDA. Upon announcement, interested parties may apply to register with SEDA through the E-FiT System. A registered E-FiT System user must comply with the instructions contained therein and will also be expected to upload all the documents/information, required by SEDA from time to time, for the purpose of obtaining the Feed-in Approval.

Once approved, a Distribution Licensee (utility companies such as TNB and Sabah Electricity Sdn Bhd) ("DL") is required to enter into a Renewable Power Purchase Agreement ("REPPA") with the FiAH.

The FiT System is established under the Renewable Energy Act 2011 ("REA"). The REA governs the FiT System in the following matters:

a) all matters relating to the connection of supply line connection points for the distribution of renewable energy generated by renewable energy installations owned by the FiAHs;

b) all matters relating to the purchase and distribution by DL for renewable energy generated and sold by the FiAHs; and

c) all FiT payment related matters by DL to FiAHs for such renewable energy.

SEDA, being the authority administrating and implementing the FiT System has various functions vested in it under the REA and Sustainable Energy Development Authority Act 2011 including to issue any guidelines on renewable energy matters. The REA and its subsidiary legislation constitute the legal framework for most matters in relation to renewable energy in Malaysia but the Minister of Energy, Green Technology and Water ("KeTTHA") has final say on certain matters such as on any appeals made to the Minister to appeal against certain decisions made by SEDA, and decisions on feed-in tariff degression rates. In carrying out its functions and obligations, SEDA is also required to give due consideration to, amongst other, the renewable energy policies of the Malaysian government from time to time.
2. Eligibility for participation in FiT System

A person/company will be eligible to apply for feed-in-approved and participate in the FiT system as a FiAH if:

a) it proposes to generate renewable energy from a renewable energy installation having an installed capacity ≤ 30MW (or such higher capacity as may be prescribed by SEDA); and

b) it meets such other criteria as may be prescribed by the SEDA, in particular the rules under the Renewable Energy (Feed-in Approval and Feed-in Tariff Rate) Rules 2011 ("RE Rules").

Essentially, the RE Rules states that an eligible producer shall be, amongst others, as follows:

a) a Malaysian citizen of not less than 21 years of age;

b) a company incorporated in Malaysia which does not include:

c) a company in which a foreign person holds, directly or indirectly, more than 49% of the voting power or issued share capital;

d) a DL, where the application for a feed-in approval relates to a renewable energy installation proposed to be connected to that DL’s electricity distribution network; or

e) an associate of a DL stated in sub-paragraph (b) above.

b) a local authority in Malaysia;

c) a body corporate constituted or established under any written law, excluding SEDA.

d) a registered society;

e) a firm specified as a partnership under the laws of Malaysia.

Based on the eligibility criteria above, a foreign investor can participate in the FiT system by incorporating a company in Malaysia but hold no more than 49% of voting power or the issued share capital of such company. A foreign investor will need accordingly a local partner to participate in the FiT system.

As stated above, a DL is required to enter into a REPPA with the FiAH, once such FiAH has received its Feed-in Approval from SEDA. Upon such REPPA being concluded, the FiAH will generally apply to such DL for connection of its renewable energy installation to a supply line connection point. The REPPA is in standard form prescribed in rules under the REA according to the renewable energy installation capacity.

The technical and operational requirements as stated under the Renewable Energy (Technical and Operational Requirements) Rules 2011 in respect of the FiT System and the renewable energy installation must be complied with by both the DL and FiAH at all times.

3. Degression of FiT

The REA provides for the FiT rate in future to be reduced progressively, commencing on 1 January each year, based on the applicable degression rate. The annual degression rates will be subject to review by SEDA, taking into consideration various factors such as:

a) the renewable energy policies of the Malaysian government;

b) the amount of funds allocated for the purpose of the FiT System;

c) the need for sustainability and diversity in renewable energy resources;

d) the ability of the FiAHs to recover their initial investment on their renewable energy installations;

e) the prevailing costs of equipping, constructing, operating and maintaining renewable energy installation utilising the relevant particular renewable resource;
f) the efficiency of renewable energy installation utilising the relevant particular renewable resource based on prevailing technologies; and

g) other factors as may be determined by SEDA from time to time.

Such degression means that future projects could have lower FiT rates awarded to them. The degression does not apply to projects which have had their FiT rates approved already.

The latest degression rates are as follows:

<table>
<thead>
<tr>
<th>Renewable Resource</th>
<th>Annual Degression Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biogas</td>
<td>0%</td>
</tr>
<tr>
<td>Biomass</td>
<td>0%</td>
</tr>
<tr>
<td>Small Hydropower</td>
<td>0%</td>
</tr>
<tr>
<td>Solar Photovoltaic</td>
<td>10% (≤ 24 kilowatts)</td>
</tr>
<tr>
<td></td>
<td>15% (24 kilowatts ≥ 1 megawatt)</td>
</tr>
<tr>
<td></td>
<td>15% (1 megawatt ≥ 30 megawatts)</td>
</tr>
</tbody>
</table>

Whilst the rates have increased for solar photovoltaic, the rates are of 0% for biomass and biogas remain the same to incentivise the take-up rate of both biomass and biogas which has been quite low and the new rates are effective from 1 January 2016.

4. Grid Parity

Over the years, it is intended by the Malaysian government that fossil fuel subsidies will gradually be reduced and the cost incurred in generating electricity through renewable energy gradually becomes more competitive with the retail rate of conventional grid power.

There will be a point of time when the renewable energy installation may achieve grid parity. Grid parity occurs when the FiT rate applicable to the renewable energy installation is equal to or cheaper than the displaced cost. The displaced cost means the average cost of generating and supplying 1 kilowatt hour of electricity from resources other than the renewable resources through the supply line up to the point of interconnection with the renewable energy installation.

Once a particular renewable energy installation has achieved grid parity, the FiAH will not be entitled to be paid the FiT and will instead be paid by the DL a tariff that is based on the prevailing displaced cost for the remaining duration under the REPPA.

The following is the prevailing displaced cost introduced on 1 May 2014:

<table>
<thead>
<tr>
<th>RE Connection Point</th>
<th>Prevailing Displaced Cost (RM/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Peninsular Malaysia</td>
</tr>
<tr>
<td>High Voltage (from 50 kV to 230 kV)</td>
<td>Nil</td>
</tr>
<tr>
<td>Medium Voltage (from 1 kV to 50 kV)</td>
<td>0.2380</td>
</tr>
<tr>
<td>Low Voltage (less than 1 kV)</td>
<td>0.3100</td>
</tr>
</tbody>
</table>

5. Renewable Energy Fund

In terms of funding, the Malaysian government has stipulated that all electricity consumers are to contribute 1% of each of their total electricity bill towards the financing of the cost to implement the Renewable Energy Program in Malaysia. However, excluded consumers, those who consume less than 300kWh per month, will not be required to make such contribution. The funds collected nationally will be deposited into a Renewable Energy Fund ("RE Fund") managed and controlled by SEDA. The RE Fund is further supported by annual national budget contributions as and when required, should the RE Fund fall short of its financial commitments to finance the feed-in tariff costs.

Other than the RE Fund, the Malaysian government has also launched the National Green Technology Policy where various programs have been implemented to promote the application and
development of green technology in Malaysia. Amongst others, a Green Technology Financing Scheme ("GTFS") was established in 2010 to accelerate the expansion of green investments by providing easier access to financing from private and commercial financial institutions. The GTFS offers a 60% guarantee of the financing amount and a rebate of 2% on the interest or profit rate charged by the financial institutions. According to the MOF’s announcement with regards to the Budget 2019, funding will be provided for any project that satisfies the requirements for private finance initiatives and meets the green technology project criteria under the GTFS and will be made available to selected commercial banks where the Government will subsidise the interest cost by 2% for the first 5 years to incentivise investments in green technology.

6. Renewable Power Purchase Agreement

In Malaysia, the Malaysian Renewable Energy (Renewable Energy Power Purchase Agreement) Rules 2011 sets out the different types of REPPA to be adopted based on the type of renewable resource and the capacity of the proposed renewable energy installation. Any deviation from the standardised REPPA format shall require the prior written approval of SEDA. The standard form of the various REPPAs are made available by SEDA at its offices and on its official website.

Under the terms of the REPPA, the FiAH sells and delivers the renewable energy generated to the distribution licensee at the applicable tariff for a fixed number of years (unless otherwise terminated earlier), the duration of which is dictated by the type of renewable energy used for power generation under which the feed-in approval is granted. The incentive provides a fixed payment from the electricity supplier for every kWh of electricity generated and a guaranteed minimum payment for every kWh exported to the grid.

7. Development in respect of Waste-to-Energy Facility

The Government of Malaysia has, on August 2014, sought to secure (by way of issuing invitation to tender to the public) suitably qualified and experienced private sector support for the building and operation of a Waste-to-Energy Facility ("WtE Facility") to process and treat 1,000 tonnes per day (tpd) of residual municipal waste in Kuala Lumpur ("WtE Proposal"). The Government has mandated the foregoing task to the MOF’s Public Private Partnership Unit, i.e. UKAS - to lead the procurement of the WtE Proposal. As at March 2018, the National Solid Waste Management Department, i.e. JPSPN has announced its target to generate 25 to 30 megawatts of electricity per hour for every 1,000 tonnes of waste burned at the WtE Facility.

The proposed site being offered for the development of the WtE Facility is located at Kepong Waste Transfer Station, Taman Beringin, Jinjang Utara, Kuala Lumpur. Under the WtE Proposal, the Government plans to deliver 1,000 tpd of residual municipal waste to the WtE Facility, which the WtE Facility then in turn convert the delivered waste into energy. For the foregoing purposes and after the final stage of tender, the owners (successful bidder) will enter into a REPPA with TNB.

A detailed environmental impact assessment studies will be carried out either by the successful bidder of the WtE Proposal or the Government of Malaysia. It should be noted that the proposed site location for the WtE Facility is surrounded by residential houses/ highly populated.

8. Net Energy Metering

The Government of Malaysia has implemented the Net Energy Metering (NEM) programme in Peninsular Malaysia and Sabah. The NEM is a programme that specifically targets solar photovoltaic to complement the FIT system. The NEM is executed by the KeTTHA, regulated by the ECM, with SEDA as the implementing agency.
What is NEM?
The concept of NEM is that energy produced from the solar PV system installed will be consumed first, and any excess will be exported and sold to the DL at the prevailing displaced cost prescribed by EC. This scheme is applicable to all domestic, commercial and industrial sectors as long as they are the customers of TNB or Sabah Electricity Sdn. Bhd.

Benefits

The energy generation by NEM consumer will be consumed first which means there will be less energy import from the utility. The more energy generated from the solar PV system that is self-consumed; the more NEM consumers can save on their electricity bills as the electricity imported from the utility will be reduced. This is especially relevant for consumers that fall under the high electricity tariff block. In many countries, NEM is often used to hedge any future fluctuations or increase in electricity tariff.

Under the NEM, any excess energy generated will be exported to the DL and will be paid at the prevailing displaced cost. NEM prioritizes self-consumption. However, some premises, especially industry or manufacturing companies which may not be operating during the weekends may have excess energy to be exported to the grid. The credit will be allowed to roll over for a maximum of 24 months and net-off at the prevailing displaced cost.

The following is the (i) quota balance; and (ii) quota in relation to NEM taken for the years 2017 and 2018:

<table>
<thead>
<tr>
<th>Quota Balance</th>
<th>Peninsular Malaysia</th>
<th>Sabah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>2017 2018</td>
<td>2017 2018</td>
</tr>
<tr>
<td>Domestic (MW)</td>
<td>39.4349 19.8027</td>
<td>8.0000 4.00</td>
</tr>
</tbody>
</table>

Improved NEM Mechanism

As at October 2018, the MESTECC had announced that only 3% of the 500MW quota was taken up and observed that NEM consumers were selling excess solar power at a displaced cost to TNB. In light of the above, the MESTECC had, on October 2018, announced that NEM consumers will, effective 1 January 2019, enjoy better rebates from TNB at the same consumption tariff under the revised NEM mechanism. There will be no differences in the sale and purchase prices of electricity as the TNB bill calculation is expected to be based on a one-on-one or equivalent to consumption minus generation times the tariff. Such one-on-one offset will mean that every 1kWh exported to the grid will be offset against 1 kWh consumed from the grid with gazetted tariff.

Supply Agreement for Renewable Energy Programme (SARE)

The Supply Agreement for Renewable Energy (SARE) programme, an initiative under the improved NEM mechanism, implements a solar leasing concept which allows the costs for the purchase and installation of PV panels, electricity generation

<table>
<thead>
<tr>
<th>Quota Taken</th>
<th>Peninsular Malaysia</th>
<th>Sabah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region</td>
<td>2017 2018</td>
<td>2017 2018</td>
</tr>
<tr>
<td>Domestic (MW)</td>
<td>0.5441 0.1973</td>
<td>0.0215 0.0000</td>
</tr>
<tr>
<td>Commercial (MW)</td>
<td>2.0147 1.5730</td>
<td>0.0000 0.0000</td>
</tr>
<tr>
<td>Industrial (MW)</td>
<td>2.6304 2.3138</td>
<td>0.0000 0.0000</td>
</tr>
<tr>
<td>Total (MW)</td>
<td>5.1892 4.0842</td>
<td>0.0215 0.0000</td>
</tr>
</tbody>
</table>
revenue and electricity tariff to be agreed between 3 parties upon entering into a tripartite agreement, namely:

a) domestic, commercial, agriculture and industrial users of solar power registered with TNB ("Consumers");

b) investors/ owners/ lessors of the assets of the PV panels ("Lessors"), who will finance the installation of the PV panels and will lease them to the Consumers. Depending on what is agreed between the Consumers and the Lessors, the Lessors will make a profit from the difference from the savings made of electricity bills by the Consumers; and

c) TNB, who will provide the service of billing, collection and remittance of the payment by the Consumers to the Lessors and in return, TNB will impose a small service charge.

Further details of SARE and guidelines in relation to SARE have not been published by SEDA.

Under SARE, which is expected to be implemented in 1 January 2019, Consumers will enjoy the following benefits:

a) zero upfront cost when installing the PV panels;

b) monthly electricity bills reduction depending on the size of the area to be fitted with the solar panel; and

c) no differences in the sale and purchase prices of electricity.

Companies that wish to participate as Lessors in SARE must first be registered with SEDA. Applicants must be Malaysia-incorporated companies, with Malaysian-controlled companies ("Local Companies") required to have a minimum paid-up capital of RM1,000,000 while foreign-controlled companies ("Foreign Companies") are required to have a minimum paid-up capital of RM10,000,000. Local companies are required to have 100% local engineering, procurement and construction capabilities by appointing SEDA-registered service providers, while not only are Foreign Companies subject to that same condition, they can participate in projects with a capacity exceeding 250kWac and must ensure that at least 80% of the company's employees are local workers.

9. Large Scale Solar Photovoltaic Plant

Apart from NEM, the EC has introduced Large Scale Solar ("LSS") projects, which will be connected to the distribution grid for its energy generated to be sold to TNB or Sabah Electricity Sdn. Bhd. under a Solar Power Purchase Agreement ("SPPA"), which are expected to grow and contribute generation capacity at an increasing market rate in the coming years. The government hopes that the implementation of LSS will increase Malaysia's Renewable Energy portion to 20% by 2025. LSS is undertaken through a competitive bidding process with the shortlisted bidders announced by the EC in its website. The selection of the bidders is based on bids with the most competitive offer prices up to the total capacity to be procured and meeting all the Request for Proposal requirements. Foreign participation is possible but capped at 49% as per the existing Malaysian Government Policy.

In the second tender, the capacity of plants for which tenders are sought are from 1 to 30MW, with a target aggregate capacity of 360MW in Peninsular Malaysia and 100MW in Sabah/Labuan, which is expected to be commissioned in 2019 to 2020. As at November 2018, 3 LSS projects with a capacity of 32.5MW have reached the date of commercial operations.

The MESTECC had, on November 2018, announced that the third tender is expected to take place in year 2019 with the total aggregate capacity of 500MW and the total project value estimated at RM2 billion.

Guidelines on LSS Plant for Connection to Electricity Networks ("Guidelines") has been issued by the EC to govern matters related to LSS in Malaysia, with the exception of Sarawak. Amongst the key principles of the LSS Framework are:
a) Each successful bidder is only allowed up to an aggregate of the annual solar capacity allocation as per the following table;

<table>
<thead>
<tr>
<th>Plant Location</th>
<th>Aggregate Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017-2018</td>
</tr>
<tr>
<td>Peninsular Malaysia</td>
<td>50MWac</td>
</tr>
<tr>
<td>Sabah/Labuan</td>
<td>10MWac</td>
</tr>
</tbody>
</table>

b) The SPPA shall be based on take and pay energy only under a Build, Own and Operate concession;

c) The solar rate offered by the bidder shall be site specific. The LSS power plant may combine plants from several different sites and if all the plants are connected to one nodal point, then a single PPA shall be used;

d) The PPA duration is 21 years with a firm energy price throughout;

e) The offers by the bidders shall be based on the optimum output, final yield and specific yield of the proposed LSS power plant in accordance with its design and technology used. The bidder shall declare the plant’s energy production. This includes the declaration of the plant’s Maximum Annual Allowable Quantity ("MAAQ") in MWh which is determined based on the capacity of the plant, the final yield and specific yield and the number of hours of generation in a year. Energy produced annually by the facility is capped at the agreed MAAQ in terms of payment of the energy rate. If MAAQ is exceeded, a lower rate is applicable, which is termed as the Excess Energy Rate.
E. Non-Renewable Energy

Coal, natural gas, oil, hydro and other natural resources are primary sources to generate electrical energy. In 2013, coal, gas, oil and hydro contributed 38.5%, 45.3%, 5.4% and 10.6%, respectively to the generation of electricity in Malaysia.

In Peninsular Malaysia, TNB is responsible for generation, transmission and distribution of electricity. Additionally, there are also a few independent power producers ("IPP") generating and supplying electricity to TNB. Electricity generated by the IPP is first sent to the transmission system owned by TNB before the consumers receive their electricity via a distribution network. In Sabah, the main electric supply utility is Sabah Electricity Sdn. Bhd. and as for Sarawak, it is Sarawak Energy Berhad.

1. The Energy Commission of Malaysia

The Energy Commission of Malaysia ("ECM") is a statutory body that is established by under the Energy Commission Act 2001 and administered by the Minister of Energy, Green Technology and Water. The EC is responsible to regulate the energy sector under the following laws:

   a) Electricity Supply Act 1990;
   b) Electricity Regulations 1994;
   c) License Supply Regulations 1990;
   d) Gas Supply Regulations 1997;
   e) Gas Supply Act 1993; and

The ECM is tasked with the responsibility of issuing licences for the operation of the power producers' installations, without which, no person is allowed to operate or supply electricity from any installation. In evaluating the application for such licences, such application must comply with the following provisions in the Electricity Supply Act 1990 and Energy Commission Act 2001:

   a) Promote competition in generation and supply of electricity to ensure it is offered at reasonable prices;
   b) Promote and encourage the generation of energy for the economic development of Malaysia;
   c) Ensure all reasonable claims for electricity supply are met;
   d) Ensure consumer needs in terms of affordable prices, security, reliability of supply and quality of services are met;
   e) Ensure the licensee can finance the activities as set out in the licence; and
   f) Encourage efficient use and supply of electricity.

2. Competitive Bidding

As part of the transformation of the Malaysian Electricity Supply Industry, competitive bidding to install new generation capacity was introduced in 2009 to ensure independence, credibility and transparency in procuring all new capacity requirements, and falls under the purview of the ECM. The competitive bidding process is a price discovery mechanism where qualified parties will be identified and tasked to ensure Malaysia's electricity requirements are met. The process will also determine the construction of all future power plants through execution of the PPA upon identification of the successful bidders and extension of the existing power plants by renegotiating the executed PPA and awarding it to the successful bidder in order to ensure an arm's length relationship in the PPA. The typical contract duration for a PPA is as follows:

   a) 21 years for a gas-based power plant; and
   b) 25 years for a coal-fired power plant.
Any qualified players, new or established, are allowed to participate in the competitive bidding process by putting in their bids when the ECM issues a request-for-proposal ("RFP") for any new plant. Bidders who submit the RFP will be shortlisted by the ECM and eventually, winners of the competitive bidding will be published on the ECM website (http://www.st.gov.my/).

Notwithstanding the introduction of competitive bidding, certain projects were awarded by the previous government without any competitive bidding. The new administration has reaffirmed its commitment to competitive bidding and cancelled some of those awards and is closely scrutinising some of the others to ensure they provide value for money.

3. Recent Developments

In November 2015, 1Malaysia Development Berhad ("1MDB"), Edra Global Energy Berhad and its subsidiaries ("Edra") executed a Share Sale and Purchase Agreement with China General Nuclear Power Corporation and its subsidiaries ("CGN Group") for the 100% sale of 1MDB's ultimate ownership in all its energy assets. CGN Group will pay an equity value of RM9.83 billion in cash and will assume all the debt and cash of those power assets. The transaction is expected to be completed in February 2016 and upon completion, the transaction would be the first in Malaysia to see foreign shareholders owning a 100% stake in Malaysian power plants and the sale will be the largest announced transaction in Malaysia and one of the largest in the Asian power sector, year to date.

Prior to the sale of 1MDB’s entire energy assets to CGN Group, it is worthy to note that 1MDB’s interests in Project 3B was sold to TNB (see below).

4. Project 3B Development

Project 3B is a project related to the development, construction and completion of 2 x 1,000 MW coal-fired power station located in Jimah, Negeri Sembilan, Malaysia. The project was originally scheduled for commissioning in stages commencing from October 2018, when it was first awarded to a consortium called Jimah East Power Sdn Bhd ("JEP") led by 1MDB (which owns 70% of the shareholding interests in JEP) and Mitsui Corp Ltd (which owns 30% of the shareholding interests in JEP). As at December 2018, TNB owns a 70% stake in Project MB. The remaining 30% stake is currently owned by Japanese companies Mitsui & Co Ltd and Chugoku Electric Power Co Inc.

It has since been reported that JEP has completed 95% of the plant’s building works and is looking to be on track for the first unit to come online and to commence commercial operations in mid-2019 and December 2019 respectively.

It should be noted that 1MDB’s divestment in Project 3B to TNB occurs prior to 1MDB’s divestment in all its energy assets to CGN Group. As such, Project 3B does not form as part of CGN Group’s acquisition in 1MDB’s energy assets disposal transaction as stated in paragraph (3) above.

a) Project 4A Back on Track

Project 4a which involves a 1,440 megawatt (MW) combined cycle power plant to be located in Pasir Gudang, Johor was awarded to a consortium back in 2014 and never took off due to several reasons. Recently, TNB decided to buy the majority 51% stake in the operating company for the power plant, namely, Southern Power Generation Sdn Bhd. It appears that TNB had been invited to get involved as TNB only paid a nominal sum of RM50 to acquire that stake,

It is to be noted that TNB had been part of the initial consortium awarded with Project 4A, along with YTL Power International Bhd and SIPP Energy Sdn Bhd, a company linked to the Johor royal family. TNB’s re-entry into Project 4A is seen as a major development in the power sector.
b) Project 4B

Edra Power Holdings Sdn Bhd has signed the power purchase agreement ("PPA") between TNB and its subsidiary, Edra Energy Sdn Bhd ("Edra") and the development of Malaysia's largest combined cycle gas turbine ("CCGT") power plant in Alor Gajah, Melaka. Edra Energy would construct, finance, own, operate and maintain a 2,242 MW CCGT power plant, which, upon completion would be the largest CCGT plant. It will consist of three generating blocks, with each having a capacity of 747.4 MW. Under the PPA dated April 11, 2017, Edra Energy will sell the electrical energy generated from the new plant to TNB for a period of 21 years from the commercial date of the first generating block.

In January 2018, Edra issued a RM5.09 Billion Sukuk Wakalah to fund the construction of Project 4B.

5. MESI 2.0

The Malaysian Government announced in September 2018 that the electricity industry is set to undergo a reform through the implementation of the Malaysia Electric Supply Industry (MESI) 2.0. It aims to increase industry efficiency, develop the industry structure, regulations and key processes as well as empower consumers in the electricity supply industry, which may create more opportunities in the market.

