

Doing Business in Malaysia

A LEGAL FACT SHEET

August 2009

GOVERNMENT AND LEGAL SYSTEM

Malaysia is a constitutional monarchy headed by a Yang Di Pertuan Agong (“King”) who is elected every 5 years by a Council of Rulers. A federal system of government links together 13 states and the federal territories of Kuala Lumpur (financial and commercial capital of Malaysia), Putrajaya (administrative centre of the Federal Government) and Labuan (International Offshore Financial Centre of Malaysia).

Malaysia’s legal system is based upon English common law. The Civil Law Act, 1956 incorporated principles of English common law as at 1957 (Malaysia’s year of independence). As a result, common law doctrines have been adopted into Malaysian jurisprudence and applied by Malaysian courts. English cases as at 1957 are immediately binding on Malaysian courts but cases after 1957 together with decisions of courts of other Commonwealth countries continue to have persuasive authority and are considered by Malaysian courts in arriving at their judgments.

The states of Sabah and Sarawak in East Malaysia joined the then Federation of Malaya in 1963 to form the Federation of Malaysia. The agreement between the then Federation of Malaya and the 2 states granted those states autonomy in certain matters. As a result, the laws in the 2 states are not identical to those of the other 11 states in Peninsular Malaysia.

Malaysian commercial law comprises of case law and statute law. Case law is based upon the doctrine of *stare decisis* where courts are bound by precedence. This means that a decision of a superior court is binding upon itself as well as upon inferior courts. Statute law is passed in accordance with the constitution and becomes law upon receiving the royal assent from the King.

The Constitution of Malaysia guarantees the rule of law and also establishes the separation of powers between Parliament, the Executive and the Judiciary. All matters relating to land and religion are the prerogative of State Governments. Islamic jurisprudence is predominantly limited to Muslims and their property and seldom enters the realm of corporate commercial transactions except where Islamic financing instruments are used.

COURTS

The courts of Malaysia are divided into Subordinate Courts and Superior Courts. The Subordinate Courts have limited jurisdiction and comprise the Magistrate Courts and the Sessions Courts. The Superior Courts comprise the High Court of Malaya, the High Court of Sabah, the High Court of Sarawak, the Court of Appeal and the Federal Court. English is predominantly used in the Superior Courts but Bahasa Malaysia (the national language) is more commonly used in the Subordinate Courts.

CONTRACTS AND LEGAL DOCUMENTATION

Commercial contracts are mainly written in English although certain government related contracts may be written in Bahasa Malaysia as well as in English. Malaysian courts will recognise contracts regulated by a foreign law provided that the foreign law can be clearly presented and explained. Malaysian courts will generally also recognise a valid judgment of a foreign court.

Freedom of contract is the underlying philosophy of contract law and as such the terms of contracts may be agreed between the parties after negotiations. However, certain statutes may incorporate compulsory terms into certain contracts for consumer protection. Provided that the contract is not for an illegal purpose or consideration or contrary to public policy, the reasonable contractual intention of parties which has been clearly expressed or evidenced will be upheld regardless of the nationality of the contracting parties.

BUSINESS ENTITIES

Business in Malaysia can be carried out either as a sole proprietorship, a partnership or a company.

Sole proprietorships and partnerships must be registered with the Companies Commission of Malaysia (“CCM”) under the Registration of Business Act, 1956. However, only Malaysian citizens and permanent residents can be registered as sole proprietors with the CCM. As a matter of practice, the CCM does not permit companies (whether locally incorporated or foreign) or foreign individuals to be registered as partners in a partnership.

Limited liability partnership has been proposed but as of date, partnerships with limited liability are still not permitted, except for offshore limited partnerships in Labuan, under the Labuan Offshore Limited Partnerships Act, 1997. Partners of a business are advised to draw up a formal partnership agreement governing their rights and obligations. In the absence of a partnership agreement, the provisions of the Partnership Act, 1961 will apply. Business partnerships of more than 20 members for the acquisition of gain are generally not permitted and should be incorporated under the Companies Act, 1965 (“CA”).