There are plans to reduce the role of government in fixing electricity tariffs by way of a special purpose agency, Malaysia Programme Officer for Power Electricity Reform (MyPower).
F. Oil & Gas

Malaysia is the second largest oil and natural gas producer in Southeast Asia, the third largest exporter of liquefied natural gas globally, and is strategically located amid important routes for seaborne energy trade. The oil and gas industry is generally divided into upstream, midstream and downstream activities. Upstream activities consist of exploration, development and production of oil and gas resources. Midstream and downstream activities range from the transportation of oil and gas, to refining and processing through to marketing and trading of end products.

The principal legislation which forms the foundation of the development of the oil and gas industry in Malaysia are the Petroleum Development Act 1974 ("PDA") and the Gas Supply Act 1993 ("GSA"). The PDA applies to all activities in the value chain of the oil and gas industry in Malaysia, except for the supply of gas through the pipelines to consumers, which is regulated by the GSA.

The GSA was implemented for the purposes of safeguarding the interest of consumers who receive the supply of gas through pipelines. These consumers include residential, commercial and industrial outlets. The GSA provides for the licensing of the supply of gas to consumers through pipelines and related matters, the supply of gas at reasonable prices, the control of gas supply pipelines, installations and appliances with respect to matters relating to safety of persons and for purposes connected therewith.

Under the realm of the PDA, the Malaysian government proposed the creation of a national oil company to safeguard the country's oil and gas resources. Following this, Petronas was formed on 6 September 1974. Petronas became responsible to manage the petroleum resources in the country and to develop according to commercial needs while taking into consideration the socio-economic needs of the country. To optimise the value and maximise the synergy of the natural gas resources, the law had divided the upstream and downstream activities to different entities.

In addition to being vested with the absolute rights to petroleum, pursuant to the Petroleum Regulations 1974 ("Petroleum Regulations"), Petronas is also the responsible authority for licensing any third party contractors ("Contractors") wishing to participate in upstream petroleum activities, including exploration and exploitation. Petronas is also responsible for licensing goods and service providers operating in the upstream sector including providers of rigs and drilling services and supply of general goods and services related to upstream operations.

Petronas' wholly owned subsidiary, Petronas Carigali Sdn. Bhd. ("Carigali") is its exploration and production arm. Although not required by law, we understand that it is the policy of Petronas that Carigali is one of the contracting parties to each Production Sharing Contract ("PSC").

1. History of Production Sharing Contracts

Exploration rights are granted to oil and gas exploration companies through the PSC. The successful company explores for hydrocarbons on behalf of Petronas and if oil and/or gas is discovered during the duration of the PSC, it can subsequently proceed to develop and produce the hydrocarbons resources.

In general, the PSC sets out the arrangement for the sharing of petroleum production and the terms of cooperation between Petronas and the PSC Contractors. As of December 2013, a total of 151 PSCs have been awarded by Petronas to oil and gas upstream companies, and Petronas had 27 PSC Contractors participating in the country's upstream industry on a variety of fiscal arrangements. In November 2014, a PSC was awarded to SapuraKencana Petroleum and M3nergy for a block in Sabah and in 2016 Petronas awarded a PSC to Thailand’s PTT Exploration & Production with joint venture partner Kuwait Foreign Petroleum
Exploration Company to explore a block off the Sarawak state. There have been five RSCs awarded by Petronas in recent years and two RSCs were discontinued in 2016 owing to the plunge in oil prices.

The PSC requires the PSC Contractor to provide all the financing and bear all the risk of exploration, development and production activities in exchange for a share of the total production. The PSC Contractors are also required to, amongst others, submit the work programme and budget annually, seek authorisation prior to incurring any expenditure beyond a certain threshold, and seek various approvals from Petronas throughout all stages of operations. Failure to comply with these requirements may result in automatic relinquishment of the rights to carry out the operations back to Petronas.

The PSC contracting parties can be one or more companies but there must always be at least one company which "operates" on behalf of all contracting parties. Essentially the reasons why most PSC's are shared among several oil and gas companies is due to risk and uncertainty as the oil and gas business involves substantial expenditure whereas there is uncertainty whether the oil and gas can be successfully discovered.

For upstream exploration and production activities, there are no special requirements or limitations at law on the participation by foreign companies. In order to participate in exploration and production activities, foreign companies must receive a licence from Petronas, which in practice, will normally take the form of a PSC.

Foreign companies wishing to supply goods and services to the upstream oil industry in Malaysia must either do so through an agency agreement with local companies licensed by Petronas or forming a joint venture company with a local company / individual to be licensed by Petronas pursuant to the PDA and Petroleum Regulations. The joint venture company must be incorporated under the CA 2016 with SSM as a private company and it must comply with the minimum local equity and/or paid-up share capital requirements, and the technical and registration requirements as stipulated under Petronas' Licensing Guidelines.

Following this business structure, whenever any international oil and gas companies enter into any PSC with Petronas to become PSC Contractors, Carigali also enters into the same PSCs as one of the PSC Contractors along with the international PSC Contractors.

Among the PSC Contractors operating in Malaysia are Petronas Carigali, ExxonMobil Exploration and Production (Malaysia) Inc., Nippon Oil, Sarawak Shell, Murphy Oil, Amarada Hess, Salamander Energy Malaysia Ltd, ConocoPhillips Malaysia, PETEP HK Offshore Ltd and KUFPEC Malaysia Ltd. These companies are involved in upstream operations.

**Malaysia Oil & Gas Regulatory Framework**

2. Exploration and Production

A Contractor wishing to participate in exploration and production activities must apply for and receive a licence from Petronas. The PDA and the Petroleum Regulations are silent on what form such licence should take. However, in practice the licence will normally take the form of a PSC.

Further, a Malaysian PSC, like many other PSCs, sets out provisions which govern payment of a royalty, caps on cost recovery, and sharing in profits from the production of petroleum. The PSC will also typically include phases of exploration, development and production, time periods for each phase and required work programs and budgets. As these obligations are imposed contractually in the PSC, rather than as a matter of law, it is possible that the obligations may vary, depending on the outcome of the PSC negotiations.
In addition to PSCs, Petronas has also executed Risk Service Contracts ("RSC") in 2011 for the development and production of discovered marginal fields. Petronas retains ownership of the oil. Exploration costs borne by RSC contractors will be reimbursed upon discovery of commercial fields. RSC contractors are also entitled to a share of the profit.

3. Transportation and Storage Infrastructure

The principal law governing petroleum transportation and storage infrastructure is the Petroleum (Safety Measures) Act 1984 ("PSMA") which governs the transportation of Petroleum by road, railway, vessels and pipelines (transportation by aircraft is prohibited, except with the prior authorisation of the responsible Minister). It also regulates the storage and handling of petroleum. The MDTCA is responsible for administrating the PSMA. Licences for transportation and storage of petroleum are issued by the MDTCA.

The MOT is responsible for the planning and development of policies with regards to rail, maritime, aviation transportation and port which involves the implementation of physical development projects involving infrastructure. In this regard, MOT’s approval may be required for the construction and development of petroleum transportation and storage infrastructure projects.

4. Transportation – Pipelines

The PSMA and the Petroleum (Safety Measures) (Transportation of Petroleum by Pipelines) Regulations 1985 ("PSMR-Pipelines") govern transportation of petroleum in pipelines to places including production facilities, tank farms, natural gas processing plants and terminals (Covered Pipelines). Certain pipelines are excluded from the application of the PSMA, including pipelines within refineries, industrial plants and gas distribution networks.

5. Transportation – Vessels

The Petroleum (Safety Measures) (Transportation of Petroleum by Water) Regulations 1985 ("PSMR – Water") provides, in some detail, the requirements for vessels carrying petroleum. Vessels carrying Petroleum are required to be licensed by the Surveyor of Ships. There are different licences depending on the nature of the Petroleum being transported.

6. Storage and Handling

Under the PSMA, separate licences are required in order to store petroleum and handle petroleum. Each licence may be issued with specific conditions as determined by the issuing authority. The issuing authority varies, depending on the location of the storage and handling facilities. It will either be a local authority, as defined in the PSMA, or such other person as the relevant Minister may authorise as the authority.

7. Goods and Service Providers

Pursuant to the PDA, Petroleum Regulations and Petronas’ Licensing Guidelines, providers of goods and services, including exploration, engineering, technical and consultancy services and the supply of goods connected to upstream operations must be licensed by Petronas – this includes the provision of such goods and services by an affiliate of a Contractor.

Based on the Petronas Licensing Guidelines, any company intending to participate in the oil and gas sector whether upstream or downstream has to make an application to Petronas for either a licence

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or to be registered. Among others, it sets out the following:

a) pursuant to the PDA and the Petroleum Regulations, a licence is required for any company who wishes to supply goods and services for the upstream sector; and

b) a company is required to register with Petronas before participating in tender and activities in the downstream sector in order to monitor the development activities in this sector and with a valid registration, an entity is allowed to supply goods and services to the downstream sector of the Petronas group companies, including maritime activities.

The general requirements for application of Petronas licence or registration are:

a) the company must be registered with the Registrar of Companies as a private incorporated or public incorporated company;

b) the company has a paid-up capital in the form of ordinary shares of not less than RM100,000 (for licence application) and RM10,000 (for registration application); and

c) meet the Bumiputra participation requirement for equity, Board of Directors, management and employee based on the Standardised Work and Equipment Categories (“SWEC”) applied (i.e. SWEC with a minimum Bumiputra requirement either 30%, 51% or 100%).

Based on an applicant's offering of services, it will need to apply for the relevant category of licences as detailed in the SWEC. The SWEC stipulates the registration requirements, the minimum mode of operation of the applicant, as well as the minimum Bumiputra participation requirement.

If the SWEC require 100% Bumiputra participation, the 100% requirement is only for equity, while the minimum Bumiputra requirement for the other levels are as follows:

a) 75% minimum Bumiputra participation for board of directors;

b) 75% minimum Bumiputra participation for management; and

c) 51% minimum Bumiputra participation for the applicant's employees.

If any category that an applicant wishes to apply is not listed in the SWEC, the applicant is advised to have a discussion with the Petronas’ Licensing and Registration Section’s officer prior to selecting the SWEC closest to the scope that the applicant intends to apply for.

8. Processing & Refining and Marketing & Distribution

Pursuant to the Petroleum Regulations, downstream activities are regulated by two ministries: MDTCA is responsible for licences to market and distribute petroleum products while MITI is responsible for all licences relating to refining, processing and petrochemicals sectors.

Petroleum products are dutiable goods which are subject to excise duty under the Excise Act 1976. Export or import of petroleum and petrochemical products are regulated through the Customs Act 1967 (Revised 1980). Both acts are enforced by the Customs Department.

Petroleum products such as petrol, diesel, kerosene and liquefied petroleum gas (“LPG”) are listed as controlled goods which require licensing from MDTCA for their sale under the Control of Supplies Regulations 1974.

9. Latest Developments

1. Economic Transformation Programme

In Malaysia, energy policy for the upstream sector is determined by the EPU and the Implementation and Coordination Unit, both of which reports directly to the Minister of Economic Affairs and Prime Minister respectively. Malaysia's dynamic oil and gas industry has been facilitated by the close cooperation and support of the Malaysian...
government through progressive policies such as the Economic Transformation Programme ("ETP").

The ETP has developed targets in oil, gas and energy in order to rejuvenate Malaysia's upstream sector, expanding the country's domestic downstream sector and venturing into alternative energy sources. The ETP projects include reviving existing fields through enhanced oil recovery, developing marginal fields and intensifying exploration activities. Among the initiatives undertaken were testing of new play types in deepwater and complex fields, introduction of enhanced oil recovery and awarding of more RSC to develop marginal fields.

New tax and investment incentives incorporated in the Petroleum Income Tax Act 1967 were introduced in 2010 to promote development of new oil and gas resources, incentivise development of technically challenging resources and further stimulate domestic exploration activity.

Malaysia Petroleum Resources Corporation ("MPRC") was formed in April 2011 and started its operation in July 2011. As an agency reporting to Prime Minister's Department, MPRC's role is to promote, catalyse and transform the oil and gas services sector to become stronger entities in the industry. The objective is to position Malaysia to be the number one oil and gas hub in the Asia Pacific region.

To achieve that goal, MPRC has a broad mandate. One is to recommend appropriate policies relating to the oil and gas sector by reviewing existing business regulations and tax incentives. This would ensure that the facilities are competitive and attractive to international oil and gas companies to set up their regional or operation headquarters in Malaysia. MPRC also collaborates and promotes partnerships and joint ventures between local companies with global Multi-National Corporations, research institutions and academia.

The recent decline in global fuel prices have resulted in the Malaysian government scrapping fuel subsidies for petrol and diesel from 1 December 2014. With the economic reasons behind the collapse of global fuel prices unlikely to go away anytime soon, industry players will have to brace for a prolonged period of tough business environment. To remain in the game, many will likely seek consolidation or other merger and acquisition exercises. According to MPRC, the industry is expected to move towards further consolidation, driven by the current weak oil price environment, as companies need to grow in size and capability to stay competitive.

2. **Pengerang Integrated Petroleum Complex**

To implement and realise the focus on oil and gas projects arising from the ETP, in 2011, the Malaysian government launched the Pengerang Integrated Petroleum Complex ("PIPC") project development in Pengerang, Southern Johor, Malaysia. The 22,000-acre PIPC mega project is one big step in creating value to the downstream oil and gas value chain in Johor and will house oil refineries, naphtha crackers, petrochemical plants as well as a LNG import terminal and a regasification plant. With a planned storage capacity of five million cubic metres, the complex will house oil refining facilities to make high value and high demand petrochemical products such as polymers, pharmaceutical products and plastics. The PIPC’s advantage is that it can be a regional centre for oil and gas services and is able to complement Singapore’s oil and gas facilities, including storage.

The development of PIPC will also benefit the local community by creating more access to economic opportunities in terms of job and business prospects. A new dedicated Federal Government agency known as Johor Petroleum Development Corporation Berhad ("JPDC"), a subsidiary of MPRC was established to coordinate the development of PIPC as well as a one-stop information centre to assist investors, oil and gas players and local community. One of the crucial roles for the
government is to put in infrastructure and utilities in Pengerang to cater for the future expansion needs once PIPC is in place. These include construction of new roads, installing a comprehensive network of power, telecommunications and water supplies, upgrading roads to highways to facilitate movements of goods and services and a centralised management of industrial waste products from the complex. Two major catalytic projects have been committed within the PIPC area. The RM5 billion Pengerang Independent Deepwater Petroleum Terminal ("PIDPT") is a joint-venture between DIALOG Group of Malaysia ("Dialog"), Royal Vopak of Netherlands and Johor State Secretary Incorporated. It serves as a centralised storage facility for trading, refining and petrochemical industry.

The second mega-project within PIPC is Petronas’ RM60 billion Refinery and Petrochemical Integrated Development ("RAPID") Project and six major associated facilities in Pengerang, through a project called Pengerang Integrated Complex ("PIC"). The RAPID project site preparation is in progress and is expected to be commissioned by 2016. RAPID will have a 300,000 bbl. per day refining capacity while additional petrochemical plants will generate value to petroleum products produced in RAPID.32

Phase 1 of the PIDPT has been completed and on March 2015, received its first Very Large Crude Carrier, the Liberian-registered MT Mesdar arriving from the Middle East to discharge its crude oil cargo at Phase 1 of the PIDPT. Phase 1 of the PIDPT has a storage capacity of approximately 1.3 million cubic metres together with six deepwater berths at a cost of RM2 billion with the capability to handle storage, blending and distribution of crude oil, petroleum, chemical and petrochemical feedstock, products and by-products. Dialog is currently investing in the Pengerang Terminal Phase 2 Project, which involves the construction of the storage capacity of approximately 2.1 mcm and a deepwater jetty with twelve berths at an approximate total project cost of RM6.3 billion and the Pengerang LNG Project for the development of LNG regasification facilities comprising of a regasification unit and two units of 200,000 cubic metres LNG storage tanks with an initial send out capacity of 3.5 million tonnes per annum at a total estimated project cost of approximately RM2.7 billion.33 Additionally, Dialog and the Johor state government have entered into a Memorandum of Understanding ("MOU") to build common tankage and dedicated deepwater marine facilities at Pengerang Terminal Phase 3 at an initial cost of RM2.5 billion. It will be developed on about 300 acres of land next to Phase 2m which is expected to be completed in early 2019.34

The RAPID project will create some 54,000 job opportunities, including 4,000 permanent jobs, upon its completion scheduled in 2019.35 The timeline for PIPC masterplan which runs until 2035 may be revised due to the slump in oil price, as the drop in oil price has resulted in difficulty in attracting new investors, as investors are holding back or slowing down investments.

10. Third Party Access


The Gas Supply (Amendment) Act 2016 ("Amendment Act") came into effect on 16 January 2017 in Malaysia. Subsequently the Gas Supply (Amendment) Regulations 2017 came into operation on 16 February 2017 amending the Gas Supply Regulations 1997 to complement the amendments introduced by the Amendment Act. The Amendment Act widened the ambit of regulated activities in the gas supply industry. It also enhances competition in

34 https://www.thesundaily.my/archive/dialog-develop-phase-3-pengerang-deepwater-terminal-BUARCH538008
the gas supply industry by enabling third party access ("TPA") to regasification terminals ("RGT"), transmission pipelines and distribution pipelines.

2. The Regulated Activities

Prior to the Amendment Act, the Gas Supply Act 1993 primarily regulates the downstream activities of distribution, retail or use in the supply of gas between the licensee and consumer, through pipelines and piping system. Post-amendment, the Gas Supply Act 1993 extends to regulate activities comprising of imports into RGT, regasification, shipping and transportation of gas. By virtue of the Amendment Act, parties involved or intending to participate in various aspects of the gas supply chain are now required to apply for a licence, from the ECM, to carry out any of the following 7 licensed activities:

a) import into RGT;
b) regasification of gas;
c) shipping of gas;
d) transportation of gas;
e) distribution of gas;
f) retail of gas; and
g) use of gas.

e) Guidelines on Licence Application;
f) Guidelines for Implementation of Gas Framework Agreement in the Power Sector;
g) Guide on Applications for a Renewal for Certificate of Approval Assemblers, Manufacturers or Importers of Gas Fittings, Gas Appliances and Equipment & Gas Fittings, Gas Appliances and Equipment;
h) Guidelines on Determination of Regasification Facility Tariff Under Incentive-Based Regulation;
i) Guidelines on Determination of Gas Transportation Facility Tariff Under Incentive-Based Regulation;

Overall, the third party access regime, as introduced by the Amendment Act, will create a level playing field amongst the players in the gas market. This will encourage participation of new players and sets a platform for healthy competition in the Malaysian gas market.

3. TPA

For the purpose of liberalizing the gas supply industry, the ECM has, as at the date of this update, developed and issued 3 TPA codes and 7 Guidelines which are:

a) the TPA Code for regasification terminals (RGT);
b) the TPA Code for transmission pipelines;
c) the TPA Code for distributions pipeline;
d) Guidelines on Competition for the Malaysian Gas Market in relation to Market Definition, Anti-Competitive Agreements and Abuse of Dominant Position;
G. Infrastructure on Water

1. Introduction to the Water Supply Industry in Malaysia

Water utilities in Malaysia were once predominantly state owned. However, continuous dependence on federal assistance were delaying the development of water infrastructure, which eventually lead to problems with the supply and quality of water. In 2006, the Malaysian Government introduced two new legislations to reform the water services industry, the Water Supply Industry Act 2006 ("WSIA") and the Suruhanjaya Perkhidmatan Air Negara Act 2006 ("SPAN Act").

The SPAN Act established a National Water Services Commission known as Suruhanjaya Perkhidmatan Air Negara ("SPAN"). The SPAN Act outlines the functions of SPAN, which include:

- a) to implement and enforce the laws in relation to water supply and sewerage services;
- b) to monitor the compliance by operators of the stipulated standards, contractual obligations and relevant laws and guidelines;
- c) to ensure long-term sustainability of the quality of water and sewerage services through continued capital works development;
- d) to ensure the national development goals pertaining to coverage, supply and access to water supply and sewerage services are achieved; and
- e) to regulate the water services industry through fair, effective and transparent implementation of the WSIA.

The WSIA regulates the water supply and sewerage services in Peninsular Malaysia. Apart from providing the licensing requirements needed to supply water or provide sewerage services, the WSIA also implements the rates, charges and deposits that may be collected.

MESTECC oversees water supply and sanitation policies. It is assisted by the Jabatan Bekalan Air (Water Supply Department).

Pengurusan Aset Air Berhad ("PAAB") is a holder of a facilities licence issued by SPAN pursuant to the WSIA and is a wholly-owned company of the Minister of Finance Inc., incorporated with the objective of holding the nation’s water assets, developing water infrastructure in Malaysia and sourcing for its funding. As of March 2017, 8 of the 11 states in Peninsular Malaysia, including Negeri Sembilan, Melaka, Johor, Perak, Penang, Kelantan, Selangor and Perlis have signed an agreement to transfer assets to PAAB. These states are able to access financing for development of new water infrastructure, refurbishment and upgrading works by PAAB.

MESTECC has also recently addressed the loss in Non-Revenue Water ("NRW") a national issue, due to water leakage from worn-out pipes, water theft and inaccuracies of metres. This is in line with efforts to promote sustainable development. According to MESTECC, NRW accounted for over 31% in 2015. SPAN has provided a NRW Action Plan to achieve the National Target of 25% NRW by 2020. The Prime Minister announced in the Budget 2018 Speech, that RM1.4 billion will be allocated to implement the Non-Revenue Water Programme with the objective of reducing the average loss of water. It has been reported that Pengurusan Air Selangor Sdn Bhd has exceeded its target in reducing non-revenue water in end 2017.

2. Sewerage Industry

Similar to the water supply industry, the sewerage industry is governed under the WSIA and is regulated by the Sewerage Services Department of SPAN. Apart from the WSIA, there are other regulations that relate to the planning, design and construction of sewerage system and the compulsory capital contributions by sewerage operators, namely:
Indah Water Konsortium Sdn Bhd ("IWK") is the national sewerage services operator, operated under the purview of the MOF, and is responsible for the development and maintenance of a modern and efficient sewerage system. As the only concession holder for sewerage services in Malaysia, IWK is currently serving people from major urban areas; for now, IWK covers 87 local authorities across Peninsular Malaysia. The tariff is regulated and at present for domestic users it ranges from RM 2.00 to RM 8.00.

Current initiatives taken by the IWK are as follows:

a) to simplify payment collection processes by incorporating joint billing with local state water companies; and

b) to reduce number of sewage treatment plants under IWK’s maintenance, as part of rationalisation and connection of bigger treatment plants.

As at November 2018, Ranhill Holdings Berhad finalised a joint-billing deal with IWK to implement a single bill system for water and sewerage services in Johor.

3. Licensing Requirements under the WSIA

All operators have to be licensed by SPAN and have to achieve certain performance indicators specified in the licences.

**Individual Licence**

An individual licence is required to own a public water supply system or public sewerage system; or to undertake, provide or make available any water supply services or sewerage services or part of the services by means of operating a public water supply system or public sewerage system. Only a company incorporated in Malaysia is eligible to apply for an individual licence. An application is made by submitting a written application to SPAN or online at: https://www.span.gov.my/article/view/e-permit-online-application.

**Class licence**

A class licence is required to own a private water supply system or private sewerage system or any part of the system. A class licence is also required for those who wish to operate a private water supply system, or a private sewerage system for the purpose of providing treated water or sewerage services to the owner or the occupier of a premise for their private use. A company incorporated in Malaysia will be eligible to apply for an individual licence. Additionally, individuals who are citizens or permanent residents of Malaysia may also apply, as well as statutory bodies established under the Laws of Malaysia.

**Types of Licences**

Under each type of licence, there are three categories of licences that may be issued:

c) Facilities Licence - for those who own a water supply system, or sewerage system, and/or any part of the system;

d) Service Licence - for those who own a water supply system or sewerage system and/or any part of the systems; and

e) Service Licence - for those who undertake, provide and/or make available any water supply services or sewerage services.

4. 2019 Budget

According to Malaysia’s Budget 2019, a total of RM 738 million has been allocated to improve water supplies in rural areas.
MESTECC plans to expand the water supply coverage to 99% nationwide by 2020, by adopting trenchless technology.
H. Construction Industry of Malaysia

1. Introduction

The construction sector in Malaysia had been put under the spotlight in the second quarter of 2018. The news of deferment of a few megaprojects, namely the East Coast Rail Link and the Kuala Lumpur-Singapore high-speed rail projects caused uncertainties to the outlook of this sector in the near term. Despite the country’s construction sector projected to record slower growth in 2019, the long term prospects of the sector remain intact and will continue to be a substantial driver of growth in Malaysia.

The Construction Industry Transformation Programme 2016-2020 of Malaysia (“CITP”) states that the construction industry provides significant employment opportunities with a registered workforce of 1.2 million, representing 9.5% of Malaysia’s total workforce. Furthermore, there are more than 120 industries that rely on the construction industry for the respective industry’s own growth and sustainability. CITP elaborates that the significance of the construction industry will continue to evolve and it will become increasingly critical as Malaysia becomes a developed nation. Malaysians will require more energy-efficient and higher quality buildings, infrastructure and cities.

There are 4 strategic thrusts with 21 initiatives in the CITP to transform Malaysia’s construction industry.

The Construction Industry Development Board (“CIDB”) has taken the lead in developing the CITP under the guidance of the MOW of Malaysia, the CIDB Board and the construction itself. In furtherance of the strategic thrusts under the CITP to improve productivity, MITI, MIDA and CIDB have jointly launched the Industrialised Building Systems (IBS) and Building Materials Supply Chain 2017/2018 Directory (“Directory”) in November 2017. The Directory contains the contact details of over 4,000 companies and relevant stakeholders and is intended to act as a comprehensive point of reference for the construction industry particularly in the area of IBS and building materials.

Construction and building materials have been exempted from SST. However, there is no specific initiative or tax relief for the construction industry provided for in the Budget 2019. Notwithstanding the lack of construction industry specific initiatives or tax relief in Budget 2019, the series of allocations and measures set out in therein to support the construction of affordable homes, exemption of stamp duty for purchase of residential properties and the introduction of the ‘Property Crowdfunding’ platforms to increase house ownership, amongst other, will enliven the construction industry.

2. The CIDB

a) Introduction to CIDB

The responsibility of coordinating the needs and wants of the construction industry, planning the direction of the construction industry, addressing the pertinent issues and problems faced by the construction industry, and making recommendations in the formulation of policies for the construction industry is entrusted to CIDB. CIDB is a statutory body established by the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 (the “CIDB Act”).

The functions of CIDB is prescribed in Section 4 of the CIDB Act and includes, amongst other:

- regulating the conformance of standards for construction workmanship and materials;
- providing, promoting, reviewing and coordinating trainings in the construction industry;
- registering and accrediting contractors, as well as imposing any conditions of registration and accreditation of the contractors and revoking, suspending or reinstating the registration and accreditation;
- registering, accrediting and certifying construction personnel and to revoke, suspend
or reinstate the registration, accreditation and certification of such construction personnel; and e) regulating the implementation for quality and safe construction works.

b) Contractor Registration with CIDB

The CIDB Act prohibits any person from carrying out or completing, undertaking to carry out or complete any construction works or hold himself out as a contractor unless such person is registered with CIDB and holds a valid certificate of registration issued by CIDB under the CIDB Act. Hence, all contractors, whether local or foreign, must register with the CIDB before carrying out any construction works.

The Guidelines for Contractor Registration Requirement and Procedure (the “Guidelines”) published by CIDB sets out the requirements and steps in applying to be a registered contractor with CIDB. The Guidelines provides that there are differing requirements and process applicable depending on whether the applicant applies to be registered:

- as a local contractor;
- as a consortium or joint venture;
- as an international contractor;
- as a foreign contractor; or
- for the purposes of government work procurement.

Non-registration is an offence punishable by a fine not less than RM10,000 but not more than RM100,000. However, the consequence which may be of more concern is that under Section 30(1) of the CIDB Act, if the CIDB finds that construction works are being carried out or completed, or undertaken to be carried out or completed by an unregistered person, CIDB may by serving a notice in writing, require such unregistered person to abstain from commencing or proceeding with the construction works or from undertaking to carry out or complete the construction works, with or without conditions. This would result in a delay in the project.

i. Local Contractor Registration

Under the Guidelines, a local contractor is a company incorporated in Malaysia which has a local equity of 70% or more with the exception of equity distribution as stated in Annex 8 of the Guidelines (Annex 8 of the Guidelines provides that foreign equity from ASEAN countries is allowed provided that such foreign equity does not exceed 51% of the total paid up capital or net worth of the applicant company). There are 81,301 local contractors registered with CIDB as at June 2017 in which 41.72% of the same are local contractors from the states of Selangor, Wilayah Persekutuan and Sabah.

A local contractor registered with CIDB will be issued a Local Contractor Registration Certificate (“PPK”). Each local contractor that applies be registered with CIDB will be registered according to:

**Grade**
The Grade ranges from G1 to G7 and the Grade of the registered local contractor depends on the financial capacity of the contractor. The financial capacity of the contractor will be assessed by CIDB based on the financial feasibility assessment. The Grade functions to limit the value of the tenders or works which the contractor’s may participate or carry out.

**Category**
The Category reflects the academic qualification and experience of the technical person of the registered local contractor.

**Specialization**
The Specialization is based on the technical person of the registered local contractor and must comply with any law or written rule
involving the activities which the registered local contractor intends to conduct or specialise in.

Classification Status
The Classification Status of the registered local contractor will be either ‘Active’ or ‘Dormant’ or ‘New’ depending on the information on the projects carried out with a valid certificate in the preceding 3 years.

ii. Consortium or Joint Venture Registration

A joint venture contractor is defined under the Guidelines to be a merger of two companies or more, incorporated in Malaysia or abroad. The Guidelines provides that a consortium or joint venture contractor, appointed to carry out a construction project must be registered with CIDB. The registration is project-based and is valid only for the contractor to carry out the project as stated in the Registration Certificate. Hence, the applicant will need to furnish a letter of award or agreement which provides that the company has been awarded the said project, together with the joint venture agreement.

Under the Guidelines, there are 2 types of consortium or joint venture registration with CIDB which are:

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consortium / joint venture between local contractor companies</td>
<td>At least one of the local contractors must be registered with CIDB with the Grade appropriate for the value or the project</td>
</tr>
<tr>
<td>Consortium / joint venture between local and foreign contractor</td>
<td>The local contractor must be registered with CIDB with the Grade appropriate for the value of the project. If the foreign equity in the joint venture agreement exceed 30%, the application for registration of such a consortium/joint venture between local and foreign contractor will have to be accompanied by a separate form known as Form R3.</td>
</tr>
</tbody>
</table>

iii. International Contractor Registration

An international contractor is a local contractor registered with CIDB who undertakes to complete or has completed construction work outside of Malaysia. Under the Guidelines, a local contractor can only be registered as an international contractor with CIDB, if such contractor has been previously registered with CIDB for at least three years and the registration is classified as ‘Active’.

iv. Foreign Contractor Registration

A foreign contractor is a company incorporated in Malaysia or in a foreign country which has a foreign equity holding of 30% or more, with the exception of equity distribution as stated in Annex 8 of the Guidelines (Annex 8 of the Guidelines provides that foreign equity from ASEAN countries is allowed provided that such foreign equity does not exceed 51% of the total paid up capital or net worth of the applicant company).

There are 2 types of foreign contractor registration with CIDB which are the provisional registration of the foreign contractor and the foreign contractor registration which are applicable at different stages of a project:-

Provision Registration

A foreign contractor must apply for the Provisional Registration Certificate before participating in any tenders in Malaysia. No foreign contractor is allowed to participate in any tender exercise without first obtaining a Provisional Registration Certificate from CIDB. The Provisional Registration Certificate is not for carrying out construction works. If the applicant is awarded the works that it has
tendered for, such applicant is required to submit a separate application to be registered as a foreign contractor with CIDB in order to be allowed to carry out any construction works for the project.

**Foreign Contractor Registration**

A Foreign Contractor Certificate is only issued when the foreign contractor has been awarded the construction works and is issued for a specific project. An applicant for a foreign contractor registration will need to furnish a letter of award or tender document which provides that the company has been awarded the construction works for the said project. As the Foreign Contractor Certificate is project specific, the Foreign Contractor Certificate is only valid until the completion of the project stated therein and the registered foreign contractor is only allowed to carry out works for the projects stated in the Foreign Contractor Certificate.

Despite the fact that a foreign contractor is defined as a company incorporated in Malaysia or in a foreign country, the Guidelines expressly provides that the foreign contractor will need to attach a copy of its registration certificate from the CCM to its application to be registered as a foreign contractor. An applicant is also required to have financial resources of at least RM750,000 and must employ at least two Malaysians holding a local degree in the field of construction, and one of the employees must have more than 5 years of experience in the construction industry.

**v. Government Work Procurement Registration**

A contractor registered for the purposes of government work procurement will be issued a Government Work Procurement Certificate ("SPKK") and as stated in the Treasury Circular No. 6, 2012 and the Treasury Bill Directive, Amendment No. 3, 2012 such SPKK certificate holder will be eligible to participate in any government work procurement in construction. Only contractors with valid PPK may apply for an SPKK and an SPKK must be renewed annually with the renewal of PPK. The SPKK is contingent upon the validity of PPK, as such, if the PPK expires, is cancelled, withdrawn, or suspended, the SPKK will automatically become void. A contractor with the SPKK will be subjected to additional terms and conditions as set out in Guidelines which includes a restriction on change in shareholding.

**c) Construction Personnel Registration with CIDB**

Unless a construction personnel is registered with CIDB and holds a valid certificate of registration issued by CIDB, such person is prohibited from being involved in or engaging or undertaking to be involved in or engaged as a construction personnel. A “construction personnel” means:

i. general construction workers;
ii. semi-skilled construction workers;
iii. skilled construction workers;
iv. construction site supervisors;
v. construction project managers; and
vi. any other employee in construction industry as may be determined by CIDB.

Non-compliance is an offence and the CIDB Act imposes personal liability on each person who is in contravention where it is provided that on conviction, such person found guilty shall be liable to a fine not exceeding RM5,000.

Further, Section 33A of the CIDB Act provides that only construction site supervisor or skilled construction worker, who are accredited and certified by CIDB and holds a valid certificate issued by CIDB under the CIDB Act may be involved in or engaged or undertake to be involved or engaged as a construction site supervisor or skilled construction
worker. A contravention of Section 33A(1) of the CIDB Act is an offence. The CIDB Act imposes personal liability on each person who is in contravention and any person who engages such construction site supervisor or skilled construction worker who is not accredited and certified by CIDB. In both instances, on conviction, such person found guilty shall be liable to a fine not exceeding RM5,000.

d) Payment of Levy to CIDB

Every registered contractor must declare and submit to CIDB the contract for any construction works awarded to the registered contractor except where the contract sum does not exceed RM500,000. The failure to declare and submit the contract for construction works is an offence and on conviction, the registered contractor shall be liable for a fine not exceeding RM50,000.

Following from the declaration and submission of the contract with CIDB, CIDB will impose a levy, calculated as percentage of the contract sum, before the commencement of construction works by the registered contractor. The failure to pay any levy due to CIDB is an offence and any registered contractor guilty of such offence shall on conviction, be liable to a fine not exceeding RM50,000 or 4 times the amount of levy payable on the contract, whichever is higher. The amount of any levy payable to CIDB is recoverable as a civil debt due to CIDB.

Initially, the levy is calculated by CIDB as 0.25% of the contract sum. However, the Minister of Works issued an order, Lembaga Pembangunan Industri Pembinaan Malaysia (Imposition of Levy) Order 2016 which reduced the rate of levy to 0.125% of the contract sum.

3. Safety

In Malaysia, there is an overlap of jurisdiction in respect of ensuring safety in construction between CIDB and DOSH. Mainstream media reports that DOSH has identified approximately 16,800 construction sites in Malaysia and based on the occupational accidents report as of October 2018, there were 2,660 accidents and 173 fatalities recorded, and such occupational accidents are most likely due to an almost non-existent safety culture and non-compliance with the Occupational Safety and Health Act 1994 (“OSHA”). According to DOSH, the construction industry accounted for 46.82% of all fatal injuries. OSHA applies to the construction industry throughout Malaysia. Under OSHA, every employer and every self-employed person shall have the duty to ensure, so far as is practicable, the safety, health and welfare at work of all his employees. Some general duties under OSHA are set out below:

a) the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health;

b) the making of arrangements for ensuring, so far as is practicable, safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances; and

c) to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the safety and health at work of his employees and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees

Construction sites create a risk not only for the construction worker, but also for the public who move around the site or who may live nearby. In this respect, OSHA imposes statutory obligation on every employer and self-employed person to persons other than their employees. For example, every employer and self-employed is:
a) to conduct his undertaking in such a manner as to ensure, so far as is practicable, that he and other persons, not being his employees, who may be affected thereby are not thereby exposed to risks to their safety or health; and

b) to give to persons, not being his employees, who may be affected by the manner in which he conducts his undertaking, the prescribed information on such aspects of the manner in which he conducts his undertaking as might affect their safety or health.

Any employer and self-employed persons who contravenes his general duties to employees and to persons other than employees under OSHA shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 2 years or to both. In the event that such offence is committed by a body corporate, every person who at the time of the commission of the offence is a director, manager, secretary or other like officer of the body corporate shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the body corporate or severally, and every such director, manager, secretary or other like officer of the body corporate shall be deemed to be guilty of the offence.

Besides the general provisions under OSHA, pursuant to Section 66(1) and (2)(b) of OSHA, the Human Resources Minister may make regulation for or with respect to the safety, health and welfare of persons at work in order to achieve the objects of OSHA including prescribe the requirements with respect to design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing, marking or inspection of any plant. Some of the guidelines pertinent to construction are the Guidelines on Occupational Safety and Health in Construction Industry (Excavation Work) 2017, Guidelines of Occupational Safety and Health in Construction Industry 2017, Guidelines for Approval of Design Scaffolding 2016, Guidelines for Public Safety and Health at Construction Sites 2007, Guidelines for the Prevention of Falls at Workplaces 2007, Guidelines on Trenching for Construction Safety 2000 and Guidelines on Occupational Safety and Health in Tunnel Construction.

In addition to OSHA, there are also provisions under the Uniform Building By-Laws 1984 which are relevant to safety standards of buildings, particularly fire safety.

4. Quality Assessment System in Construction (QLASSIC)

Workmanship quality of a building construction work is vital for the industry players and the end-users of the construction work. Hence, industry players have been urged to adopt a quality-centric mindset to ensure quality of one’s workmanship and earn the public’s confidence in the quality of their construction work.

CIDB had consistently called upon the industry players to submit their projects to be assessed according to the QLASSIC. One of the targeted key outcomes under the Quality, Safety and Professionalism strategic thrust of the CITP is to achieve more than 50% of public projects to exceed the acceptable QLASSIC score. CIDB went as far as signing a MOU with Bank Pembangunan Malaysia Berhad (“BPMB”) in August 2018. Pursuant to the MOU, future infrastructure projects financed by BPMB will undergo QLASSIC assessment progressively while CIDB will provide QLASSIC training to enhance knowledge amongst BPMB staff.

QLASSIC is a system and method to assess and evaluate the quality of workmanship of building projects based on the Construction Industry Standard (CIS 7), through a scoring system. QLASSIC had categorized buildings to be assessed into these 4 categories, namely:-
a) **Category A** (Landed housing) – Detached, semi-detached, terrace and cluster houses.

b) **Category B** (Stratified housing) – Flats, apartments, condominiums, service apartments, small office home office (SOHO) and town houses.

c) **Category C** (Public/commercial/industrial buildings without centralised cooling system) – Office buildings, schools, factories, warehouses, workshops, hangers, small office flexible office (SOFO), small office virtual office (SOVO), religious buildings, stadiums, community halls, hospitals, airports, universities, colleges, police stations, etc.

d) **Category D** (Public/commercial/industrial buildings with centralised cooling system) – Office buildings, schools, factories, warehouses, workshops, hangers, small office flexible office (SOFO), small office virtual office (SOVO), religious buildings, stadiums, community halls, hospitals, airports, universities, colleges, police stations, etc.

Marks will be awarded if the workmanship of the building complies with the standard under the QLASSIC. These marks will subsequently be used to calculate the QLASSIC score of the building. The average score of projects assessed under QLASSIC in 2017 was 72%.

5. **Adjudication under Construction Industry Payment and Adjudication Act (CIPAA)**

Timely payment and proper cash flow are perhaps the two most important issues faced by players in the construction industry. The Construction Industry Payment and Adjudication Act 2012 (“CIPAA”) came into force in Malaysia on 15 April 2014. One of the key feature of CIPAA is the facilitation of regular and timely payment through an adjudication mechanism. The AIAC which is the adjudication authority, describes adjudication as a summary procedure for resolution of disputes under a construction contract. It allows a party who is owed monies under a construction contract (the claimant) to have the disputes resolved with the non-paying party (the respondent) in a quick and cheap manner. Disputes which may be referred to adjudication under CIPAA must only relate to payment for work done and services rendered under the express terms of a construction contract. Adjudication is a statutory right in that any party to a construction contract who is neither excluded nor exempted under the CIPAA has the right to resort to adjudication for an interim solution.

In addition to introducing an adjudication mechanism, CIPAA also prohibits the enforcement of conditional payment provision in a construction contract. Under Section 35(2) of CIPAA, conditional payment provisions are clauses which provides that:

a) the obligation of one party to make payment is conditional upon that party having received payment from a third party; and

b) the obligation of one party to make payment is conditional upon the availability of funds or drawdown of financing facilities of that party.

Thus, CIPAA removes the pervasive and prevalent practice of ‘pay when paid’, ‘pay if paid’ and ‘back to back payment’ which have sometimes caused standstills in construction projects and even insolvencies of parties involved in the construction projects.

During the CIPAA Conference 2017 organised by AIAC, AIAC stated that since the implementation of CIPAA, a total of 373 decisions have been released (as of 15th April 2017) and 51% of these cases have received in the range of 80% to 100% of the claimed amount as the adjudicated amount. The analysis of the statistics on adjudication by AIAC shows that there has been a remarkable rise in adjudication since the implementation of CIPAA, indicating that the construction industry embraces the statutory mechanisms of CIPAA.
The success of the regime under CIPAA is also facilitated by the Malaysian judiciary. The Malaysian Courts are interpreting CIPAA in its context as an interim solution to resolve the cash flow problem in the construction industry and approaching adjudication decisions as being 'binding but not final'. As such, the Malaysian Courts have been reluctant to interfere with the decisions of an adjudicator by setting aside the adjudication decisions save and except on the limited ground expressly set out in Section 15 of CIPAA which includes that the adjudication decision was improperly procured through fraud or bribery, there was a denial of natural justice, and/or that the adjudicator had not acted independently or impartially and/or was in excess of his jurisdiction.
16. Telecommunications, Media and Technology

In light of significant developments and advancements within the Technology, Media and Telecommunications ("TMT") sectors across the globe, Malaysia has continuously been experiencing the ripple effect of the converging advancements across the three areas within the TMT sector. The aforementioned, coupled with incremental efforts by the government in according opportunities and incentives to individuals and businesses alike has made TMT one of the primary sectors in Malaysia.

In November 1998, the government adopted the convergence regulation model for purposes of administering the TMT sector. This initiative saw the enactment of two statutes, namely the Malaysian Communications and Multimedia Commission Act, 1998 ("MCMC Act") and the Communications and Multimedia Act, 1998 ("CMA").

A. Regulators

The TMT sector is primarily administered by the KKMM; and the MCMC. The MCMC was established under the MCMC Act. KKMM is responsible for legislating, issuing directions and subsidiary instruments whereas the MCMC will enforce, implement and supervise the policies involved.

On its establishment, the MCMC had set out ten (10) national policy objectives, which are to:

1. establish Malaysia as a major global centre and hub for communications and multimedia information and content services;
2. promote a civil society where information-based services will provide the basis of continuing enhancements to quality of work and life;
3. grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity;
4. regulate the industry for the benefit of the end user;
5. promote a high level of consumer confidence in service delivery from the industry;
6. ensure an equitable provision of affordable services over ubiquitous national infrastructure;
7. create a robust applications environment for end users;
8. facilitate the efficient allocation of resources such as skilled labour, capital, knowledge and national assets;
promote the development of capabilities and skills within Malaysia's convergence industries; and

to ensure information security and network reliability and integrity.

These national policy objectives form the regulatory basis of the MCMC's regulatory framework which include, amongst others, economic regulation, technical regulation, consumer protection and social regulation.

B. Regulations for the TMT sector

The main legislation governing this sector is the CMA, which sets out the regulatory licensing regime within the TMT sector. The CMA has been in force since 1 April 1999 and serves to repeal the Telecommunications Act 1950 and Broadcasting Act 1988.

The licensing regime propounded within the CMA mainly functions to control the entry of market players within the industry. However, the rather broadly worded CMA is expanded upon and more clearly spelt out within the numerous guidelines, regulations and plans issued by MCMC, which are to be read together with the Acts, including but not limited to the CMA and MCMC Act.

One of such example is MCMC's publication of the Number and Electronic Addressing Plan ("NEAP") which governs matters pertaining to numbering and electronic addressing. To elaborate, the NEAP serves to ensure the proper and efficacious allocation, distribution and use of land line numbers, mobile numbers, IP telephony numbers, domain names, amongst others, which are considered as national resources that are scarce and finite in amount. Requirements for the approval of the four categories of licences issued by MCMC, which shall be elaborated in further detail below, are also addressed within the NEAP.

The MCMC has also issued the Malaysian Communications and Multimedia Content Code ("Content Code") which encourages self-regulation by members of the industry in its implementation. The general principle behind the Content Code is to ensure that content shall not be indecent, obscene, false, menacing or offensive. Although compliance with the Content Code is not mandatory, compliance with the Content Code shall be a defence against any prosecution, action or proceeding of any nature, whether in court or otherwise, taken against any person who is subject to the Content Code regarding a matter dealt with in the said Code. Further, the MCMC may direct a person or class of persons to comply with the Content Code.

C. Licensing Regime

The CMA provides the general terms of the licensing regime required. The specific provisions relating to licensing are contained in the Communications and Multimedia (Licensing) Regulations 2000 ("Licensing Regulations") which needs to be read together with the Communications and Multimedia (Licensing) (Exemption) Order 2000 ("Exemption Order"). The Licensing Regulations sets out in detail, the requirements and procedures to be complied with in order to obtain specific licences. The Exemption Order exempts certain specified activities and services from the requirement to obtain a licence under the CMA.

The four categories of licensable activities are described below.

a) Network Facilities Provider ("NFP")

These are the owners of facilities such as earth stations, broadband fibre optic cables, telecommunications lines and exchanges, radio-communications transmission equipment, mobile communications base stations and broadcasting transmission towers and equipment. They are the fundamental building block of the convergence model upon which network applications and content services are provided.
b) **Network Services Providers ("NSP")**

Parties who provide the basic connectivity and bandwidth to support a variety of applications are required to obtain an NSP licence. Network service enables connectivity or transport between different networks. A network service provider is typically also the owner of the network facilities. However, these services may also be provided by a person using network facilities owned by another.

c) **Applications Service Providers ("ASP")**

ASPs are parties who provide particular functions such as voice services, data services, content-based services, electronic commerce and other transmission services. Application services are essentially the functions or capabilities, which are delivered to end-users.

d) **Content Applications Services Providers ("CASP")**

The CASP licence is for a special subset of application service providers, including traditional broadcast services and online publishing and information services. "Content applications services" are defined as applications which provide sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the proceeding which is capable of being created, manipulated, stored, retrieved or communicated electronically.

Across these four categories, the CMA provides for the issuance of two different types of licences, i.e. individual licences and class licences. Generally, an individual licence is granted to providers of services or owners of facilities who are subject to a high degree of regulatory control. For example, the services rendered or the facilities owned by the applicant has national and/or social significance; or there is a need to control market entry, to establish the conditions of operation, or to limit the scope of the licensed activities (i.e. whether there are existing exclusivities, guarantees or other arrangements which must be preserved). A class licence, on the other hand, is relevant to services and facilities which are comparatively minor in nature. It is therefore subject to light-handed regulation and requires only the endorsement of the MCMC on registration notices submitted by the applicants.