Under the CA, 3 main types of companies may be incorporated or established in Malaysia:

- a private limited company which has liability limited by shares;
- a public limited company which has liability limited by shares; and
- a company limited by guarantee only.

All 3 types of companies are corporate entities and have separate legal identities and may enter into legally binding commitments, sue and be sued. Companies limited by shares are the most frequently

used in Malaysia. Private limited companies are known as 'Sendirian Berhad' or 'Sdn. Bhd.' (for short) and public limited companies are known as 'Berhad' or 'Bhd.' (for short).

A joint venture may be formed between a foreign company and a local entity by agreement (unincorporated joint venture) or by forming a company in which the parties to the joint venture are shareholders (incorporated joint venture).

Prior to the incorporation of a company, an application must be done to determine if the proposed name of the intended company is available. The proposed name of a company will be rejected if the name already exists in the records of the CCM. Certain names may also be rejected for policy reasons. The incorporation process takes approximately 1 week after the proposed name of the company is approved. It is also possible to purchase 'shelf companies' but in doing so, it is important to ensure that these companies do not have liabilities.

The constitutional documents of a company are called the Memorandum of Association and the Articles of Association. These documents must be filed with the CCM. Companies must also file annual audited accounts and other returns with the CCM showing changes to shareholders, directors or secretaries and special resolutions passed by them.

All companies must have at least 2 initial subscribers. Companies normally apply for an initial authorised share capital of RM100,000 to save costs and time of having to enlarge the minimum authorized share capital later. However, it is not necessary to have all the authorized capital issued and fully paid up.

There may also be different capital requirements for certain industries. For instance, companies engaging in wholesale and retail trade must comply with the policy on foreign participation in Distributive Trade Services administered by the Ministry of Domestic Trade and Consumer Affairs. This policy requires all wholesale and retail businesses with foreign interest to operate through a locally incorporated company with the following minimum capital requirement:

- RM50 million for hypermarkets (also restrictions on location);
- RM20 million for department stores;
- RM25 million for supermarkets;
- RM5 million for direct selling entities; and
- RM1 million for 'specialty outlets'.

All companies must have at least 2 resident directors. There is no requirement that the 2 resident directors must be Malaysian citizens. There must also be a duly qualified and licensed person to act as a company secretary. A circular or paper resolution may be adopted if this is allowed by the Articles of

Association of the company or agreed by the shareholders of the company. Board meetings may be held via teleconferencing.

Another popular form of business organisation is the Operational Headquarters ("OHQ") which has been permitted by the Malaysian government to promote the use of Malaysia as a regional base for providing management services to affiliates outside Malaysia. In order to qualify for tax incentives, the OHQ must demonstrate that it provides qualifying services to its offices or related companies within and outside Malaysia. It is also possible to set up a representative office/regional office which will entitle a foreign party to establish an office in Malaysia albeit as a cost centre only. A representative office/regional office may not transact business or effect sales.

The CA permits the registration of a branch of a foreign company in Malaysia. The branch operates as an extension of the foreign company and is not a separate legal entity. A branch of a foreign company may be permitted to carry on business in Malaysia.

Federal as well as local government licenses may be required to carry out certain businesses. For instance, companies engaging in manufacturing activities with a paid up capital of RM2.5 million and above or who employ more than 75 full time employees would require a manufacturing license from the Malaysian Industrial Development Authority.

EQUITY CONDITIONS

The Malaysian government established a Foreign Investment Committee ("FIC") in 1974 to implement equity and ownership guidelines to enhance the level of bumiputra (indigenous Malaysian) participation in the economy. The FIC implemented policy guidelines that generally restricted foreign ownership to 30%. Over time as Malaysia liberalised its economy the restrictions under the FIC guidelines have been progressively relaxed and restriction for acquisition of interests, mergers and takeovers were finally repealed on 30 June 2009. However, the overall objective of 30% bumiputra equity participation has not been abandoned completely as equity conditions for investments will continue to be imposed by the relevant sector regulators. For instance, foreign ownership in existing stock broking companies, unit trust management companies for the retail segment, investment banks and insurance companies is restricted to 70%. Foreign equity restrictions will also be applied in 'strategic industries' such as telecommunication, ports, energy and transport.