The licence application procedure is quite simple. Applications for individual licences are made by completing and submitting a prescribed application form together with any documents that may be requested for by the MCMC and the prescribed licence fee. Individual licences are issued for ten years. In contrast, class licences are valid for only one year and need to be applied for through submitting a prescribed registration notice together with the licence registration fee.

In relation to individual licences, it should be noted that all ASP individual licences have ceased to be valid and new ASP individual licences are no longer issued. Licensees previously holding a valid ASP individual licence and providing licensable applications services must register for an ASP class licence.

D. **Spectrum**

Under the CMA, the Minister of Communications and Multimedia ("Minister") is given power to make regulations in relation to technical regulation, and this includes the assignment of rights to spectrum and mechanisms for rate-based assignments. In the same vein, the MCMC may develop a spectrum plan for any part of the spectrum. Within the spectrum plan, it shall specify, among other things, the division of frequency bands for specific uses, procedures for the assignment of spectrum (e.g. by auction, by tender, or at fixed prices) and a conversion plan. As of 1 June 2017, the MCMC has issued a revised spectrum plan which revokes the previous spectrum plan issued on December 2014.

For spectrum assignments, the Minister may determine that a certain spectrum is to be reallocated after taking into account recommendations of the MCMC, whereas the
MCMC would then be able to confer rights on a person to use the specified frequency bands. The current ministerial determination would be Determination No. 2 of 2016 Ministerial Determination on the Issuance of Specified Spectrum Assignment to Particular Persons for the 900MHz Spectrum and Determination No. 5 of 2016 Ministerial Determination on the Issuance of Specified Spectrum Assignment to Particular Persons for the 1800MHz Spectrum.

As prescribed under the CMA, assignments shall be valid for a period of up to 20 years or less as may be specified in the spectrum assignment.

E. Access Obligations

In promoting an “any-to-any” connectivity network and in order to create a level playing field for the benefit of consumers, regulatory intervention is required to allow competitors access to each other’s network, facilities or services. To this end, the MCMC has put in place three categories of determinations to regulate access obligations among CMA licensees: the Determination on the Access List; the Mandatory Standards on Access; and the Mandatory Standards on Access Pricing.

The Access List lists outs the type of services and/or facilities that are regulated by the MCMC which places an obligation on certain licensees (“Access Provider”) to provide access or interconnection to other licensees (“Access Seeker”) and these licensees would be subject to the Mandatory Standards on Access. The Mandatory Standards on Access sets out the minimum standards that are expected in an Access Agreement which governs the relationship between an Access Provider and an Access Seeker to a facility or service. It also sets out certain obligations in relation to non-discriminatory practices, negotiation processes, operational standards and also a dispute resolution process. Further, Access Providers would also be subject to Access Pricing which specifies the wholesale prices that can be offered to an Access Seeker.

F. Incentives in the TMT sector

The Malaysian government recognises the importance of the TMT sector and has introduced several incentives for industry players. One of the most notable incentive would be the “MSC status” for companies that are in the information, communication and technology (“ICT”) business or an ICT-facilitated business that develops or uses multimedia technologies to produce and enhance their products and services.

G. Other TMT Related Legislation


The CCA is enacted to criminalise certain forms of conduct targeted at computers and the contents therein, including but not limited to, unauthorised access to computer material, unauthorised modification of the contents of a computer and wrongful communication of passwords. It also carries penalties ranging from maximum fines of RM25,000 to RM 150,000 and/ or prison sentences of 3 to 10 years.

2. Digital Signature Act 1997 (“DSA”)

The DSA allows for the development of, among others, electronic transactions, by providing an avenue for secure online transactions through the use of digital signatures. The legal recognition of digital signatures allows electronic communications to be transmitted securely, especially on the Internet. It provides an identity verification procedure using encryption techniques to prevent forgery and interception of communication. The DSA further specifies certain certification agencies which issue certificates containing the subscriber’s public key. A list of these certification agencies is provided on a register which can be inspected on the MCMC’s website.

3. Electronic Commerce Act 2006 (“ECA”)

The ECA provides legal recognition of electronic messages in commercial transactions, the use of the electronic messages to fulfil legal requirements and
to enable and facilitate commercial transactions via electronic means. It confers legal recognition to the formation of a contract via electronic means; recognises electronic messages and electronic signatures; and deems certain electronic documents to be considered original. It further states that the retention of documents in an electronic format fulfils the requirements of the law, provided certain qualifying criteria set out in the ECA are met.

4. **Electronic Government Activities Act 2007 ("EGAA")**

The EGAA mirrors the Electronic Commerce Act 2006 and was enacted to recognise the legal validity of electronic transactions and records to and from the Government.

5. **Consumer Protection Act 1999 ("CPA")**

The CPA lays down consumer protection principles which applies to all business offerings or supplying services to one or more consumers in trade, including where transactions are conducted through electronic means such as the Internet. The CPA, through the Consumer Protection (Electronic Trade Transactions) Regulations 2012, additionally requires websites conducting business to disclose certain information, including but not limited to, business name, description of the main characteristics of the services, etc.

6. **Cybersecurity Bill and the National Cyber Security Agency ("NCSA")**

In January 2016, the Malaysian Cabinet approved the setting up of the National Cyber Security Agency or NCSA under the purview of the National Security Council. The agency currently uses existing laws such as Communication and Multimedia Act 1998, Defamation Act 1957 and Sedition Act 1948 to fight cyber threats. A proposed Cybersecurity Bill which will be tabled sometime in 2017 is expected to empower the NCSA to be the coordinating agency to deal with cybercrimes and ensure that more effective action may be taken against cyber security threats in Malaysia. The Act is also expected to aid the government in all forms of cybercrime, including the recruitment and financial sourcing by terrorist groups, money laundering and online gambling.

H. Cyber Courts

The Malaysian Cyber Courts were launched in September 2016 to regulate cyber activities and in particular, to address the increasing number of civil and criminal cyber offences. Although the court is currently restricted to hearing only cases relating to cybercrimes, its jurisdiction is expected to be expanded to include hearing civil cases as well.

I. Digital Currencies and Initial Coin Offering (ICO) Schemes

1. **Digital Currencies**

Digital currencies are “digital money” used on the Internet, or a payment method which exists only in electronic form, including cryptocurrencies such as bitcoin.

Notwithstanding the fact that digital currencies have yet to be recognised as legal tender in Malaysia, BNM has stated the need to increase the transparency of digital currency activities in the country. As such, digital currency exchanges (DCEs) are required to comply with regulatory requirements under securities laws, including the need to conduct customer due diligence and to report suspicious transactions to the relevant authorities.

In this regard, and in order to ensure that effective measures are in place against money laundering and terrorism financing risks associated with the use of digital currencies, BNM has issued a policy document in February 2018 titled *Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Digital Currencies (Sector 6)* (the “Policy Document”).

The Policy Document sets out, amongst others, the minimum requirements and standards that reporting institutions (i.e. any person offering services to
exchange digital currencies) must observe when carrying out any one or a combination of the following types of activities:

(i) exchanging digital currency for money;
(ii) exchanging money for digital currency; or
(iii) exchanging one digital currency for another digital currency, whether in the course of carrying on a digital currency exchange business or otherwise.

BNM has highlighted that the reporting obligations imposed on the DCEs is the first step towards making digital currency activities more transparent in Malaysia, but it does not in any way connote the authorisation, licensing, endorsement or validation by BNM of any entities involved in the provision of DCE services.

2. Initial Coin Offering ("ICO") Schemes

ICO refers to fundraising activities / investment schemes through the issuance and sale of digital tokens, in exchange for investors paying for these tokens through cryptocurrencies.

As at the date of this edition, participation in ICO schemes is neither prohibited nor regulated in Malaysia. However, the SC and BNM have issued a joint cautionary statement on ICO Schemes in Malaysia on 19 January 2018, stressing that ICO schemes may involve activities that are subject to laws administered by the SC and BNM, and that carrying on such activities without proper authorisation will be an offence, whereby both authorities will not hesitate to take action against any offenders.

In the statement, issuers of ICOs are cautioned to be mindful that the launching of an ICO, the offering of digital tokens in exchange for digital currency or any form of payment and related activities, may trigger regulatory requirements under existing securities laws.

The SC and BNM also list the types of activities that ICO operators are prohibited from carrying out without the necessary approval or authorisation and have further reminded members of the public to exercise caution before participating in any ICOs, including by first referring to the list of institutions that are licensed or approved to carry out regulated activities under the laws administered by the SC and BNM.

In November 2018, the MOF announced that the DCEs and ICOs will be regulated, and that regulations will come into force by the first quarter of 2019. The regulations are intended to bring digital assets (i.e. digital currencies and digital tokens) within the remit of Malaysia securities laws, to promote fair and orderly trading, and to ensure protection of investors.

The SC will regulate the issuance of digital assets via ICOs and the trading of digital assets via DCEs in Malaysia. ICO issuers and DCEs involved in the issuance or dealing of digital assets with a payment function will be required to comply with applicable laws and regulations by BNM relating to payments and currency matters.

Pending the coming into force of the abovementioned regulations, BNM through a joint statement with the SC on 6 December 2018 reiterated that digital assets were not legal tender in Malaysia. Members of the public were still advised to carefully evaluate the risks associated with dealings in digital assets.

J. Equity Crowdfunding (ECF) and Peer-To-Peer Financing (P2P)

Crowdfunding refers to the practice of funding projects or ventures by raising money from members of the public via the Internet. The current methods of crowdfunding are through equity crowdfunding (ECF) and peer-to-peer lending (P2P).

ECF allows members of the public to invest in a company (usually SMEs) in exchange for equity or
shares in the company; whereas P2P allows members of the public to lend money to individuals or businesses, which is repaid back at fixed intervals with interest included. Both ECF and P2P are offered and facilitated through online platforms.

In Malaysia, ECF and P2P platforms are regulated by the SC. Malaysia is also the first country in the ASEAN region to implement a regulatory framework for ECF and P2P financing, through the SC Guidelines on Recognized Markets issued on 11 December 2015 and last revised as at 13 April 2016. Any person who operates ECF and/or P2P platforms without prior authorisation from the SC may be held liable under section 7 of the Capital Markets and Services Act 2007, which carries a maximum fine of ten million ringgit and/or imprisonment term not exceeding ten years.

Recent developments in the ECF and P2P landscape in Malaysia include:

• In November 2018, the Minister of Finance announced during the Budget 2019 that the government will be approving private sector-driven property crowdfunding platforms, which will serve as an alternative source of financing for first-time home buyers. This property crowdfunding scheme will be supervised by the SC and aims to enable more individuals to own homes with minimum payments.

• On 5 December 2018, the SC announced that it may license more operators of ECF and P2P platforms in 2019, after current operators raised more than 200 million ringgit (USD48.25 million) for small firms since 2015.

K. Digital Tax

In November 2018, the MOF announced the proposed implementation of service tax on foreign digital services, including software, music, video and digital advertising services, to be effective from 1 January 2020. This taxation measure is intended to level the playing field between physical and online stores, especially online stores owned by foreign companies.

Once this digital tax regime is put in place, foreign digital service providers (such as Netflix, Spotify, and Steam) will be required to register with the customs department, and to apply and remit the relevant service tax.

As of the date of this edition, the proposed tax rate that will be levied on these services and the mechanism for implementation have not been made public as yet.
17. Multimedia Super Corridor

The Malaysia Digital Economy Corporation (formerly known as Multimedia Development Corporation) ("MDEC") - the government body championing Malaysia's digital economy, successfully launched the Multimedia Super Corridor (“MSC”) back in 1996 and more recently, on the back of the explosion of e-commerce growth in Asia, the Digital Free Trade Zone (“DFTZ”) in March 2017.

A. Digital Free Trade Zone

DFTZ is an initiative launched by the Malaysian Government (“Government”) on 22 March 2017, together with Jack Ma, founder and Executive Chairman of Alibaba Group. This initiative comprises both physical and virtual DFTZs, which will pave the roadmap for SMEs to capitalize on the exponentially growing Internet economy by providing a platform on which they can conduct businesses and services.

The physical zone comprises an eFulfilment hub to facilitate exports of local SMEs and businesses as well as a satellite services hub to further facilitate cross-border trade by connecting SMEs and businesses with necessary services such as financing, last mile fulfilment and insurance. On the other hand, the virtual zone sees the construction of an eServices platform, which facilitates the management of processes needed for cross-border trade, such as cargo clearance, by digitally connecting users with government and business services.

DFTZ is divided into 2 phases. The 1st phase involves the development of the eFulfilment hub of DFTZ centred at KLIA Aeropolis whereas the 2nd phase involves the development of the satellite services hub of DFTZ centred at Kuala Lumpur Internet City, Bandar Malaysia. The 1st phase was launched in November 2017 and the 2nd phase will be rolled out before end of 2019. Whilst it remains to be seen to what extent the growth rate of SMEs and businesses will improve, SMEs and businesses can generally expect to enjoy high efficiency e-fulfilment warehouse services, unified government services platform, improved regulatory processes and reduction of turnaround time and improved trackability across the value chain upon full implementation of these DFTZ initiatives.

SMEs, businesses including traders and manufacturers, service providers and multinational corporations are encouraged by MDEC to reach out to MDEC directly for MDEC to assess and determine how each party can best participate in and benefit from these initiatives. Further details can be accessed via DFTZ’s official website at https://mydftz.com/.

B. Multimedia Super Corridor

Multimedia Super Corridor ("MSC") is a special economic zone designated by the Government to
house companies that embrace information and communications technology ("ICT").

This initiative was officially inaugurated on 12 February 1996 and the aim is to propel Malaysia into a knowledge based society. MDEC was tasked to manage and facilitate the development of the MSC and the award of MSC status to qualifying ICT companies.

The eligibility criteria for both local and foreign owned companies intending to apply for a MSC status and the corresponding benefits of having a MSC status are set out below.

C. Eligibility

MDEC awards MSC status to the following 4 types of business entities, each with a different set of qualifying criteria:

a) private limited companies (a.k.a. sendirian berhad);
b) institutions of higher learning ("IHL");
c) incubators; and
d) MSC4Startups.

Once an applicant falls into either one of the 4 categories set out above, the applicant (save for MSC4Startups applications, IHL and incubators) must:

a) undertake qualifying activities which involve technology and/or knowledge transfer and/or contribute towards the development of MSC or support Malaysia’s e-economy initiatives;
b) establish a separate legal entity for MSC qualifying activities if the existing business entity has a separate business activity; and
c) be located in a designated premise within MSC Malaysia Cyber City / Cybercentre*, to be considered for MSC status.

D. Qualifying activities

Generally, qualifying activities are categorised into either Infotech, Global Business Services or Creative Content and Technology. Each category comes with different additional criteria such as minimum capital requirement, minimum capital expenditure and minimum number of jobs creation for both local and foreign owned entities with a higher threshold for foreign owned entities.

1. Infotech

a) Software Development

Companies undertaking design, development, maintenance and marketing of software products which includes but not limited to the following:

i. general business software applications such as CRM/ERP/Accounting on any platform (including mobile and cloud platforms); and

ii. specialised software applications for the vertical industries such as manufacturing/security solutions/wireless and fixed telecommunications embedded software.

b) Hardware Technology products & application

Companies undertaking design, development, maintenance and marketing of hardware technology products and applications including but not limited to the following:

i. intelligent Controller/RFID/security solutions/Wireless and fixed telecommunications/SoC designs/IC design; and

ii. specialist design companies focused on electronic hardware components or finished products (RFID/Smart Cards).
c) **E-Business**

Utilise the World Wide Web as its main platform of operation such as marketing, web hosting and e-commerce transactions, including:

i. application service providers, e-commerce service providers; web-based trading platforms; and

ii. E-Government based service providers.

2. **Global Business Services ("GBS")**

The GBS activities are further broken down into 3 categories:

a) **Business Process Outsourcing (BPO)**

Transactional-type internal (back-office) business functions such as human resources or finance & accounting and front-office functions which include customer-related services such as marketing and contact centre services.

b) **Information Technology Outsourcing (ITO)**

Transactional-type IT and IT-related functions such as programming, technical support, desktop and server support, network and security systems etc.

c) **Knowledge Process Outsourcing (KPO)**

Value-added processes which are highly complex and require the talent of professionals with widespread educational backing. The profile essentially requires specific and advanced knowledge of a particular domain or specialty. In the KPO context, the emphasis will be far more on talent than on physical infrastructure. Therefore, it will be more knowledge centric rather than capital centric.

A company under these activities will be subject to the following additional criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>MSC Malaysia (Foreign)</th>
<th>MSC Malaysia (Local)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Headcount</td>
<td>50 knowledge workers in 5 years or 20 knowledge workers with average salary &gt; / = RM 10k (subject to MDEC's evaluation)</td>
<td>30 knowledge workers in 5 years or 20 knowledge workers with average salary &gt; / = RM 8k (subject to MDEC's evaluation)</td>
</tr>
<tr>
<td>Exports</td>
<td>70% exports by 5th year of MSC status</td>
<td>20% or RM 0.5 million exports by 5th year of MSC status</td>
</tr>
<tr>
<td>Location</td>
<td>70% of investment located within designated areas</td>
<td>30% of investment located within designated areas</td>
</tr>
<tr>
<td>Investment</td>
<td>RM 10 million capital expenditure in 5 years</td>
<td>RM 5 million capital expenditure in 5 years</td>
</tr>
</tbody>
</table>

3. **Creative Content and Technology**

Companies whose core business activity revolves around multimedia content creation, including:

a) production of digital content IP;

b) production process (including interactive content);

c) post production digital audio and visual EFX / computer graphics based (CGI);

d) animation: 2D/3D, virtual reality, simulation, augmented reality;

e) aggregation/packaging of content;

f) delivery of content; or

g) enhancement of IP for licensing.

A foreign applicant under this category must invest a minimum of RM 5 million, have IP development activities in their business model, create a minimum of 20 high value jobs and generate at least 60% of its revenue from exports.

A recent initiative by MDEC includes Kre8tif! Conference 2017 ("Kre8tif!") - a brainchild of MDEC, with the mandate to develop the creative content industry in Malaysia. Kre8tif! will be spearheading
conferences, business and market get-togethers as well as organising content festivals in Cyberjaya.

E. Benefits of MSC status

1. Bill of Guarantees ("BoGs")

The grant of MSC status entitles qualified entities to a set of incentives, rights and privileges from the Government, set out in the BoGs. The incentives, rights and privileges granted pursuant to the BoGs are subject to requirements under relevant laws and policies. In addition, entitlement to the BoGs are conditional upon compliance with such terms and conditions as may be imposed by the Government and/or MDEC.

The BoGs comprises the following guarantees:

a) the guarantee of world-class physical and information infrastructure ("BoG 1");

b) the guarantee of unrestricted employment of local and foreign knowledge workers ("BoG 2");

c) the guarantee of exemption from local ownership requirements ("BoG 3");

d) the guarantee of freedom to source capital globally for MSC infrastructure and borrow funds globally ("BoG 4");

e) the guarantee of competitive financial incentives, including pioneer status which gives 100% tax exemption for up to 10 years or an investment tax allowance for up to 5 years and the guarantee of no duties on importation of multimedia equipment ("BoG 5");

f) the guarantee of the MSC entities becoming a regional leader in intellectual property protection and cyber laws ("BoG 6");

g) to ensure no censorship of the internet ("BoG 7");

h) the guarantee of grant of competitive telecommunication tariffs ("BoG 8");

i) the guarantee of major MSC infrastructure contracts will be tendered to the MSC entities ("BoG 9"); and

j) the guarantee of the support of MDEC as an effective one-stop agency ("BoG 10").

2. Grants and Funding for MSC Malaysia Status Companies

Grand Technology Fund (GTF)

GTF helps existing local technology companies expand into their first overseas markets, assist foreign/local technology companies in relation to their R&D activities, as well as develop a digital innovation ecosystem for foreign/local technology accelerators.

The GTF is available to the following categories of companies:

a) the first category relates to:

i. local technology companies that are looking to enter their first overseas market, expand existing market presence, innovate, develop and commercialise innovative, commercial driven products and services for external customs, innovate existing products and services, and scale up provision of R&D services; and

ii. foreign/local technology companies conducting R&D activities (higher value activities) and setting up R&D centre or Centre of Excellence (COE).

b) the second category relates to local or foreign technology accelerator or business entity specialising in technology that provides money, mentor and market access to businesses.

The GTF focuses on MDEC’s Technology Focus Areas which includes Big Data Analytics, Cloud Computing, Internet of Things (IoT), eCommerce, Cybersecurity, Games, 3D Printing, Mobile
Technology/Computing, Artificial Intelligence/Deep Learning and Fintech.

Applicants are required to submit a proposal to MDEC. The proposal should offer value added proposition that is impactful, significant and sustainable to the growth of the Malaysian economy, local talent development, Malaysian ecosystem (including industry, society/community and universities/research institutions) as well as leading to economic spinoffs (i.e. assisting non-related Malaysian entities to secure projects overseas).

The proposal is required to address the following desired outcome KPIs:

a) investment value (RM);
b) export value (RM);
c) number of job creation in the identified technology areas/new technologies with at least average pay of RM6,000 per month;
d) number of talent developed and work in the identified technology areas/new technologies.

Additionally, applicants are also required to address the following output KPIs:

a) number of COE; and
b) number of innovative, commercial products.

The local technology companies must be entities incorporated in Malaysia with paid-up capital of at least RM20,000 and hold Malaysian equity of at least 51%.

The foreign technology companies must be entities incorporated in Malaysia with paid-up capital of at least RM50,000.

For both types of companies, it is a requirement to maintain project team composition of at least 50% Malaysians throughout the project funding duration (typically 2 years).

2. MSC Malaysia for Startups (known as "MSC4Startups")

On 12 May 2015, MDEC launched the MSC Malaysia for Startups Programme ("Programme"). This Programme is an alternative for companies to attain MSC status without being required to locate to any of the MSC designated Cybercities/Cybercentres. Prior to the Programme, MSC status companies must be located in designated premises within MSC Cybercities/Cybercentres ("Tier-1 Companies") or commercial premises within MSC Cybercities/Cybercentres ("Tier-2 Companies") for them to enjoy the various incentives offered under the MSC status. This Programme now creates a third category for MSC status companies that are located outside of MSC Cybercities/Cybercentres ("Tier-3 Companies").

For a company to enjoy the incentives under the Programme, it must first apply for a MSC status from MDEC. Whilst the Programme was launched on 12 May 2015, companies with MSC status approved from 1 January 2015 onwards are eligible to apply for a Tier-3 Company status.

MSC status companies approved after 1 January 2015 and have not activated their pioneer status incentive are eligible to apply for Tier-3 Company status. A Tier-3 Company can apply to move up to Tier-1 or Tier-2 Company status after 5 years of pioneer status incentive or it can choose to remain as a Tier-3 Company as long as the company is still active. However, such company will be liable to the applicable taxation laws after 5 years of pioneer status incentive. In other words, the company will have to upgrade to Tier-1 or Tier-2 Company status in order for it to enjoy another 5 years of pioneer status incentive.

MSC status companies approved prior to 1 January 2015 will still need to adhere to the location requirements as stated in their conditions of grant. If they move outside the designated location, it will be considered a breach of the conditions of grant. These companies are not eligible to move down to
Tier-3 Company status and participate in the Programme but will continue to enjoy the full suite of incentives offered under MSC status.

Some of the main incentives offered to Tier-3 Companies under the Programme are as follows:

a) Enjoy 6 BoG privileges, i.e. BoGs 3, 4, 6, 7, 9 and 10
   BoG1 & 8 are not applicable to Tier-3 Status Companies due to the company’s location that is outside of a Cybercity/Cybercentre;

b) Enjoy partial BoG2
   Companies can employ foreign knowledge workers for key positions only (maximum 20 workers); and

c) Enjoy partial BoG5
   Instead of enjoying 100% tax exemption, Tier-3 Status Companies will only enjoy 70% tax exemption of statutory income for 5 years only, and no duties on the import of multimedia equipment.

3. Cybercentre-Digital Hub

MSC Malaysia designated a few places as Cybercities and Cybercentres, based on the concept of industry clustering to fuel economic growth. Each location is annually audited by MDEC to ensure the Cybercities and are always adopting the latest in intelligent cities standards. Recently, MSC Malaysia created a new category of Cybercentre known as the Cybercentre-Digital Hub, which is tailored for start-ups and internet economy companies; as Cybercentres remain optimised for established and larger MSC Malaysia status companies. MSC Malaysia has confirmed that it will offer the same 10 BoGs to companies located within the Cybercentre-Digital Hub. The new Digital Hubs directory is accessible via the following link: https://www.mdec.my/directory/cybercities-cybercentres/selangor

4. Malaysia Tech Entrepreneur Programme

Malaysia Tech Entrepreneur Programme ("MTEP") is another MDEC initiative to attract technology talents and aspiring entrepreneurs from around the globe where qualified entrepreneurs’ application for a work pass can be expedited and can be issued within 6 weeks. The MTEP specifically caters for tech founders who want to capture the ASEAN market from Malaysia and an individual with no track record of established business may apply for 1 year pass while an individual with track record of established business may apply for a 5 year pass. Some of the criteria include having a business pitch deck, certificate of good conduct from the embassy, letter from any Malaysia Digital Hubs or Malaysian sponsor, bank statements showing a minimum of RM50,000 etc. Additional requirements are applicable for established entrepreneurs in the venture capital industry and this includes being the founder, co-founder or the Malaysian venture partner, having minimum funds of RM10 million and registration with the securities commission of Malaysia as a venture capital management corporations. The portal to apply for a work pass can be accessed via the following link: https://www.mtep.my/

5. Bumi ICT Demand Aggregation Programme

The Bumi ICT Demand Aggregation programme, which commenced in 2013, is designed to assist Bumi ICT companies to improve their business growth and performance. This programme is developed to provide access to the local market through business matching from government agencies, corporations, government-linked companies and international organizations. The programme adopts a two-pronged approach i.e. aggregating demand and institutionalising supply with the objective to bridge demand requirements with capable Bumi ICT companies. Further details can be accessed via the following link: http://mybida.net/
6. **Global Acceleration and Innovation Network**

This Global Acceleration and Innovation Network ("GAIN") is a programme that provides customised assistance based on every qualified company's needs and goals including for instance, elevating brand visibility, facilitating market access, upskilling capabilities match-making for merger and/or acquisition or accessing funding ecosystem. The main criteria to qualify as a GAIN company is to be majority Malaysian owned, possesses a strong financial track record, possesses scalable or innovative technology products and solution among others. Further details can be accessed via the following link: [https://www.mdec.my/msc-malaysia/gain](https://www.mdec.my/msc-malaysia/gain)
18. Labuan – International Business and Financial Centre

Labuan is one of the three federal territories of Malaysia and has its own laws and regulations for financial activities carried on within the Labuan International Business and Financial Centre ("Labuan IBFC"), separate from the domestic Malaysian laws. Since its inception in 1990, Labuan IBFC has evolved to become a midshore financial centre to serve the growing demands for international financial services within the region.

A. Labuan IBFC

At present, there are 14,201 Labuan companies, 54 banks, 57 international commodity trading companies and 188 private and charitable foundations registered. The LFSA is a statutory body established under the Labuan Financial Services Authority Act 1996 to be responsible for the development and administration of the Labuan IBFC. The LFSA is the sole authority of the Labuan IBFC and is empowered under legislation to administer all financial activities that take place within the Labuan IBFC and to enforce the laws of Labuan.

B. Labuan Companies

The Labuan Companies Act 1990 ("LCA") provides for the incorporation, registration and administration of Labuan companies, as well as the registration of foreign companies incorporated outside Malaysia as a foreign Labuan Company.

Every Labuan company is required to appoint a Labuan trust company to attend to their company secretarial matters and must have a registered office in Labuan which shall be the principal office of the Labuan trust company. A company incorporated under the LCA is required to have at least one director (who may be a resident or a non-resident) and one resident company secretary. The minimum number of shareholders in a Labuan company is one (1) and the shareholder may be an individual, a corporation or a trust company holding the shares as a nominee, or on trust. A Labuan company may be limited by shares, limited by guarantee or an unlimited company. There are also no foreign ownership restrictions in Labuan companies. Subject to its articles of association, a Labuan

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company may also establish a branch or an office in any part of the world except for any part of Malaysia outside Labuan, unless approved by the LFSA.

Labuan business activities shall be carried out in, from or through Labuan with non-residents or with another Labuan entity. Where a Labuan company carries on a business with a Malaysian resident, the Labuan company must notify the LFSA of such transaction within 10 working days of the transaction.

Furthermore, it should also be noted that a Labuan company must not carry on its business for more than 6 months without any member. Failure of compliance shall result in every officer, servant, employee or agent of that company during the time it so carries on business who has knowledge of the absence of its members to be liable, and if more than one, jointly and severally, for the payment of all of the company’s debts contracted during the time it so carries on business after such 6 months period.

C. Exchange Controls

Labuan entities are generally not permitted to conduct business in Malaysian Ringgit except in limited circumstances. Furthermore, BNM deems all Labuan entities as non-residents for foreign exchange controls purposes.

D. Labuan Taxation

Labuan entities come under the purview of the Labuan Business Activity Tax Act 1990 ("LBATA"), unless it makes an irrevocable election to be taxed under the Income Tax Act 1967.

Under the LBATA, a Labuan entity carrying on a "Labuan business activity" will come within the LBATA tax regime.

A "Labuan business activity" includes a Labuan trading activity or Labuan non-trading activity carried on, in, from or through Labuan in a currency other than Malaysian currency, by a Labuan entity with a non-resident or with another Labuan entity. Under the Malaysian Budget 2019, it is proposed that with effect from 1 January 2019, Labuan entities are permitted to carry on activities in the Malaysian currency and/or with Malaysian residents and still fall within the LBATA tax regime.

A "Labuan trading activity" includes banking, insurance, trading, management, licensing, shipping or any other activity that is not a Labuan non-trading activity, whereas a "Labuan non-trading activity" refers to investment holding activities on its own behalf.

Under the LBATA tax regime, a Labuan entity carrying out a "Labuan non-trading activity" is not subject to any tax.

On the other hand, a Labuan entity carrying out a "Labuan trading activity" can elect to pay tax at either, the rate of 3% of its net audited profits, or a flat rate of RM20,000. The choice to pay tax at either 3% or RM20,000 is made every year and electing either option will not preclude a Labuan entity from electing the other option in the following year of assessment. However, it was proposed in the Malaysian Budget 2019 that with effect from 1 January 2019, the flat rate of RM20,000 will be abolished and all Labuan entities will pay tax at a rate of 3% of its net audited profits.

There is no capital gains tax, indirect tax, stamp duty or estate tax in Labuan. There is also no withholding tax on interest, technical fees and royalties for payments made by a Labuan company to non-residents or other Labuan companies.

Recent Development

The Malaysian Budget 2019 also proposed that with effect from 1 January 2019:

(a) Malaysian residents transacting with Labuan entities will only be entitled to a 3% tax deduction on the expenditure incurred (as opposed to 100% before); and
in addition, where a liability arises which is attributable to a particular cell of a labuan pcc, only the cell assets attributable to that cell shall be used to satisfy the liability and a creditor in respect of the said cell. the creditor will not be entitled to have any recourse against the cell assets of any other cell or the general assets of the labuan pcc.

similarly, where a liability arises which is not attributable to a particular cell of a labuan pcc, the liability shall be satisfied solely from the general assets of the labuan pcc.

f. overview of financial services in labuan

the financial services industry in labuan is regulated under the labuan financial services and securities act 2010 (“lfssa”). the lfssa governs, amongst others, labuan banking business, labuan investment banking business, labuan financial business and labuan insurance business. it is important to note that these financial services industries are not subject to the jurisdiction of bnm, but instead are regulated by the lfsa.

g. labuan banking business

the lfssa defines labuan banking business as (a) the business of receiving deposits on current account, deposit account, savings account or any other account as may be specified by the lfsa; (b) labuan investment banking business; (c) labuan financial business; (d) labuan islamic banking business; or (e) such other business as the lfsa, with the approval of the minister, may specify, in any currency (including in malaysian ringgit where permitted under the fsa or such other relevant law in force).

any person wishing to carry on a labuan banking business must be licensed with the lfsa. the minimum eligibility criteria for applicants is that the applicant: (a) must be a bank or a financial institution; (b) possesses a sound track record; (c) be accorded a good credit rating by acceptable
credit rating agencies; (d) be supervised by a competent regulatory authority; and (e) conforms to generally accepted standards of international banking practices or the Bank for International Settlements (BIS), as the case may be.

A Labuan bank may also set up an Islamic banking window pursuant to the LFSSA without the need to have a separate Labuan Islamic banking license. Pursuant to the initiatives led by the Malaysia International Islamic Financial Centre ("MIFC"), Islamic divisions in Labuan banks have been given some flexibility, including: (a) exemption from the requirement to maintain a physical presence in Labuan; the Islamic divisions of Labuan banks may open operations offices anywhere in Malaysia, subject to the consideration of the LFSA; (b) there is no limitation on the staffing and number of operations offices to be opened outside of Labuan; (c) the operation offices are to conduct Islamic financial business in non-Ringgit currencies and deal mainly with non-residents as required under the relevant legislation; and (d) dealings with residents in non-Ringgit transactions are allowed as permitted under the current foreign exchange administration policies.

**Labuan Investment Banking Business**

The LFSSA defines Labuan investment banking business to mean: (a) the business of providing credit facilities; (b) the business of providing consultancy and advisory services relating to corporate and investment matters, including dealing in securities, or making and managing investments on behalf of any person; (c) the business of undertaking foreign exchange transactions, interest rate swaps, dealings in derivative instruments or derivative financial instruments or any other similar risk management activities; (d) Labuan Islamic investment banking business; (e) Labuan financial business; or (f) such other business as the LFSA, with the approval of the Minister, may specify, in any currency (including in Malaysian Ringgit where permitted under the FSA or such other relevant law in force). Note that Labuan investment banks are not allowed to accept deposits.

Similarly, any person wishing to carry on a Labuan investment banking business, must be licensed by the LFSA. An applicant for a Labuan investment banking business licence may be from: (a) an investment bank or group engaging in investment banking activities licensed by the regulatory authority in its country of origin; (b) a licensed bank or an established financial institution or financial services provider supervised by a competent regulatory authority; (c) any institution licensed under the FSA with prior approval from BNM; or (d) corporations with the necessary expertise and experience in the financial industry with at least 3 years of good track record and is regulated by an authority in their home country.

**Labuan Financial Business**

Labuan financial business includes (a) building credit business; (b) credit token business; (c) development finance business; (d) leasing business; (e) factoring business; (f) money-broking business; (g) Labuan Islamic financial business; or (h) such other business as the LFSA, with the approval of the Minister, may specify, in any currency (including Malaysian Ringgit where permitted under the FSA or such other relevant law in force).

Each type of financial business will be subject to different application and operational requirements as prescribed by the LFSA.

**Labuan Insurance Business**

Labuan insurance business is defined as insurance business which is not domestic insurance business and which is transacted in foreign currency, and includes takaful and retakaful business, Labuan captive insurance business and such other insurance business as may be approved by the LFSA. Only a Labuan company, a foreign Labuan company or a branch of a Malaysian insurer that holds a valid insurance license may carry on or
transact any Labuan insurance business. There are four main categories of Labuan insurance business: (a) Labuan captive insurance; (b) Labuan Reinsurance; (c) Labuan general insurance; and (d) Labuan life insurance.

Labuan insurance-related businesses include business as a Labuan insurance broker, Labuan insurance manager or Labuan underwriting manager. Again, only a person with a valid insurance license may carry on or transact these insurance-related activities. Each of these activities will have separate licensing and operational requirements as prescribed by the LFSA.

**Labuan Islamic Financial Services and Securities**

The Labuan Islamic Financial Services and Securities Act 2010 ("LIFSSA") is the LFSSA’s counterpart for the Islamic finance sector in Labuan. The LIFSSA governs, amongst others, Labuan Islamic banking business, Labuan Islamic investment banking business, Labuan Islamic financial business and Labuan takaful business.

**Labuan International Financial Exchange ("LFX")**

The LFX was launched in 2000 and is wholly-owned by Bursa Malaysia. The LFSA is the regulator of the LFX. The LFX functions as an international financial exchange and it caters for the listing of a multitude of multi-currency financial instruments including equities, investment funds, debt instruments and insurance related instruments.

There are no restrictions on the types of financial instruments and there is also no predetermined minimum quantity for listing on the LFX. All listings on the LFX shall be denominated in currencies other than Malaysian Ringgit.
19. Economic Corridors

In order to propel the growth of certain under-developed regions within Malaysia, the Malaysian government had launched five economic growth corridors under its 9th Malaysia Plan. The primary objective of this initiative was to bridge development imbalances in the nation.

Each corridor has a distinct focus with its own respective high impact clusters, chosen for their own specific geographical and sectoral advantages. Measures were also put in place to allow businesses to benefit from the sharing of common resources, the facilitation of labour market matching and knowledge sharing.

The government has also sought to attract participation from the private sector to accelerate the development of these corridors. To that end, policies were implemented to incentivise investors to aid the cause. The Public Private Partnership Unit was established for this purpose and is responsible for formulating such policies.

Each corridor is governed by a Corridor Development Authority that is empowered to oversee and implement the development plan specific to its particular corridor.

The five corridors are:

a) Iskandar Malaysia in Southern Johor (“Iskandar”);

b) Northern Corridor Economic Region (“NCER”); 

c) East Coast Economic Region (“ECER”);

d) Sabah Development Corridor (“SDC”); and

e) Sarawak Corridor of Renewable Energy (“SCORE”).

The Malaysian government supports these economic corridors by legislating and implementing supportive government policies such as liberal equity requirements, tax incentives and the flexibility to recruit expatriates. These policies are mainly implemented through the respective Corridor Development Authorities of each individual corridor.

In May 2015, the Malaysian government announced the 11th Malaysia Plan in order to facilitate the nation’s socio-economic progress, for the 5-year period from 2016 to 2020, towards realising Vision 2020 – a goal for Malaysia to achieve the status of a self-sufficient industrialised nation by the year 2020. Under the 11th Malaysia Plan, efforts were proposed to stimulate investments and improve infrastructure within the 5 economic corridors. Such efforts include the upgrading of existing roads and highways such as the Pan Borneo Highway to ensure better connectivity from SCORE to SDC and the Kota
Bahru – Kuala Krai highway to increase connectivity to the ECER.

In October 2018, the newly formed Government tabled a Mid-Term Review of the 11th Malaysia Plan. The highlight of this review revolves around fiscal and governance reforms which are expected to result in a trade-off in relation to Malaysia’s economic growth in the short-term future.

With the focus on reducing fiscal deficits and debt levels, the newly formed Government has announced its intention to cut down on development expenditure from the originally proposed RM260 billion to RM220 billion. To this end, the government will undertake a review of current and upcoming projects to seek to renegotiate the terms thereof, or to terminate those projects if necessary. Further, it is also expected that annual growth on private investment will be reduced. Hence, it is envisaged that development in relation to the 5 economic corridors are likely to be adversely affected as well.

A. Iskandar Malaysia ("Iskandar")

IRDA is a Malaysian Federal Government statutory body established under the Iskandar Regional Development Authority Act 2007 to oversee development within Iskandar. Accordingly, IRDA’s main focus and roles are to establish policies, directions and strategies that have a direct impact on development activities within Iskandar and to act as a "one-stop centre" to deal with investors and responding to investors’ needs in a timely and efficient manner.

Companies investing in Iskandar may apply to IRDA to enjoy an array of flexibilities and attractive incentives. Companies applying to be an Iskandar Development Region ("IDR") status Company must be a company incorporated under the Malaysian Companies Act and approved by the MOF and a resident in Malaysia which undertakes a qualifying activity in the approved zone within Iskandar. The qualifying activities are education, financial healthcare, ICT & creative, industries, logistics and tourism.

IDR-status companies will enjoy various incentives. One of the incentives enjoyed by IDR-status companies is the exemption from the FIC rules. Besides that, they will enjoy flexibilities under the foreign exchange administration rules, in that they can make and receive payments in foreign currency with residents, retain export proceeds offshore, invest any amount in foreign currency assets onshore and offshore and borrow any amount of foreign currency from licensed onshore and non-residents. IDR-status companies will also enjoy unrestricted employment of foreign knowledge workers.

Tax incentives for IDR-status companies will depend on the sector that a company is in, however the general incentive is a five year corporate tax exemption or 100% investment tax allowance within a five year period to be offset with statutory income, along with import duty and sales tax exemption for equipment and components used directly in the company’s qualifying activities.

As of November 2018, Iskandar has successfully attracted RM 273 billion worth of investments since its inception, 40% of which consists of investment from foreigners in countries such as China, Singapore, the United States, Japan and Spain. The area has also become a popular migration destination for young professionals nationwide, as a direct consequence of the increasing availability of lucrative career opportunities.

Iskandar is situated in southern Johor and is divided into five flagship zones, namely:

1. Flagship A: Johor Bahru

Johor Bahru is located within the central region of Iskandar Malaysia. It is bound by Senai to the North, Nusajaya to the west, Singapore to the south, and Pasir Gudang to the east.
The current key economic activities in this flagship zone are financial services, commerce and retail, arts and culture, hospitality, urban tourism, plastic manufacturing, electrical and electronics and food processing.

2. Flagship B: Nusajaya

Nusajaya is located west of Johor Bahru, in close proximity to Port of Tanjung Pelepas and Gelang Patah. It is also strategically located within a 45-minute drive from Singapore’s Changi International Airport, a regional aviation hub, and 20 minutes from Johor’s Senai International Airport. The regional city combines residential, commercial and industrial elements.

The current key economic activities in this flagship zone are mixed property development, state & federal administration and logistics. Going forward, this flagship zone would be the hub for creative arts and entertainment, medical facilities, educational institutions, tourism, biotechnology and hi-tech manufacturing.

3. Flagship C: Western Gate Development

Flagship C is located within the south-western region of Iskandar Malaysia. It is bound by Mukim Jeram Batu and Mukim Jelutong to the north; Mukim Serkat and Mukim Sungai Karang to the west; Selat Tebrau to the south; and Gelang Patah and Nusajaya to the east. It covers an area of more than 30,000 acres.

The key economic activities in this flagship zone are port and marine services, warehousing, logistics, engineering, hi-tech manufacturing, food production, petrochemical industry, entrepot trade. The Western Gate Development boasts a logistic centre, regional distribution centres, regional procurement centres and utilities (power).

4. Flagship D: Eastern Gate Development

Pasir Gudang is located 30km east of Johor Bahru. It is located at the western end of the Johor Bahru metropolitan area. The population is around 100,000.

Current key economic activities in this flagship zone are focused on heavy industries and logistics, including electrical and electronics (E&E), chemical, oleochemical, food products, research and development (R&D) and engineering-based industries as well as ports and logistics and warehousing.

5. Flagship E: Senai – Skudai

Senai-Skudai development is located within the northern region of Iskandar Malaysia. It is bound by Mukim Sedenak to the north; Gunung Pulai to the west; Mukim Tebrau to the south; and Seelong to the east.

Current key economic activities in this flagship zone are airport services, engineering, electrical and electronics (E&E) and education. Going forward, the Senai – Skudai flagship zone would also be the hub for agro and food processing, ICT and retail tourism.

B. Northern Corridor Economic Region ("NCER")

The Northern Corridor encompasses the northern states of Perlis, Pulau Pinang, Kedah and northern Perak, covering an area of 17,816 sq. km. This area leverages on existing economic achievements in electronics, tourism, agriculture as well as its strategic location bordering Thailand and facing the Straits of Malacca. The NCER focuses on accelerating economic growth and elevating income levels in northern Peninsular Malaysia with the objective of becoming a world-class economic region by the year 2025.

Unlike the other economic corridors, the NCER does not have key development areas for certain sectors, but rather it develops all key sectors as a whole. The key sectors are:

a) agriculture;
The NCIA was established under the Northern Corridor Implementation Authority Act 2008 as the authority responsible for providing direction and for devising policies and strategies in relation to socio-economic development in the Northern Corridor Economic Region.

The development of the area will be cascaded into a number of programmes. The programmes are mainly divided into phases 1, 2 and 3. Phase 1 is from 2007 to 2012, which is the introductory phase to secure anchor investors and develop infrastructure. Phase 2 is from 2013 to 2020, which focuses on broadening private sector involvement in the area and the establishment of business networks. Phase 3 is from 2021 onwards and it focuses on achieving regional leadership via sustainable market growth.

Several iconic projects have been planned for the NCER, and these include the Kedah Rubber City, Kedah Science and Technology Park, Kulim International Airport, Kedah Aerocity, Sungai Petani-Kedah Inner Expressway and Kedah Medical Science City. The Kedah Rubber City project has attracted some interest from Thailand and Indonesia who is keen on making the Kedah Rubber City part of a larger rubber corridor between the 3 nations. The Malaysian government has also shown its support for the Kedah Rubber City Project by allocating some RM320 million for the development of the rubber city.

All investors are welcome to invest in the area through the various routes of setting up a presence in Malaysia. Investors can also enjoy several incentives by making an application to the NCIA. The NCIA usually grants the incentives on a sector-by-sector basis but it generally includes Investment Tax Allowances, Pioneer status exemption on import duty and others.

In January 2018, the NCIA had announced 5 new initiatives worth up to RM 1 billion. The targeted areas of development are:

a) developing public infrastructure and transportation;
b) upgrading works for the Langkawi and Penang international airports;
c) erecting a new global lifestyle development for high income residents and businesses;
d) establishing a futuristic, applied auto research and commercialisation area;
e) improving technical and vocational education and training;
f) transforming Pulau Pangkor into a duty-free island; and

g) generating further job opportunities.

C. East Coast Economic Region ("ECER")

The ECER covers the states of Kelantan, Terengganu, Pahang and the district of Mersing in Johor. It occupies an area of 66,000 sq. km or 51% of the total area of Peninsular Malaysia. The ECERDC is the statutory body established to spearhead the development of the ECER, particularly in the five key economic sectors, namely manufacturing, oil, gas & petrochemicals, tourism, agriculture and human capital development.

There are six key development areas or nodes within the ECER, and they are:

a) The coastal belt from Besut in Terengganu to the Kelantan-Thai border at Tumpat. This node focuses cross border development, capitalizing on the synergy generated by the Indonesia-
Malaysia-Thailand Growth Triangle. Key initiatives include Pasir Mas Halal Park; Pengkalan Kubor Collection; Processing, Packaging Centre; Tok Bali Fisheries Park, Kota Bharu City Centre and Jeli-Bukit Bunga Conurbation.

b) The heartland of Terengganu formed by Dungun, Kuala Terengganu and Kuala Berang. The focus of this node is on agriculture and ecotourism. Key projects include Dungun Coastal Tourism Development, Pasir Raja Herbal Park, Kuala Berang Sheep Breeding Centre and Telaga Papan Goat Multiplier Farm.

c) The Special Economic Zone of Greater Kuantan, which extends over an area of 3,874 square kilometres along the coast from Kertih in Terengganu to Pekan in Pahang, is the only special economic zone in Malaysia. This Special Economic Zone acts as the main engine of growth in ECER through key projects such as the regional Kuantan Port, Kuantan Integrated Biopark, Kertih Biopolymer Park, Cherating Coastal Tourism Development, Pahang Technology Park and Pekan Automotive Park.

d) The Mersing-Rompin key development area stretches from Rompin in Pahang to Mersing in Johor. It plays an important role in agriculture and ecotourism. Some of the key projects in the Mersing-Rompin key development area are the Rompin Integrated Pineapple Plantation, Cattle Research and Innovation Centre in Muadzam Shah, Endau-Rompin State Park and Island Tourism off the Coast of Mersing, Johor.

e) The Dara-Jengka key development area consists projects aimed at promoting sustainable development, enhancing public transportation and developing a progressive community.

f) The Bentong – Raub key development area in Pahang is aimed at providing a satellite role to the Greater Kuala Lumpur Development. Gua Musang – Kuala Lipis key development area focuses on initiatives such as the eco-tourism and agropolitan projects.

Similar to the other economic corridors, all investors are welcome to invest in the area through the various routes of setting up a presence in Malaysia and in turn the investors in the ECER enjoys incentives such as income tax exemption up to ten years, investment tax allowance of 100% on qualifying expenditure, sales tax exemption, discount rate for land premium, quit rent and land assessment, guaranteed land lease periods for a specific time period, flexibility in the employment of expatriates and special flexibility in foreign exchange administration under BNM.