On the other hand full foreign equity holding is allowed in:

- 27 sub-sectors of the service industry including health, tourism, transport and computer related services;

- Multimedia Super Corridor (“MSC”) companies and approved companies carrying out promoted activities in designated areas (see discussion on Growth Corridors below);
- manufacturing companies licensed by the Ministry of Trade and Industry;
- approved OHQs, representative offices and regional offices, Labuan offshore companies and companies that are granted the status of international procurement centre;
- companies listed on Bursa Malaysia Securities Berhad (“Bursa Malaysia”), Malaysia’s only approved securities exchange (however, companies with Malaysian based operations going for initial public offering are required to offer half of the 25% public spread shares to Bumiputra); and
- companies endorsed by the Secretariat of the Malaysian International Islamic Financial Centre, which is an initiative to position Malaysia as a hub for international Islamic finance.

FOREIGN OWNERSHIP OF REAL PROPERTY

Transfer of properties valued at RM20 million and above from bumiputra or government interest will have to be approved by the Economic Planning Unit in the Prime Minister’s department. Foreigners are not allowed to acquire properties below the threshold level of RM500,000. For residential properties the threshold is temporarily set at RM250,000 until the end of 2009.

Additionally, the National Land Code, 1965 provides that, with the exception of industrial land (i.e. land used for the purposes of erection or maintenance of factories, workshops, warehouses or other buildings where any manufacturing, processing or storage activities take place), all foreigners must obtain the prior approval of the relevant state authority before acquiring property in West Malaysia. The state authorities have the discretion to consider the acquisition based on the area or location of property, types of property and percentage of total units in a project. The state authorities may also impose conditions relating to foreign ownership of land held under leasehold title.

A foreign company that intends to construct its own retail premises in order to carry out its operations in Malaysia must do so in a commercial zone. In addition, the relevant state authority may impose further restrictions on the permitted use of certain lands.

TAXATION

Generally, all income of companies and individuals accrued in or derived from Malaysia is taxable. Foreign sourced income remitted to Malaysia (other than by companies carrying on the business of banking, insurance, air and sea transportation) are exempted from tax. Sources of income which are liable to income tax are as follows:

- gains or profits from trade, profession and business;
- gains or profits from employment (salaries, remuneration, etc.);
- dividends, interests and discounts;
- rents, royalties or premiums;
- pensions, annuities or other periodic payments; and
- other gains or profits of an income nature.

A company, whether resident or not, is liable for corporate income tax currently at the rate of 25% on income accrued in or derived from Malaysia (a company carrying on petroleum upstream operations is subject to a petroleum income tax of 38%). A company is considered resident in Malaysia if the control and management of its affairs are exercised in Malaysia.

Labuan offshore companies and other Labuan entities that are taxed under the Labuan Offshore Business Activity Tax Act, 1990 have the option of electing annually to pay 3% of audited net profits or a fixed sum of RM20,000 as the corporate tax for income from ‘offshore trading activities’. The income from ‘offshore non-trading activities’ such as the holding of investments in securities, loans, deposits and immovable properties as well as the management of estate, is tax-exempt, unless they are carried on as part of the offshore trading activities. Effective from year of assessment 2009, Labuan offshore companies can also make an irrevocable option to be taxed under the Income Tax Act 1967 so that they can enjoy the tax treaty benefits with countries who have specifically excluded Labuan in their tax treaties with Malaysia.