There are also several Schemes tailored for Malaysian citizens only, which are aimed at improving the livelihood of Malaysian citizens in the area. These Schemes are:

a) Entrepreneur ECER

This programme targets existing entrepreneurs in the ECER who wish to grow their business. The programme aims to increase the participation of Bumiputera entrepreneurs as well as entrepreneurs from other communities, including Orang Asli. Entrepreneurs. The programme is implemented through collaboration with SIRIM and AGROBANK. The programme involves financial assistance and training workshops on business management skills, financial management, product development, product quality improvement, branding, product registration, research & development, Halal JAKIM certification, packaging & labelling and also market expansion.

b) ECER Talent Enhancement Programme (ETEP)

The ETEP is a human capital development programme designed to ensure that there are adequate skilled and multilingual workforce that matches the industry’s requirements. The programme forges strategic partnerships between investors and training providers in training graduates from various disciplines for placement with
employers to ensure high employability of the trainees.

D. Sabah Development Corridor ("SDC")

The SDC emphasises transformation and expansion of the agricultural, bio-technological avenues, tourism and logistics sectors in the region with the overall theme of "increasing value add from existing industries". The SDC initiative seeks to accelerate the key sectors to move towards higher value-add activities such as design and research & development. Also, key tourism assets such as the National Park Islands of Sipadan, Pulau Tiga, Mabul, and Kinabalu National Parks, will be enhanced to attract higher-yielding tourists, thereby increasing per capita tourist spending and the size of the tourism industry in the region. Besides that, SDC also aims to enhance the industrial potential of palm oil with a Palm Oil Industrial Cluster at Lahad Datu to get investors to open up more palm oil related industries within the area.

In order to expedite the implementation of SDC, the Sabah State Legislative Assembly had approved the establishment of a statutory body known as SEDIA. SEDIA has been entrusted as the One-Stop Authority to drive the SDC, with the primary responsibility to plan, coordinate, promote and accelerate the development of the SDC.

The SDC is divided into specific project areas, with different functions or sectors for each project area:

a) Kinabalu Harbour Front and Gold Coast Enclave are developed for the consolidation of logistics and transportation infrastructure as well as reducing the cost of doing business.

b) The development of the Keningau Integrated Livestock Centre on the other hand, is for the production of commercial rice, fruits and livestock.

c) Marine Integrated Cluster is developed for the purposes of Permanent Food Production Parks, seafood and aquaculture.

d) Palm Oil Industrial Clusters in Lahad Datu and Sandakan are developed for the purposes of the production of palm oil.

e) Other specific projects include the development of Oil and Gas Industry Cluster in Sipitang, environmental rehabilitation and conservation, Brunei Bay Development Zone, agropolitan projects for the rural poor, promotion of new sources of growth via the application of pioneering technology in the SDC such as ICT, Biotechnology and Nanotechnology and to establish a one-stop service centre for SDC and Business Desk for SMEs, start-ups and Bumiputera Commercial and Industrial Community.

To encourage companies to participate in the initiative, incentives are given to companies carrying out specific qualifying activities, located in the designated SDA. Activities that qualify for the incentives are specifically as laid out in the table below.

In order to enjoy the incentives, investors must make an application to SEDIA and applications received by 31 December 2020 are eligible for the incentives listed in the table below. Incentives granted are on a case by case basis but generally, companies investing in the SDC will enjoy incentives such as exemption on import duty and sales tax, full tax exemption on statutory income for ten years and investment tax allowance of 100% on qualifying capital expenditure for five years.

Further details on the investment tax incentives for SDC may be found in http://www.sedia.com.my/SDC_Incentives.html.

E. Sarawak Corridor of Renewable Energy ("SCORE")

In terms of land area, SCORE had initially covered an area of more than 70,000 square kilometres of the resource rich central region of the state of Sarawak with a population of more than 600,000. To
date, SCORE has further expanded its boundary by 30%, which has increased its land area to approximately 100,000 square kilometres. SCORE has a long coastline of more than 1,000 km, over eight million hectares of forests and almost five million hectares of arable and peat land suitable for agriculture. The corridor has 1.2 billion of known oil reserves, over 80 million tonnes of Silica sand and over 22 million tonnes of China clay. Besides that, SCORE has an abundance of natural resources, including clean and safe renewable resources, such as hydropower, that offers commercial users clean energy at competitive rates.

In view of this, the 2008 – 2030 development plan for SCORE focuses on developing the energy sector and targets 10 high impact industries that will complement the development plan and also provide downstream opportunities for SMEs. The 10 industries are aluminium, glass industries, steel, oil-based industries, palm oil, fishing & aquaculture, livestock, timber-based industries, marine and tourism.

In order to ensure effective allocation of infrastructure and resources, SCORE is divided into five different areas to focus on different sectors. The five areas are:

a) Samalaju

Samalaju is the ideal location for heavy industries with a deep sea port scheduled for completion in stages from 2013 to 2016 and the state’s attractive energy rates. Covering an area of 450 hectares, the port will form the logistical hub for the import of raw materials and the export of finished products from the heavy industries located in the industrial park.

b) Tanjung Manis

Tanjung Manis is being developed into an industrial port city and Halal Hub. The port will have an annual capacity of 200,000 TEUs and 6 million tonnes of general cargo and will play a pivotal role in the future success of the Halal Hub and SCORE. Tanjung Manis Halal Hub will be the largest and most advanced integrated Halal Hub in the world. Tanjung Manis has a number of competitive advantages including a large land bank, extensive infrastructure and the deep water port and airport will be upgraded.

Currently, two agro-based projects owned by Taiwan’s Sea Party and Fieldmart Sdn Bhd are in operation.

c) Mukah

Mukah will be the administrative nerve centre of the corridor, with access to all key locations within SCORE and RECODA headquartered there. Mukah will also be the location for training and research with polytechnics, specialised training centres as well as research and development centres set up there.

Recent development components include:

i. New Mukah Airport
ii. Mukah Water Supply
iii. Mukah Polytechnic and UiTMMukah Campus
iv. Approval of Matadeng Industrial Park Site

d) Baram

The Baram area will have at its core hydroelectric power generation, oil palm plantations, forest plantations that use renewable plantation timber to promote the preservation of rainforests with responsible forest management practices, and eco-tourism that allows visitors to experience the natural world of the rainforest.

e) Tunoh

The Tunoh area focuses on oil palm and forest plantations, agriculture and eco-tourism.
Sarawak is focused in its resolve to develop its human capital to meet the needs of industries in SCORE, and one of the most significant initiatives to date has been the setting up of U-Score, which is a consortium of private and public institutions of higher learning in the State, with the main purpose of assisting the State Government in monitoring the demand and supply of the workforce required for SCORE. MOE instructed UNIMAS to chair the U-Score project, which is implemented in collaboration with the State Government. U-Score gathers statistics on the number of graduates produced by institutions of higher learning and then presents this information to the Federal and State government. Apart from that, the new investors setting up their operations in SCORE are also preparing their future employees for the task ahead by offering courses related to their field of work. Their investment in local human capital has even included sending their employees overseas for training stints.

RECODA is the agency tasked with overseeing and managing SCORE. The Chairman of the RECODA board is the Chief Minister of Sarawak and RECODA has board representation from all of the relevant federal and state agencies to ensure swift decision making and traditional government procedural delays are avoided. RECODA has two primary tasks. The first is to promote SCORE effectively by creating and stimulating new and existing markets, and the second, to work towards achieving the ambitious investment goals set by the State.

a) RECODA also provides continuous support to foreign and domestic companies wishing to set up or expand their businesses in SCORE by providing comprehensive assistance from arranging and hosting visits to SCORE, initiating meetings with relevant deferral or state authorities, gaining approvals, acquiring licenses, visas and permits to ongoing support even after the investor is up and running.

b) Key information on regulatory factors
c) Help fast track immediate start of business
d) Assistance with land acquisition and recruitment
e) Sector information and introduction to key sector networks
   i. Introductions to potential strategic partners in Malaysia and regionally
   ii. Ongoing support to companies once they are established

To accelerate the development of SCORE, the state government has set up three development agencies under RECODA, being the Upper Rejang Development Agency, Highland Development Agency and the Northern Regional Development Agency.

All investors are welcome to invest in the area through the various routes of setting up a presence in Malaysia and similar to the other economic areas, incentives are granted by RECODA through application by the investors. The general incentives include capital deductions, tax incentives such as investment tax allowance and pioneer status, with the option to renew for a second term. Non tax incentives include infrastructure allowances, cheap industrial land, flexible payment terms for industrial land, double deduction on freight charges incurred for the export of rattan and wood-based products and full import duty exemption on raw materials which are not available in Sarawak.

Interested parties may send an email to RECODA via the following link (http://www.recoda.com.my/contact/connect-with-us/) with an expression of interest and RECODA will contact them directly.

In addition to the Economic Corridors, the Malaysian Government has recently launched 2 new zones to promote specific types of economic activity. These zones are:
a) Digital Free Trade Zone  
b) Malaysian Vision Valley

**Digital Free Trade Zone**

The world's first Digital Free Trade Zone (DFTZ) was launched by the Malaysian Government on 22 March 2017 together with Jack Ma, founder and Executive Chairman of Alibaba Group. This initiative comprises both physical and virtual DFTZs to facilitate SMEs to capitalise on the exponential growth of the internet economy and cross border eCommerce activities.

The DFTZ consists of three main components that combine both physical and virtual zones. The physical zone comprises of the eFulfillment Hub and Satellite Services Hub while the virtual zone consists of the eServices Platform.

For a better understanding of the DFTZ and the three main components mentioned above, please refer to Chapter 17 of this Guide on Digital Economy, where the DFTZ is elaborated in more detail.

**Malaysian Vision Valley (MVV)**

Touted as the sixth economic corridor in Malaysia, the MVV is an economic zone encompassing some 379,086 acre of land from Port Dickson to Seremban and Nilai and will be divided into five strategic clusters covering Central Business District, Nature City, Education Tech Valley, Tourism and Wellness and New Liveable Township. This metropolis project is expected to attract investments worth over RM290 billion and offer over 1.38 million job opportunities by 2045.

Sime Darby Property Bhd will be the sole driver of the MVV, following the withdrawal of its two principal partners Brunsfield Development Sdn Bhd and Kumpulan Wang Amanah Pencen after the Memorandum of Understanding signed between the parties in May 2017 lapsed in November 2017.

The MVV is expected to have an integrated transportation hub on the Kuala Lumpur – Singapore High Speed Rail project (HSR). This hub will be based in Labu, Negeri Sembilan, which will connect the state with KL International Airport, Bandar Malaysia and Singapore. However, Malaysia and Singapore have recently signed an agreement to postpone work on the HSR for about two years. The HSR service is expected to commence by 1 January 2031, four years later than the original start date of 31 December 2026.
20. Competition Law

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

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

The regulator of the Competition Act MyCC. There is no merger regime in Malaysia yet.

A. Anti-Competitive Agreements

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

In general, "significant" means the agreements must have more than a trivial impact. It should be noted that impact would be assessed in relation to the identified relevant market. A good guide to the trivial impact of an anti-competitive agreement might be the combined market share of those participating in such an agreement. As a starting point and to provide greater certainty, MyCC may use the following basis in assessing whether an anti-competitive effect is "significant". This approach sets "safe harbours" for otherwise anti-competitive agreements or association decisions. In general, anti-competitive agreements will not be considered "significant" if:

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

b) the parties to the agreement are not competitors and all of the parties individually has less than 25% in any relevant market.
B. Types of Anti-Competitive Agreements

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

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

C. Abuse of Dominant Position

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

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

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

For instance, there may be a new product provided by an enterprise in the market and hence it holds a market share of more than 60%. If the enterprise can show however that there will be potential competitors entering this market soon and that the market share of 60% will be quickly eroded, then it is arguable that the enterprise has no dominance. Conversely, even with a market share of for example only 20%, if there are no existing or future competitors who could constrain the enterprise (for example, as the rest of the market is very fragmented and made up of many very small players) then, the enterprise could still have dominance. It is very much a question of fact and the "significant market power with no effective constraint" test is the best determinant.
There are 2 main types of abuse:

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

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

D. Leniency Regime

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

E. Consequences of Infringement

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

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

F. Enforcement Action

MyCC has conducted investigations into various associations, companies and industries. As of December 2018, there are seven (7) findings of an infringement and two (2) proposed decisions issued by MyCC which have yet to be finalised – one against the General Insurance Association of Malaysia (“PIAM”) and its 22 members in October 2017 and another against Dagang Net Technologies Sdn Bhd (“Dagang Net”) in July 2018. MyCC has also received undertakings (e.g. commitments to cease anti-competitive activities) from various associations and companies.

1. Section 4 of the Competition Act

a) MyCC’s first cartel enforcement was in 2012. Non-financial remedies were imposed on the Cameron Highlands Floriculturist Association (“CHFA”) after discovering that members of the CHFA were engaging in an anti-competitive agreement to increase the prices of flowers by ten percent (10%).
b) An enforcement action against a cartel by MyCC which attracted significant media interest is its action against MAS and AirAsia. MAS, AirAsia and AirAsia X entered into a Comprehensive Collaboration Framework (i.e. Collaboration Agreement dated 9 August 2011 (“the Agreement”)) with the purported goal of seeking cost savings and increase in revenues in relation to certain sectors and categories of aviation services. MyCC found both MAS and AirAsia to have infringed Section 4(2) of the Competition Act for market sharing and imposed a financial penalty of RM10 million each on MAS and AirAsia for the four (4) months from the date the Competition Act came into effect up to the time when the two airlines terminated the agreement. However, on 4 February 2016, the Malaysian Competition Appeal Tribunal (“CAT”) unanimously determined that MAS and AirAsia did not infringe Section 4(2) of the Competition Act. In its written judgment, CAT undertook a thorough review of the Agreement and upheld MAS’ and AirAsia’s appeal on three (3) grounds, namely that (i) the Agreement did not have an anti-competitive object; (ii) the Agreement was not implemented; and (iii) MyCC did not establish (and did not even attempt to establish) any link between the Agreement and MAS’ withdrawal of routes. Additionally, MAS and AirAsia had also argued that there was procedural unfairness and that the financial penalties imposed by MyCC were disproportionate and discriminatory in nature. On the former, CAT found that procedural unfairness was not an issue as CAT has the jurisdiction to hear the case afresh. On the latter, CAT did not come to a decision as the appeal was upheld on the aforementioned three (3) grounds. Nevertheless, on 25 July 2016, MyCC obtained High Court leave for a judicial review to reinstate MyCC’s decision which imposed a fine of RM10 million on each of MAS and AirAsia. On 20 December 2018, the High Court ordered the reinstatement of MyCC’s decision.

c) In January 2015, a penalty of RM252,250 was imposed by MyCC on ice manufacturers for price-fixing. Subsequent to that, in February 2015, MyCC took enforcement action against Sibu Confectionary and Bakery Association (“SCBA”). Enterprises who are members of SCBA were found infringing section 4(2) of the Competition Act after they were discovered agreeing to increase the prices of confectionery and bakery products by ten to fifteen percent (10% - 15%) in the Sibu area effective 1 December 2013. Final decision was issued by MyCC with a financial penalty as much as RM247,730 imposed. It is interesting to note from this decision that mere participation without objection to an anti-competitive decision suffices as evidence of participation in an infringing agreement. Three of the members, namely To Eat Bakery Sdn Bhd, Farley Bakery Sdn Bhd and Chung’s Bakery Sdn Bhd, filed an appeal against MyCC’s decision but subsequently withdrew the appeal.

d) In June 2016, MyCC released its final decision against Containerchain (Malaysia) Sdn Bhd (“Containerchain”) and container depot operators (“CDOs”). MyCC held that Containerchain has entered into vertical agreements with the CDOs in the area of Penang Port by way of concerted practices and their conduct has infringed Section 4(1) of the Competition Act. It is worth noting that this is the first MyCC’s decision on an infringement on anti-competitive vertical agreement. MyCC further determined that the CDOs have infringed Section 4(2) of the Competition Act by entering into horizontal agreements to fix the depot gate charges. One of the CDOs, Prompt Dynamics Sdn Bhd, filed an appeal on 29 June 2016 against MyCC’s decision. However, a decision was given by the CAT on 27 February 2017 that the appeal was dismissed.

e) On 22 February 2017, MyCC issued a proposed decision against PIAM and its 22 members for being parties to an alleged anti-competitive
agreement to fix the parts trade discount at 25% for six vehicle makes namely Proton, Perodua, Nissan, Toyota, Honda and Naza and 15% for the Proton Saga BLM model, as well as the labour hourly rate of RM30 per hour for PIAM Approved Repairers Scheme workshops.

f) Most recently in October 2018, MyCC imposed a collective sum of RM33,068.85 on seven (7) tuition and day care centres for infringing Section 4(2) of the Competition Act by collectively agreeing to fix and standardise the fees charged for the tuition and day care services in the SS19 Subang Jaya area. This decision illustrates that MyCC’s enforcement actions are far-reaching regardless of how small an enterprise may be.

g) Apart from findings of infringement of the Competition Act, MyCC also made findings of non-infringement. MyCC found that there was no infringement of section 4 of the Competition Act by Sarawak Restaurants Association, My Egg Consortium Sdn Bhd, the Federation of Stationers and Booksellers Association of Malaysia, Avery Dennison Materials Sdn Bhd, UPM Raflatac Sdn Bhd, Dongwha Fibreboard Sdn Bhd and Evergreen Fibreboard Bhd.

2. Section 10 of the Competition Act

a) One important case in MyCC’s enforcement of section 10 of the Competition Act is its action against Megasteel Sdn Bhd (“Megasteel”). Megasteel was claimed to have abused its dominance and a fine of RM4.5 million was proposed by MyCC on Megasteel. However, on 15 April 2016, MyCC found that there was no infringement of the Competition Act by Megasteel as MyCC came to the conclusion that Megasteel did not abuse its dominant position nor practice margin squeeze. Melewar Industrial Group Berhad, the complainant, appealed to CAT but subsequently withdrew it.

b) The second enforcement on abuse of dominance is MyCC’s decision on My E.G. Services Berhad (“MyEG”). On 24 June 2016, MyCC issued a decision setting out a fine of RM2.272mil against MyEG and MyEG Commerce Sdn Bhd (“MyEG Commerce”) for infringing Section 10 of the Competition Act, i.e. for abusing its dominant position in the market. MyCC has determined that by virtue of their shareholdings and directorships, MyEG and MyEG Commerce is a single economic unit as defined under Section 2 of the Competition Act. This decision came after MyCC issued a proposed decision against MyEG on 6 October 2015 where it proposed to impose a fine of RM307,200. In 2015, MyCC probed MyEG after receiving several complaints from various parties. As a result of the investigations, it was discovered that MyEG had abused its dominant position in its market owing to its management of the online portal for Foreign Worker Permit (“PLKS”) renewals. MyEG was found to have harmed the level of competition in the selling of mandatory insurance policies for online PLKS renewal applications as it was also competing against other insurance companies in the market. MyEG’s wholly-owned unit, MyEG Commerce, was an agent of RHB Insurance Bhd which was selling the mandatory insurance policies. The insurance policies were foreign workers insurance guarantee, foreign workers hospitalisation and surgical scheme and foreign workers compensation scheme. On top of the financial penalty, MyCC also imposed remedial actions on MyEG which included to cease and desist immediately from imposing different conditions on equivalent transactions in the processing of mandatory insurance policies for online PLKS renewal applications. MyEG was also required to provide an efficient gateway for all its competitors in the market for sale of the mandatory insurance policies and allow other competitors to compete at the same level within 60 days from the date of the decision. MyCC also required MyEG to provide an undertaking in the form and manner acceptable to MyCC to be fully compliant with the rules and regulations of
the PIAM within 60 days from the date of the decision. MyEG then filed an appeal on 22 July 2016 against MyCC’s decision. On 28 December 2017, the CAT dismissed MyEG’s and MyEG Commerce’s appeal against MyCC’s decision. The CAT found that MyCC was right to find that MyEG and MyEG Commerce had abused their dominant position within the meaning of Section 10(2)(d)(iii) of the Competition Act. The CAT, in dismissing the appeal, affirmed MyCC’s directions and orders, save for the undertaking to comply with the rules and regulations of PIAM, as MyEG and MyEG Commerce did not fall within the jurisdiction of PIAM. Consequential amendments were also made by CAT to the financial penalty to account for a daily penalty from the date of MyCC’s decision to the date of CAT’s decision. Nevertheless, MyEG has sought a judicial review of the CAT’s decision.

c) In July 2018, MyCC issued a proposed decision against Dagang Net for allegedly abusing its position as a monopoly in the provision of trade facilitation services under the National Single Window, refusing to supply its electronic mailboxes to end users of the Sistem Maklumat Kastam and also imposing barriers to entry to the extent that may harm competition. The proposed financial penalty on Dagang Net is RM17,397,695.30.

3. Undertakings

a) In 2014, MyCC’s enforcement actions against Malaysian Indian Hairdressing Saloon Owners Association (“MIHSOA”) and Pan-Malaysia Lorry Owners Association (“PMLOA”) had resulted in both associations giving their respective undertakings that (i) MIHSOA would stop the fixing of price of haircut services of its members and ensure that each of its members do not engage in any anti-competitive conduct in the future; and (ii) PMLOA would apologise in major newspapers for the anti-competitive behaviour of its members and ensure that its members do not engage in any anti-competitive conduct in the future.

b) Other enforcement actions against cartel where MyCC received undertakings include (i) an action against two major providers of logistic and shipment services by sea for motor vehicles from ports in Peninsular Malaysia to ports in Sabah, Sarawak and Labuan – namely, Giga Shipping Sdn Bhd and Nexus Mega Carries Sdn Bhd where these logistics service providers have given their undertaking that they would stop any exclusive logistics activities and remove any exclusivity clauses in their agreements unless (I) such agreements have been entered or are entered into following open tendering process; and (II) such agreements contain exclusivity clauses which are of a duration of 2 years or less; and (ii) an action against the Malaysia Heavy Construction Equipment Owners’ Association (“MHCEOA”) for increasing machinery rental where MyCC has accepted an undertaking from MHCEOA to cease all anti-competitive activities.

c) On 25 September 2017, MyCC accepted an undertaking from a group of sand operators in Kelantan concerning the alleged fixing of sand prices in Kelantan. The sand operators had on 10 January 2017 issued a price list for sand which MyCC considered to potentially raise competition concerns. These sand operators undertook to rescind the said price list, terminate any other anti-competitive behaviour in relation to the said price list as well as issue a press release of their undertaking to the major newspapers.

4. Investigations

a) In March 2018, Grab announced its acquisition of Uber’s South East Asia operations which spanned across Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. Following the said announcement, a press release was issued by
MyCC indicating that MyCC would be closely monitoring the e-hailing market post-merger activities together with the Land Public Transport Commission to ensure that competition in the e-hailing services is not disrupted by the said merger.

b) In September 2018, MyCC initiated investigations on tyres and beverages companies in Malaysia for possible anti-competitive behaviours. This was following the direction of the MDTCA which was informed of the issuance of price increase notices issued by certain industry players in July and August 2018 prior to the implementation of SST on 1 September 2018. Acting on the direction, MyCC and the enforcement division of MDTCA jointly inspected several tyres companies, followed by inspections by MyCC on related associations.

c) More recently, in December 2018, MyCC has confirmed that it is working closely with the MDTCA to identify any anti-competitive elements that may occur in the domestic market for chicken eggs. Apart from anti-profiteering issues that may have contributed to the rising price of chicken eggs, MyCC is looking into the possibility of anti-competitive behaviour among market players like the existence of price-fixing cartels, market sharing and deliberate limiting of production.
21. Private Healthcare

Healthcare in Malaysia is provided by both the private sector and the public sector. In 2012, as a measure to liberalise the services sector in Malaysia, the Prime Minister announced that 100% foreign shareholding would be allowed for private hospitals. All private facilities in Malaysia are required to be licensed under the Private Healthcare Facilities and Services Act 1998 ("PHFS") and Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006 ("PHFS Regulations"). The two main institutions involved in regulating private facilities are the Ministry of Health ("MOH") and the local municipal authority of the location of the hospital.

A. Regulation of Healthcare Professionals

Persons intending to set up private practices in medical and healthcare services are required to fulfil the necessary licensing conditions specified by the respective licensing authorities of the accredited professional services. This is important to ensure that only competent professionals with recognised qualifications get into the system. The licensing conditions briefly tabulated are as follows:

<table>
<thead>
<tr>
<th>Professions</th>
<th>Act &amp; Regulations</th>
<th>Regulators</th>
<th>Licensing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Practitioner (Doctors) &amp; Specialists</td>
<td>Medical Act 1971 &amp; Medical Regulations 2017</td>
<td>Malaysian Medical Council</td>
<td>Registration &amp; Annual Practicing Certificate</td>
</tr>
<tr>
<td>Nurses</td>
<td>Nurses Act 1950 &amp; Nurses Registration Regulations 1985</td>
<td>Malaysia Nursing Board</td>
<td>Registration &amp; Annual Practicing Certificate</td>
</tr>
<tr>
<td>Midwives</td>
<td>Midwives Act 1966 &amp; Midwives Regulations 1990</td>
<td>Malaysia Midwife Board</td>
<td>Registration &amp; Annual Practicing Certificate</td>
</tr>
<tr>
<td>Pharmacists</td>
<td>Registration of Pharmacists Act 1951 &amp; Registration of Pharmacists Regulations 2004</td>
<td>Malaysia Pharmacy Board</td>
<td>Certification of Registration &amp; Annual Retention of Registration</td>
</tr>
<tr>
<td>Medical Assistants</td>
<td>Medical Assistants (Registration) Act 1977 &amp; Medical Assistants (Registration) Regulations 1979</td>
<td>Medical Assistants (Registration) Board</td>
<td>Annual Certificate of Registration</td>
</tr>
</tbody>
</table>

These healthcare professionals are required to be registered formally with the respective licensing authorities.
authorities and apply for a practicing licence, which needs to be renewed annually.

Apart from the above, in the event that these professionals intend to set up a medical and health care practice, they are required to register with the CCM under the Registration of Business Act 1956 or incorporate a company under the CA 2016.

B. Establishing a Private Hospital

**PHFS and PHFS Regulations**

In order to establish and operate a private hospital in Malaysia, a person or company will need to obtain an approval ("Approval") and licence ("Licence") from the Director General of Health ("Director General"). These requirements are provided under Sections 3 and 14 of the PHFS respectively. The approval and licence may only be issued to

- a sole proprietor who is a registered medical practitioner;
- a partnership which consists of at least one partner who is a registered medical practitioner; or
- a body corporate whose board of directors consists of at least one person who is a registered medical practitioner.

In determining whether to grant the Approval or not, the Director General will take into consideration the following matters:

- the nature of the healthcare facility or service to be provided;
- the extent to which the healthcare facilities or services are already available in an area;
- the need for the healthcare facility or service in an area;
- the future need for the healthcare facility or service in an area; or
- any other matter which in his opinion is relevant.

Once an Approval has been secured, an application for a Licence must be made within 3 years from the date of the issuance of the Approval, failing which the Approval will be deemed to have been revoked. In order to qualify for the Licence, the private hospital has to meet all the regulatory requirements prescribed in the PHFS and the PHFS Regulations. These provide for the licensing of private hospitals and other private healthcare facilities to ensure that the minimum acceptable standards are complied with. Among other things that are provided in the PHFS Regulations are that all private hospitals need to have a plan of organisation outlining the staff and practitioners in the facility and the chain of command and the Person-In-Charge is responsible for the employment of qualified healthcare professionals including foreigners registered under the law and recognised by the Director General.

C. PHARMACEUTICAL INDUSTRY IN MALAYSIA

1. Overview of the Pharmaceutical Industry in Malaysia

One of the important components of the healthcare sector in Malaysia is the pharmaceutical industry. The pharmaceutical industry in Malaysia has been identified by the Malaysian government as an industry to be developed and promoted. Besides that, Malaysia is a member of Pharmaceutical Inspection Co-operation Scheme ("PIC/S") since January 2002. What this means is that the manufacturers are required to be in compliance with the high standards of the Good Manufacturing Practices requirements. Since being admitted as a

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37 Section 6 of PHFS
38 Section 9 of PHFS
39 Regulation 11 of PHFS Regulations
40 Regulation 13 of PHFS Regulations
member of the PIC/S, our exports of pharmaceutical products have increased, especially among the member countries such as Canada, Australia and the EU. In 2014, income generated from pharmaceutical export grew 9%, surpassing the 5% growth target.

Generally, pharmaceutical products can be classified as:

a) New Drug Products;
b) Biologics;
c) Generics (i.e. controlled medicine or over the counter medicine);
d) Health supplements; and
e) Natural Products (i.e. traditional medicine, finished herbal product, herbal remedy, homeopathic medicine).

2. Regulatory Requirements

In Malaysia, the DCA of the MOH is responsible to regulate the production, importation and sale of pharmaceutical products in Malaysia. All manufacturers, importers and wholesalers are required to be licensed by the DCA. The National Pharmaceutical Regulatory Agency (“NPRA”) acts as the secretariat to DCA. NPRA’s main roles and functions is to develop and implement regulations concerning the quality, safety and efficacy of drugs.

3. Pharmacy Legislative: Existing Laws

Main legislations that currently govern the pharmaceutical industry in Malaysia are as follows:

a) Registration of Pharmacists Act 1951. This Act governs the establishment of a Pharmacy Board and the registration of pharmacists.
b) Poisons Act 1952. This Act regulates the importation, possession, manufacture, compounding, storage, transport, sale and use of poisons.
c) Medicines (Advertisement and Sale) Act 1956. This Act prohibits certain advertisements relating to medical matters and regulates the sale of substances recommended as medicine.
d) Sale of Drugs Act 1952. This Act regulates the sale of drugs.

D. AGED CARE INDUSTRY IN MALAYSIA

In an effort to increase the standards within the aged care industry, the Private Aged Healthcare Facilities and Services Act 2018 (“PAHFAS”) and the Care Centres (Amendment) Act 2018 (“CCA”) were gazetted in March 2018 and will come into force on a date to be appointed by the MOH.

Under the PAHFAS and CCA, there is a distinction between regulations which are applicable to centres providing care to those below 60 and to aged persons (i.e. persons 60 years old or above). PAHFAS regulates centres providing care to aged persons, which are noticeably more stringent. Meanwhile, CCA imposes regulations on centres providing care to those below 60.

Pursuant to section 4(1) of the PAHFAS, in order to provide healthcare facilities and services to 4 or more aged persons, individuals are required to obtain a pre-approval and an operating license from the Director General of Health.

The PAHFAS contains a transitional provision that allows a care centre registered under the CCA which provides care to 4 or more aged persons to be deemed to have been licensed under the PAHFAS for a limited period of 5 years from the date of coming into operation of the PAHFAS. The operator of such care centre must within the 5 years period, apply for an approval and a licence under the PAHFAS. Failure to do so may attract liability of:

a) for an individual, a fine of up to RM30,000; or
b) for a body corporate, partnership or society, a fine of up to RM100,000.\textsuperscript{41}

Under the PAHFAS, a licensee must:

a) ensure that the healthcare professions employed or engaged are qualified under the relevant law regulating their profession;

b) ensure that the caregivers are trained and competent;

c) ensure that the assessment of a care recipient are carried out by a healthcare professional;

d) ensure that arrangements are made for a healthcare professional to be available at the facilities and services;

e) ensure that the facilities and services is managed by a person in charge;

f) submit an annual report on the facilities and services to the Director General of Health in such form and manner as the Director General of Health will determine; and

g) perform other duties and responsibilities as the Director General of Health will determine.\textsuperscript{42}

E. Equity Policy

The MOH has the discretion to impose restrictions on foreign equity participation in private healthcare facilities. These restrictions are imposed in the form of conditions in the licences or registration approvals. For private hospitals, the present policy is that new facilities are allowed to be 100% foreign owned, but foreign participation is not allowed for existing facilities.

F. Employment of Foreigners

1. Employment of Foreign Medical Practitioners

Under section 16(1) of the Medical Act 1971, a temporary practicing certificate may be issued to foreign medical practitioners who intend to teach, do research, or pursue a post graduate course or clinical attachment in Malaysia. The temporary practicing certificate is not to be used for employment purposes.

Based on the Registration Procedures and Guidelines issued by the Malaysian Medical Council, the applicant may be required by the Evaluation Committee of the Malaysian Medical Council to work initially in an approved practice setting such as a health care facility which has systems for the effective management of practitioners, systems for identifying and acting upon concerns about practitioners’ fitness to practice, systems to support the provision of relevant teaching or continuing professional development, and systems for providing regulatory assurance.

A temporary practicing certificate that is issued to practitioners for teaching purposes shall be limited to the duration applied for and shall not exceed six weeks. A temporary practicing certificate issued to practitioners who intend to pursue a post-graduate course shall not exceed three months. If the applicant intends to enrol in post-graduate courses at local universities for more than three months, the applicant must apply for full registration for the duration of the course. At all times, there has to be a registered medical practitioner with a valid annual practicing certificate that will be responsible for the applicant.

\textsuperscript{41} Section 53 of PAHFAS.

\textsuperscript{42} Section 20 of PAHFAS
Under section 16(5) of the Medical Act 1971, any foreign medical practitioner that practices without a temporary practicing certificate under section 16(1) commits an offence and shall, on conviction be liable:

a) in respect of a first offence, to a fine not exceeding RM10,000; and

b) in respect of a second or subsequent offence, to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding 6 months or to both.

In the case of a continuing offence, such person shall be liable to a further penalty of RM100 for each day during which the offence continues in addition to the penalty under section 16(5)(a) and (b).

2. Employment of Foreign Pharmacist

Under section 11A of the Registration of Pharmacists Act 1951 ("RPA"), a temporary practicing certificate may be issued to foreign pharmacist intending to practise as a professional pharmacist in Malaysia.

The Pharmacy Board of Malaysia ("PBM") has set the following pre-requisites for registration:

a) the applicant must hold a bachelor’s degree qualification from an approved institution as listed in Schedule 1 of the RPA;

b) the applicant must be a fully certified pharmacist in his or her country of origin; and

c) the applicant is required to pass a qualifying examination by PBM.

In granting a certificate, PBM will take into consideration the applicant’s immigration documents. PBM will only grant temporary certificates in cases where the foreigner is:

a) the spouse of a Malaysian citizen;

b) the spouse of an expatriate holding an employment pass in Malaysia; or

c) holding a PhD in Pharmacology related field and has received an employment offer in Malaysia.

The validity period of the certificate will depend on the applicant’s immigration document and will be subjected to annual renewals. It should also be noted that applicants may be exempted from the 1 year internship requirement under section 6A of RPA and the compulsory public service required under section 11C of the same Act.

G. Tax Incentive for Healthcare Industry

With the view of expanding Malaysia's potential to be a hub for medical tourism in the region and to further stimulate its growth, companies establishing new private healthcare facilities or existing private healthcare facilities undertaking expansion, modernisation or refurbishment to promote healthcare travel can apply for an Income Tax Exemption equivalent to Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years. The allowance can be used to offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. For purposes of this incentive, private healthcare facilities means private hospitals or ambulatory care centres. This incentive is applicable for applications received by MIDA from 1 January 2015 to 31 December 2020.43

At the moment, the manufacture of pharmaceuticals, biopharmaceuticals, nutraceuticals, microbials and probiotics are also eligible for Pioneer Status with income tax exemption of 70% of statutory income for a period of 5 years; or Investment Tax Allowance

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43 Guidelines on Application For Tax Incentive For the Promotion of Healthcare Travel by the Malaysian Investment Development Authority, published on 8th February 2018
incentives of 60% on qualifying capital expenditure incurred for a period of 5 years (to be offset against 70% statutory income for each assessment year); or Reinvestment Allowance of 60% on qualifying capital expenditure (to be offset against 70% statutory income) for 15 consecutive years. The development, testing and production of pharmaceuticals promoted under biotechnology are eligible for High Technology Pioneer Status with full income tax exemption on statutory income for 5 years or Investment Tax Allowance incentives of 60% on qualifying capital expenditure incurred for 5 years (to be offset against 100% of statutory income for each assessment year). Other incentives available for the pharmaceutical industry includes, incentives for Strategic Projects, Research & Development, Automation Capital Allowance Expenditure and Principal Hub.  

44 Guide on Pharmaceutical Industry in Malaysia by the Malaysian Investment Development Authority, published on October 2018
22. Private Higher Education Institutions

Private higher education institutions ("PHEI") in Malaysia are governed by the Private Higher Educational Institutions Act 1996 ("PHEI 1996") under the jurisdiction of the Ministry of Higher Education ("MOE"). The Act facilitates the establishment of private colleges, universities, university college and foreign branch campus in Malaysia.

Under the PHEI 1996, approval must be obtained from the MOE before a PHEI can be set up or before any courses can be offered by the PHEI. In addition, the courses offered by the PHEI must be endorsed by the national quality assurance agency, MQA.

There are four stages in starting a PHEI business in Malaysia namely:

a) Company / PHEI establishment;
b) Pre-operational registration;
c) Operational approvals; and
d) Additional approvals.

A. Establishment of PHEI

Under Section 6 of the PHEI 1996, prior approval of the MOE shall be obtained before a PHEI may be established and maintained. An application for approval shall be made to the Registrar General of PHEI ("Registrar General"). Section 21 of the PHEI 1996 further states that for the establishment of a PHEI with the status of a University or University College or a branch campus thereof or a branch campus of a foreign University or University College, prior approval of the MOE shall be obtained. It is also important to note that only applications from companies registered with the CCM are accepted. In the event the successful applicant is not a locally incorporated company, the applicant shall within one year from being notified of the approval, incorporate a company locally.

Upon being granted an approval, the applicant shall ensure that:

a) its issued and paid up capital shall be of an amount as determined by the MOE;

b) its equity participation and composition of the board of directors shall be as determined by the MOE; and
c) the sole object of the applicant's Constitution shall be to establish and manage PHEI and shall contain provisions for such matters as may be described.

If the successful applicant is a company limited by guarantee, the applicant shall ensure that:

a) its initial fund shall be of an amount as determined by the MOE;

b) the source of its initial fund to be disclosed to and approved by the MOE;

c) its composition of the board of directors shall be as determined by MOE; and

d) the sole object of the applicant's Constitution shall be to establish and manage PHEI and shall contain provisions for such matters as may be described.

In addition, PHEI requires the recommendation from the MQA in order to receive approval to conduct courses. Approval from the MOE would be given upon receipt of MQA’s recommendation.

Therefore, at this stage, the following certificates and approvals are required:

<table>
<thead>
<tr>
<th>No.</th>
<th>Certificates/Approvals</th>
<th>Issuing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Notice of Incorporation</td>
<td>CCM</td>
</tr>
<tr>
<td>2.</td>
<td>Approval for the establishment of the PHEI with the status of University or University College or branch campus thereof or a branch campus of a foreign University or University College</td>
<td>MOE</td>
</tr>
<tr>
<td></td>
<td>Approval for the establishment of the PHEI without the status of University or University College or branch campus thereof or a branch campus of a foreign University or University College</td>
<td>MOE</td>
</tr>
<tr>
<td>3.</td>
<td>Approval for draft PHEI Constitution</td>
<td>MOE</td>
</tr>
</tbody>
</table>

1. Issued and Paid-up Capital

The applicant must ensure that, amongst others, its issued and paid-up capital shall be of an amount as determined by the MOE. Regulation 7 of Private Higher Educational Institutions (Establishment) Regulations 1997 provides that the issued and paid-up capital of the company shall not be less than Ringgit Malaysia Two Hundred Thousand (RM200,000.00). The prescribed issued and paid up capital for the different types of PHEI are as follows:

<table>
<thead>
<tr>
<th>Institution</th>
<th>Prescribed issued and paid-up capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>College</td>
<td>RM1,000,000.00</td>
</tr>
<tr>
<td>University College</td>
<td>RM15,000,000.00</td>
</tr>
<tr>
<td>University</td>
<td>RM20,000,000.00</td>
</tr>
</tbody>
</table>

2. Equity Conditions

Generally, the minimum Bumiputera shareholding required for the establishment of a PHEI with Colleges is 30%. Whereas for the establishment of University, University College and Foreign Branch Campus, there is no such minimum Bumiputera shareholding requirement. Instead, 100% foreign ownership is permitted.

3. Other Requirements

An applicant must also comply with the prescribed requirements set out in Regulation 5 of the Private Higher Educational Institutions (Establishment) Regulations 1997 as follows:

a) the applicant is capable of preparing the site, location and premises with communication facilities;
b) the applicant has the appropriate experience in education or an excellent performance record;

c) the applicant is capable of providing qualified and experienced teachers in the relevant fields;

d) the applicant has a strong financial position and is capable of providing good financial management; and

e) the applicant is capable of conducting courses of study or training programmes individually or in affiliation, association, or collaboration with any University or University Colleges, higher educational institutions, whether private or public, or professional bodies within or outside Malaysia.

B. Registration of PHEI

Once the MOE has granted its approval for the establishment of a PHEI, the applicant is then required to register the PHEI. An application for registration shall be made to the Registrar General within three years from the date of approval for the establishment of the PHEI. This duration is provided to allow the applicant to prepare and equip themselves with the necessary resources including facilities to start operating the PHEI. It is necessary for registration to be done within this three year period, failing which the approval granted for its establishment shall be deemed to have been withdrawn unless an extension of time is granted by MOE.

Generally, the applicant is required to secure the following specific approval, licences, certificates and permits:

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of Licences / Approvals / Certificates / Permits</th>
<th>Issuing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Certificate of Registration</td>
<td>MOE</td>
</tr>
<tr>
<td>2.</td>
<td>Registration of Chief Executive PHEI</td>
<td>MOE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of Licences / Approvals / Certificates / Permits</th>
<th>Issuing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Premise Licence</td>
<td>Respective Local Authorities</td>
</tr>
<tr>
<td></td>
<td>Note: the PHEI provider is also required to comply with the requirements in relation to the PHEI premises set out in the PHEI 1996 and Regulations.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Advertisement Licence</td>
<td>Respective Local Authorities</td>
</tr>
<tr>
<td></td>
<td>Note: the PHEI provider is also required to comply with the requirements in relation to advertisement as set out in the PHEI 1996 and Regulations.</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Teaching Permit (for local teaching staff)</td>
<td>MOE</td>
</tr>
<tr>
<td>6.</td>
<td>Teaching Permit (for foreign teaching staff)</td>
<td>Immigration Department of Malaysia</td>
</tr>
<tr>
<td></td>
<td>Note: The application for an employment pass for a foreign teacher/lecturer shall be submitted to MOE for its recommendation to the Immigration Department of Malaysia.</td>
<td></td>
</tr>
</tbody>
</table>

C. Operational Approvals

PHEI providers which have been given Provisional Accreditation are required to apply for Full Accreditation prior to the expiry of the validity period specified in the Certificate of Provisional Accreditation.

Private Higher Educational Institutions (Conducting Courses of Study) Regulations 1997 requires any application to conduct courses shall be submitted to the Registrar General in the prescribed Forms A & B, and a copy to the Chief Executive of the National Accreditation Board ("LAN") not later than six months before the proposed course of study or additional course of study commences. The conditions for approval of such an application are as follows:
a. the course shall be taught only in the registered premises of the private higher educational institution;
b. complete and up-to-date facilities shall be provided for the purpose of teaching and learning the course of study; and
c. sufficient qualified and experienced teachers shall be provided to conduct the course of study. Other conditions may be imposed by the Minister.

If the Registrar General is not satisfied with the application on the courses of study or training programmes, he has the right to refuse to grant such approval, and an applicant who is aggrieved by such a decision, may appeal in writing to the Minister within 21 days from being notified of the decision appealed against.

The MQA is the successor agency to the LAN and is responsible for quality assurance of higher education for both the public and the private sectors. In general, MQA assures the quality of programs through two distinct processes namely Provisional Accreditation and Full Accreditation.

1. **Provisional Accreditation**

Provisional Accreditation is an exercise to determine whether a program has met the minimum quality requirements preliminary to Full Accreditation. The minimum quality requirements consist of nine areas of evaluation that have to be met by a PHEI provider. However, these nine areas will be adjusted accordingly to fit the PHEI provider distinct purposes. The minimum quality requirements cover the following areas:

a) Vision, mission, educational goals and learning outcomes;
b) Curriculum design and delivery;
c) Assessment of students;
d) Student selection and support services;
e) Academic staff;
f) Educational resources;
g) Program monitoring and review;
h) Leadership, governance and administration; and

i) Continual quality improvement.

Section 38 of the Malaysian Qualifications Agency (“MQA”) Act 2007 provides that an application by a higher education provider for the provisional accreditation of its program or qualification shall be made to the MQA. The MQA may conduct an institutional audit for the purpose of considering such application. Certificate of Provisional Accreditation issued by the MQA shall specify the period within which the higher education provider shall apply for accreditation.

2. **Full Accreditation**

Full Accreditation is an assessment exercise to ascertain that the teaching, learning and all other related activities of a program provided by a higher education provider has met the quality standards and in compliance with the Malaysia Qualifications Framework (“MQF”). Application for the accreditation of programme or qualification which complies with the MQF shall be made to the MQA. The MQA may also conduct an institutional audit for the purpose of considering such application.

The MQF has eight levels of qualifications, namely Certificate Level 1-3, Diploma, Advanced Diploma, Bachelors, Masters and Doctoral:

<table>
<thead>
<tr>
<th>Level 1 – 3</th>
<th>Level 4 – 5</th>
<th>Level 6 – 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levels 1 to 3 are Skill Certificates, Vocational and Technical Certificates as well as Certificates awarded by the Higher Education Sector are at Level 3.</td>
<td>Levels 4 and 5 are Diplomas and Advanced Diplomas (General Degree) respectively, awarded by the Technical and Vocational Sector, the Skills Sector and the Higher Education Sector.</td>
<td>Level 6 is for Bachelor’s Degree with Honours while Level 7 is for Master’s Degrees and Level 8 for PhD / Doctoral Degrees.</td>
</tr>
</tbody>
</table>

In the event the MQA grants the application, a certificate of accreditation will be issued to the higher education provider and the certificate of
accréditation shall specify the program and state the premises in which the program shall be conducted or facilitated.

D. Additional Approvals

Any proposal to change or add to existing practice, operation or environment of a PHEI would require additional approvals from the MOE in order to ensure that the standards and regulations are continuously complied with.

Generally, a PHEI provider may apply for the following approvals depending on the number of academic activities intended to be provided by the PHEI:

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of Approvals</th>
<th>Issuing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Approval to conduct additional courses</td>
<td>MOE</td>
</tr>
<tr>
<td>2.</td>
<td>Approval of amendment of courses requirement</td>
<td>MOE</td>
</tr>
<tr>
<td>3.</td>
<td>Approval for fees increase</td>
<td>MOE</td>
</tr>
<tr>
<td>4.</td>
<td>Approval of change of PHEI’s name</td>
<td>MOE</td>
</tr>
<tr>
<td>5.</td>
<td>Approval of change in Company’s issued and paid-up capital</td>
<td>MOE</td>
</tr>
<tr>
<td>6.</td>
<td>Approval of change of/addition to/renovation of premise</td>
<td>MOE</td>
</tr>
<tr>
<td>7.</td>
<td>Recommendation by MOE for recruitment of international students</td>
<td>MOE</td>
</tr>
<tr>
<td>8.</td>
<td>Approval for recruitment of international students</td>
<td>Ministry of Home Affairs (Immigration Department)</td>
</tr>
<tr>
<td>9.</td>
<td>Application for extension of period for teaching permit of local and foreign teaching staff</td>
<td>MOE</td>
</tr>
<tr>
<td>10.</td>
<td>Approval to sell/dispose/reconstruct the business of PHEI relating to education</td>
<td>MOE</td>
</tr>
</tbody>
</table>

E. Applications for Establishment of PHEI as at July 2017

On 1 February 2013, MOE implemented a moratorium on the establishment of new PHEI with the status of universities, university colleges and colleges. Initially, the moratorium was effective for a period of 2 years from 1 February 2013 until 31 January 2015. Due to positive developments that supported the objectives of the moratorium, particularly on the quality and sustainability of PHEI, the Government decided that the moratorium would be extended until December 2020. The objectives of the moratorium are as follows:

a) to prevent an excess supply of over demand in the PHEI sector;

b) to focus on the rationalisation of the private higher education sector by means of mergers and acquisitions, collaborations or restructuring of a PHEI; and

c) to focus on the improvement of the quality of existing study programs and PHEI.

However, exemptions to the moratorium may be considered in the following circumstances:

a) applications for the upgrading of a PHEI;

b) the establishment of the foreign branch campus of a University that rates among the top 100 in the international rankings;

c) the establishment of a PHEI in the development area of Pagoh and Iskandar Malaysia, Johor.
23. Insurance

In Malaysia (excluding Labuan), the insurance business is divided into conventional insurance and takaful (insurance based on Islamic principles). Conventional insurance is regulated under the Financial Services Act 2013 ("FSA"), which is a consolidation of the now repealed Banking and Financial Institutions Act 1989, Payment Systems Act 2003, Insurance Act 1996 and Exchange Control Act 1953. On the other hand, takaful is regulated by the Islamic Financial Services Act 2013 ("IFSA"), which consolidated the repealed Islamic Banking Act 1983 and the Takaful Act 1984. The IFSA applies to the takaful industry, which is the Islamic equivalent of conventional insurance.

A. Licensing requirements

BNM is the main regulatory authority for the insurance and takaful industry in Malaysia. BNM wields a wide range of powers in the insurance and takaful industry, including regulating insurance and takaful business, insurance broking business, adjusting business and financial advisory business. Insurers and takaful operators are required to hold a valid licence issued by the Ministry of Finance on the recommendation of BNM. The carrying on of an insurance broking business or financial advisory business requires the approval of BNM while an adjusting business is required to be registered with BNM. The current policy is that BNM does not intend to issue any new licences for conventional insurance or a takaful operator. Nevertheless, interested persons may explore the option of partnership with the existing licence holders.

B. Classification of insurance business

In general, conventional insurance business is divided into two classes under the FSA:

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

b) general business — all insurance business which is not life business.

Under the IFSA, takaful is divided into family takaful business and general takaful business, which are the Islamic equivalents of life business and general business.

Carrying on insurance business includes the activity of: (i) effecting a contract of business; or (ii) carrying out a contract of insurance by way of business. A person is deemed to effect, or carry out, a contract of insurance by way of business if he: (a) engages in such activity in a manner which in itself constitutes the carrying on of a business; (b) holds himself out as willing and able to engage in such activity; or (c) regularly solicits other persons to engage with him in
transactions constituting such activity. A reference to carrying on insurance business includes carrying it on through an agent, or as an agent, but “insurer” does not include an insurance agent as such or, in the case of a person who is both insurer and insurance agent, any business done by that person as an insurance agent.

Licensed insurers (excluding reinsurers) are not allowed to carry on both life business and general business under a single entity under the FSA. Similar provisions with regard to single takaful business which applies to licensed takaful operators (excluding retakaful operators) can also be found in the IFSA.

C. Form of establishment and prudential requirements

The FSA and IFSA provide that only a public company can be licensed to carry on an insurance business or takaful, with the exception of professional reinsurers and professional retakaful operators which do not need to be a public company. Under the IFSA, a licensed takaful operator which is a private company must be converted into a public company within 12 months from the appointed date or such longer period as may be specified by the MOF, on the recommendation of BNM. The FSA and IFSA empower BNM to specify standards on prudential matters to promote the sound financial position of an institution or to promote the integrity, professionalism and expertise in the conduct of the business, affairs and activities of an institution.

The standards that may be specified include standards relating to:

a) capital adequacy;

b) liquidity;

c) corporate governance;

d) risk management;

e) related party transactions;

f) maintenance of reserve funds;

g) insurance/takaful funds; and

h) prevention of an institution from being used, intentionally or unintentionally for criminal activities.

Every institution must have a chief executive officer (“CEO”) at all times. Further, the CEO must have a principal place of residence within Malaysia and devote the whole of his/her professional time to the service of the institution. The chairman, director, CEO or senior officer of the institution must be an individual, not disqualified under the FSA and complies with the fit and proper requirements as prescribed by BNM.

A licensed insurer must appoint an actuary in respect of a life or general business it carries. Further, a licensed insurer must establish and maintain one or more insurance funds for any class or description of its insurance business as may be specified by BNM. A licensed life insurer must also establish and maintain a separate insurance fund for its life insurance business relating to participating life policies. The same requirements also apply to licensed takaful operators.

D. Regulation of Shareholding

The FSA and IFSA stipulate the circumstances where the prior written approval of the MOF or BNM are required for the acquisition of interest in shares that exceeds the prescribed limit or results in a change in control of a licensed insurer or takaful operator.

The FSA and IFSA require a person to obtain BNM’s prior approval before entering into an agreement to acquire an interest in shares which would result in him holding an aggregate interest of 5% or more shares in a licensed insurer or takaful operator.

A person shall also obtain BNM’s approval before entering into an agreement to acquire an interest in shares which would result in him holding an
aggregate interest in shares of more than 50% of the interest in shares of a licensed insurer or takaful operator.

Further, a person shall also obtain BNM's approval before entering into an agreement to acquire an interest in shares which would result in him holding an aggregate interest in shares of a licensed insurer or takaful operator, exceeding any multiple of 5% or the percentage of holding that triggers a mandatory offer under the Malaysian Code on Take-overs and Mergers, i.e. 33%.

The FSA and IFSA also introduce the concept of a “financial holding company” where any company which holds an aggregate of interest in shares of more than 50% in a licensed insurance or takaful operator is required to submit an application to BNM to be approved as a financial holding company. Unless otherwise approved, a financial holding company of a licensed insurer or takaful operator shall not carry on any business, other than the business of holding investments in corporations which are primarily engaged in financial services.

Under the FSA and IFSA, the maximum permissible interest in shares that may be held by an individual in a licensed insurer or takaful operator is 10%. Such requirement in the IFSA may be waived by BNM if BNM is satisfied that this would not result in the individual having the power to exercise control over the takaful operator and such individual has given a written undertaking not to exercise control over the takaful operator. Such waiver is not provided for in the FSA.

"Interest in shares" is defined in the FSA and IFSA to include both direct and effective interests. For purposes of determining the interests held, the FSA and IFSA require a person's interest in shares to be aggregated. In other words, the interest held by the person's spouse, children, family corporation and persons acting in concert with him shall be taken into account when computing the interests held.

E. Foreign Equity Limits

Generally, there is a maximum limit of 70% on foreign equity participation in insurance companies and takaful operators. However, a higher foreign equity limit may be considered by the BNM on a case by case basis for players who can facilitate consolidation and rationalisation of the insurance and takaful industry.

F. Business conduct and consumer protection

BNM may specify standards on business conduct to a licensed insurer for the purposes of ensuring that the licensed insurer is fair, responsible and professional when dealing with financial consumers. A financial consumer means any person who uses the insurance product for personal, domestic or household purposes or in connection with a small business, as specified by BNM. These standards may include standards relating to:

a) transparency and disclosure requirements, including the provision of information to financial consumers that is accurate, clear, timely and not misleading;

b) fairness of terms in a financial consumer contract for financial services or products;

c) promotion of financial services or products;

d) provision of recommendations or advice including assessments of suitability and affordability of financial services or products offered to financial consumers; and

e) complaints and dispute resolution mechanisms.

The FSA and IFSA provide a list of prohibited business conduct. This list includes among other things:

a) engaging in conduct that is misleading or deceptive in relation to the nature, features,
terms or prices of any financial service or product;

b) inducing a financial consumer to do an act or omit to do an act in relation to the any financial service or product by:

i. making or recklessly making a statement, illustration, promise, forecast or comparison that is false, misleading or deceptive; or

ii. dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or

c) exerting due pressure, influence in relation to the provision of any financial service or product to a financial consumer;

d) demanding payments from a financial consumer in any manner for unsolicited financial services or products;

e) colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer.

Both the FSA and IFSA contain several provisions on consumer protection, these provisions laid down the requirements in relation to pre-contractual duty of disclosure, representations, and remedies for misrepresentations for insurance and takaful contracts. The FSA and IFSA also set out the provisions relating to insurance policies and takaful certificates. BNM also prohibits a person from entering into a general insurance contract with an insurer other than a licensed general insurer licensed by the BNM, unless with the prior approval from the BNM.

Further, an insurer is required to have an express provision in its policies informing its customer of a cooling-off period. A cooling-off period allows the customer to terminate a life policy within a specified period and obtain a full refund of money paid.

The Guidelines on Product Transparency and Disclosure issued by the BNM provides that general insurance products can be cancelled by the customer at any time by giving a written notice to the insurer. Upon cancellation, the customer is entitled to a refund of the premium, based on short period rates. Any expense incurred by the insurance company could be deducted from the premium paid.

In addition, Paragraph 2 of Schedule 8 of the FSA gives a policy owner the right to return a life policy to the insurer within 15 days from the date of delivery of the life policy. Upon return of the life policy, the insurer must immediately refund the premium, subject only to the deduction of expenses incurred for the medical expenses of the policy owner.

G. Risk-Based Capital Framework

The BNM has issued Risk-Based Capital Framework for Insurers and Risk-Based Capital Framework for Takaful Operators (the “RBC Framework”) to ensure that each insurer and takaful operator maintains a capital adequacy level that is commensurate with its risk profile. The RBC Framework applies to all insurers, takaful operators, including reinsurers and retakaful operators, licensed by the BNM, for businesses generated from within and outside Malaysia.

The RBC Framework sets out the requirements applicable to each insurer and takaful operator to determine the adequacy of the capital available in its insurance and shareholders’ funds to support the Total Capital Required (“TCR”). The RBC Framework also sets out the formula for computation of Capital Adequacy Ratio (“CAR”) which serves as key indicator of the insurer’s financial resilience and its ability to support the insurance business and will be used as an input to determine the appropriate level of supervisory intervention by the BNM.

H. Outsourcing

Licensed insurers are allowed to outsource various business activities, functions and processes; however, such arrangements can also potentially increase the risk profile of an insurer as a result of the increased dependence on third parties,
particularly where the outsourced activities are critical to the insurer’s ongoing viability and ability to meet its obligations to policy holders.

The BNM has recently on 28 December 2018 issued a Policy Document on Outsourcing (“Outsourcing Guidelines”) which came into force on 1 January 2019, following an Exposure Draft on Outsourcing previously issued by BNM on 27 September 2017. The Outsourcing Guidelines govern all outsourcing arrangements of a licensed insurer to a third party. The Outsourcing Guidelines set out the minimum expectations of BNM for insurers that outsource, or plan to outsource, any of its business activities, functions or processes, particularly in light of changing business models and greater adoption of technology within the insurance sector.

For example, the Outsourcing Guidelines set out requirements on minimum information to be provided in outsourcing arrangements, prescribe requirements regarding the role of board and senior management and increase the prescribed minimum requirements for due diligence carried out on service providers.

It is interesting to note that where an outsourcing arrangement involves a cloud service provider, insurers are required to take effective measures to address potential risks associated with data accessibility, confidentiality, integrity, sovereignty, and recoverability.

Insurers are now required to submit an outsourcing plan (approved by its board) to BNM within 3 months following the insurers’ financial year end. An outsourcing plan should include, amongst others, details on all planned outsourcing arrangements (both new and renewal of existing arrangements) for the following financial year and information regarding each planned outsourcing arrangement (such as description of the outsourced activity and location of where the outsourced service is undertaken).

Furthermore, insurers will need to perform a gap analysis of all existing outsourcing arrangements against the requirements prescribed in the Outsourcing Guidelines, as well as maintaining a register of all outsourcing arrangements. The abovementioned outsourcing plans, gap analysis reports and the maintenance of a register of outsourcing arrangements must be submitted to BNM by 1 July 2019. It is also important to note that insurers are expected to comply with all requirements under the Outsourcing Guidelines by 1 July 2022.

Generally, an outsourcing arrangement is considered material if, in the event of a service failure or security breach, has the potential to significantly impact the insurer’s provision of services to its customers, business operations, financial position, reputation, or compliance with applicable laws and regulatory requirements; or if it involves customer information and in the event of unauthorised access, disclosure or modification, or loss or theft of the information, has a material impact on its customer or the insurer itself.

An insurer is also required to obtain BNM’s approval before entering into any material outsourcing arrangements or making a significant modification to an existing material outsourcing arrangement.

I. Winding up

A licensed insurer or takaful operator may not be wound up voluntarily without obtaining the prior approval of BNM. In the event of a winding up of a licensed insurer, the assets of an insurance fund must be applied to meet its liabilities to policy owners and claimants under policies of that fund and these liabilities shall have priority over unsecured liabilities of that fund, to the extent that they are apportioned to the insurance fund. However, the preferential debts such as remuneration of liquidators, wages and salary of employees, worker’s compensation and taxes (as provided in Section 527(1) of the CA 2016), and debts due and owing to the Malaysian Government still maintain priority over the assets of
the insurance fund in such instance. Similar provisions can also be found in the IFSA for winding up of a licensed takaful operator.

J. Recent changes

1. Surveillance of non-bank financial institutions

As of 26 January 2016, BNM undertakes surveillance on significant non-bank financial institutions that have important interlinkages with the financial system. This is supported by the establishment of the Financial Stability Executive Committee (“FSEC”) under the Central Bank of Malaysia Act 2009 which is chaired by the Governor and whose members include the Secretary General of the Treasury, the Chairman of the Malaysia Securities Commission, the Chief Executive Officer of the Malaysia Deposit Insurance Corporation and an independent external member.

Based on BNM’s surveillance, BNM and the FSEC may, from time-to-time, issue advice to significant non-bank institutions as a pre-emptive measure to promote the sound financial standing of such institutions and avoid any systemic risks to the financial system.

2. Liberalisation of Motor Insurance

On 1 July 2016, the first phase of the Liberalisation of the Motor Tariff (“Liberalisation”) was introduced. The Motor Tariff was the regulated price of motor and fire insurance products. Under the Liberalisation, such prices will no longer be fixed but determined by individual insurers and takaful operators. During the first phase, insurers and takaful operators were given the flexibility to offer new motor products and add-on covers at market-based pricing.

Phase two of the programme commenced on 1 July 2017, which liberalised the premium rates for Motor Comprehensive and Motor Third Party Fire and Theft products. However, the premium rates for Motor Third Party products will continue to be determined by tariffs. With the liberalisation, premium rates will become more competitive, as the same individual may be assessed differently by different insurers depending on how the insurer slices the risk profiles of its insureds and how efficiently the insurers manage their claim costs, among other factors. This will enable Malaysians to shop around for the coverage and rates best suited to them.

3. Development of Microinsurance and Microtakaful

On 18 April 2016, BNM announced plans to develop a regulatory framework to facilitate the growth of the microinsurance and microtakaful market. To that end, a Discussion Paper on Microinsurance and Microtakaful was issued to provide guidance on the proportionate regulation of microinsurance and microtakaful products and the operating environment that is envisioned for microinsurance and microtakaful in Malaysia. In the interim, prior to the issuance of the regulatory framework, an interested licensed insurer or licensed takaful operator may apply for proportionate regulatory treatment for a microinsurance or microtakaful product by submitting a product proposal for the BNM’s approval.

4. Operating Cost Controls for Life Insurance and Family Takaful Business

On 29 December 2017, BNM issued new revised guidelines on operating cost controls for life insurance and family takaful business which aims to deregulate operating costs for life insurance and family takaful business.

The guidelines set out BNM’s gradual deregulation of operating cost control limits to give insurers and takaful operators more flexibility to manage operating expenses commensurate with their business strategies.

A summary of the gradual implementation is set out below:
(a) Effective from 1 January 2018 onwards

- Removal of commission limits for pure protection term products offered through all intermediaries, subject to meeting the specific requirements.
- Implementation of the balanced scorecard framework for agents, financial advisers and brokers.

(b) Effective from 1 July 2018 onwards

- Removal of commission limits for pure protection critical illness and pure protection medical and health products offered through all intermediaries, subject to meeting the specific requirements.

(c) Effective from 1 January 2019 onwards

- Adjustment of commission limits for bancassurance partners.
- Implementation of balanced scorecard framework for bancassurance partners.
- Removal of limits on commission and agency-related expenses for investment-linked products.

5. Offering of Trade Credit Insurance and Trade Credit Takaful

BNM recently announced plans to regulate trade credit insurance and trade credit takaful ("Products"). The Products protect sellers against the risk of non-payment of goods and services by buyers. Through the issuance of an Exposure Draft specifically targeted at these Products on 1 June 2018, BNM sets out the approval process and requirements for the offering of Products by licensed insurers and takaful operators in Malaysia. The Products generally protect businesses against the risk of non-payment of goods and services by buyers and assist businesses to manage country risks.

Additionally, the Products are recognised as Credit Risk Mitigation (CRM) under the Capital Adequacy Framework for financial institutions in Malaysia.

6. Re-introduction of the SST Regime

On 1 September 2018, the Malaysian Government re-introduced the SST regime. As a result, general insurance products are now taxable under the SST regime. Customers who purchase or renew their general insurance policies on or after 1 September 2018 will be charged the SST at 6% on their premium.
24. Personal Data Protection

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

1. Definition of Personal Data

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

2. Principles under the PDPA

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

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

b) Notice and choice principle – a data user must provide a notice informing individuals whose personal data is collected of several matters, including that their personal data is being processed and provide a description of the personal data, the purpose of collection, the categories of parties that it is to be shared with and whether it is obligatory to provide the said personal data;

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

d) Security principle – a data user must take practical steps to protect personal data from loss, misuse, modification, unauthorised or accidental access or disclosure;
3. Minimum Personal Data Protection Standards

Standards in relation to the Security, Retention and Data Integrity principles were issued by the Personal Data Protection Commissioner (the “Commissioner”) on 30 December 2015. The Standards are the "minimum standards" to be observed by data users, and details specific measures which need to be taken by data users in respect of the Security, Retention and Data Integrity principles. The Standards apply to both physical and electronic personal data. A contravention of any of the Standards may attract a fine of up to RM250,000 or imprisonment for a term not exceeding 2 years or both.

4. Rights of an Individual

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

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

b) an individual is entitled to correct his personal data if it is inaccurate, incomplete, misleading or outdated;

c) an individual is entitled to withdraw his consent to the processing of personal data;

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

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

5. Transfer of Personal Data outside Malaysia

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

In May 2017, the Commissioner published on its official website the Public Consultation Paper No. 1/2017 entitled “Personal Data Protection (Transfer of Personal Data to Places outside Malaysia) Order 2017” (the “Proposed Order”). The Proposed Order is essentially a "White List" which permits the transfer of personal data to certain jurisdictions outside Malaysia (as listed in the Proposed Order), in accordance with Section 129(1) of the PDPA.

The effect of this "White List" (once it is officially issued by the Commissioner, and comes into legal effect) is that data users will be permitted to transfer personal data to the jurisdictions that have been identified, and will no longer be required to fulfill the prescribed conditions under Section 129(3) prior to the transfer of personal data to the said jurisdictions (e.g. the requirement to obtain consent of the individuals/data subjects prior to transfer of their personal data outside Malaysia; the requirement to undertake reasonable precautions and exercise due
diligence to ensure that the recipient place will not process personal data in any manner which would contravene the PDPA).

6. Working with Data Processors

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

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

7. Registration as Data User

Pursuant to the Personal Data Protection (Class of Data Users) Order 2013 (and amended pursuant to an amendment order in 2016), there are 13 classes of data users who must be registered under the PDPA.

The classes which have been specified in the aforementioned Order are as follows:

a) communications;
b) banking & financial institution;
c) insurance;
d) health;
e) tourism & hospitalities;
f) transportation;
g) education;
h) direct selling,
j) services (e.g. legal, audit, accountancy etc.);
k) utilities;
l) pawnbrokers; and
m) moneylenders.

The Commissioner is empowered by the PDPA to designate a body as a data user forum for each of the specific classes of data users. These data user forums in turn may prepare codes of practice either on their own initiative or at the request of the Commissioner, to regulate the personal data processing activities carried out by the respective industries.

As at the date of this edition, codes of practice have been prepared and registered with the Commissioner for the following sectors:

a) utilities sector (electricity) (w.e.f. 23 June 2016);
b) insurance and takaful sector (w.e.f. 23 December 2016);
c) banking and financial sector (w.e.f. 19 January 2017); and

The codes of practice for several other sectors are still in the process of being finalised by the respective data user forums, such as the codes of practice for the legal services sector and communications sector.

A data user who fails to comply with any provision of the code of practice that is applicable to the data user commits an offence and shall, upon conviction, be liable to a fine not exceeding RM100,000 or to an imprisonment term of up to one year or both.

8. Non-application

The PDPA will not apply to:

a) the Malaysian Federal and State Government;
b) information processed for the purpose of a credit reporting business carried on by a credit
reporting agency under the Credit Reporting Agencies Act 2010; and
c) to any personal data processed outside Malaysia unless that personal data is intended to be further processed in Malaysia.

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

9. Non-compliance

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

10. Compoundable Offences

On 15 March 2016, the Commissioner issued the Personal Data Protection (Compounding of Offences) Regulations 2016. The Compounding Regulations provide a list of offences which are prescribed to be "compoundable offences", where the Commissioner may offer data users an opportunity to pay a monetary penalty (which penalty can be up to half of the maximum fine stipulated in the PDPA) within the time period stipulated in the offer. If no payment is received within the stipulated period, prosecution for the offence will be instituted against the data user.

11. Enforcement Phase of PDPA

On 3 May 2017, a company has become the first data user to be charged in court for alleged breach of the PDPA. The company, which operates a local private college, was charged in the Sessions Court for processing personal data of former employees of the college without a valid certificate of registration issued by the Commissioner’s department, in contravention with section 16(1) of the PDPA. Section 16(1) requires certain classes of data users to be registered and to be issued with a valid certificate of registration. The charge, under section 16(4) of the PDPA, provides that in the event of conviction, the company would be liable to a fine of up to RM500,000, or imprisonment of its officer(s) for up to three years, or both.

The Commissioner has subsequently instituted enforcement actions and proceedings against several other data users, including the following (as reported in its official website):

<table>
<thead>
<tr>
<th>Sector</th>
<th>Offence / Maximum Penalty</th>
<th>Penalty Imposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism (Hotel)</td>
<td>Section 16(4) (Processing personal data without certification from the Commissioner)</td>
<td>Fine of RM500,000 or imprisonment not more than 3 years or both</td>
</tr>
<tr>
<td></td>
<td>Section 5(2) (Processing personal data without consent of data subject)</td>
<td>Fine of RM300,000 or imprisonment not more than 2 years or both</td>
</tr>
<tr>
<td>Education (IPTS)</td>
<td>Section 16(4) (Processing personal data without certification from the Commissioner)</td>
<td>Fine of RM10,000 or 3 months imprisonment</td>
</tr>
<tr>
<td></td>
<td>Section 16(4) (Processing personal data without certification from the Commissioner)</td>
<td>Fine of RM10,000 or 3 months imprisonment</td>
</tr>
<tr>
<td>Service (Recruitment Agency)</td>
<td>Section 16(4) (Processing personal data without certification from the Commissioner)</td>
<td>Fine of RM10,000</td>
</tr>
</tbody>
</table>
Fine of RM500,000 or imprisonment not more than 3 years or both


12. Proposed Implementation of Data Breach Notification Regime

In August 2018, the Commissioner issued the Public Consultation Paper No. 1/2018 entitled “The Implementation of Data Breach Notification” (the “DBN Public Consultation Paper”).

The DBN Public Consultation Paper seeks to introduce a data breach notification regime in Malaysia, where organisations will be required to notify regulators and/or affected individuals in the event of a data breach incident.

The DBN Public Consultation Paper identifies the proposed elements to be included in a data breach notification, such as details about the data breach, the containment or control measures taken by the organisation, parties to whom notification must be made and timeframe for notification, as well as details on previous training and guidance on data protection provided by the organisation.

The Commissioner has proposed to implement the DBN regime by way of imposing conditions upon the certificates of registration issued to data users who are required under the PDPA to register with the Commissioner. In other words, the DBN Public Consultation Paper currently only envisages mandatory application upon registered data users.

It remains to be seen whether the DBN regime will further be imposed upon non-registered data users (i.e. data users who do not fall within the classes of
Acknowledgements

We would like to take this opportunity to thank everyone who has contributed to this Doing Business Guide. Without your timeless effort, the Doing Business Guide could not have been possible.

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