All individuals are liable to personal income tax on taxable income accrued in or derived from Malaysia. The rate of tax depends on the residency status of the individual. The residency status of an individual is determined by the duration of his stay in Malaysia. Generally, an individual is regarded as a tax resident if he has been in Malaysia for at least 182 days in a calendar year. Resident individuals are taxed at scaled rates of up to a maximum of 27%, while non-resident individuals are subject to a flat tax rate of 27%.

Payment to non-resident individuals are subject to withholding tax of 10% on royalties, and special classes of income such as use of moveable property, technical advice, assistance or service and installation services on supply of plant and machinery; and 15% on services of a public entertainer.

Sales tax is an *ad valorem* tax levied on certain imported and locally manufactured goods. The current rates ranges from 5% to 10% (specific rates are imposed on certain classes of petroleum).

Service tax is a consumption tax (currently at 5%) imposed on certain prescribed services provided by specific group of taxable persons. Taxable services includes health services, parking space services, communication services, courier services, professional and consultancy services provided by advocates and solicitors, professional engineers, licensed surveyor/valuers, registered appraisers and estate agents, architects, public accountants, advertising companies and consultants, insurance companies, motor vehicle service and/or repair centers, employment agencies and recreational clubs.

Import duties are levied on a large number of imports to protect certain developing industries. However, many of these will be removed in line with the Malaysian government's commitment to trade liberalization driven by agreements under the World Trade Organization (WTO) and obligations under free trade agreements. Export duties are imposed on the country's main commodities like crude petroleum and palm oil. Excise duties are levied on selected products manufactured locally or imported into Malaysia, namely, cigarettes, liquors, playing cards, mahjong tiles and motor vehicles.

A variety of tax incentives are available for companies that produce promoted products or engaged in promoted industries. In recent years incentives have also been given to the service sector especially for those involved in Islamic financial services, ICT, research and development. These incentives include the grant of pioneer status to qualifying companies, investment tax allowance, re-investment allowance, export incentives, research and development incentives, abatement of tax for training and R&D activities, tax exemptions for OHQ and abatement of tax for the use of Labuan as an offshore financial centre.

EXCHANGE CONTROL

Non-residents can bring in any amount of foreign currency notes and/or traveller's cheques provided that any amounts in excess of the equivalent of US\$10,000 must be declared. Non-residents would need to seek permission from the Controller of Foreign Exchange ("Controller") if the amount of foreign currency notes to be carried out of Malaysia exceeds the amount brought in and is more than the equivalent of US\$10,000. Non-residents may bring in or out of Malaysia, Ringgit notes of up to RM1,000. All payments, including the repatriation of capital, profits, dividends, interest and rental are freely permitted.

There is no restriction on payments to non-residents for import of goods and services but such payments must be made in foreign currency.

There are no restrictions on non-residents to open and maintain Ringgit denominated accounts with licensed onshore banks, financial institutions and

merchant banks. Licensed onshore banks and approved merchant banks may extend credit facilities in foreign currency to non-residents for any purpose. In addition, banking institutions may extend credit facilities in Ringgit up to an aggregate limit of RM10 million to a non-resident (excluding a non-resident stockbroking company, custodian bank or correspondent bank) for any use in Malaysia. Residents, bank or non-bank, may subject to their own internal credit assessment guidelines extend immovable property loans in Ringgit to a non-resident to finance/refinance the purchase or construction of any immovable property in Malaysia (purchase of land only is not permitted).

All exchange control regulations are applied uniformly to transactions with all countries, except Israel for which special restrictions apply. Exchange controls are, however, subject to changes and modifications from time to time.

INTELLECTUAL PROPERTY LAWS

Malaysia has extensive and progressive legislation in the field of intellectual property rights protection. The principal statutes dealing with intellectual property rights are:

- Trade Marks Act, 1976;
- Patents Act, 1983;
- Copyright Act, 1987; and
- Industrial Designs Act, 1996.

The classification of goods and services under the Trade Marks Regulations 1997 is in line with the Nice Classification of goods and services for the purposes of registering trade marks and service marks. Malaysia is a party to the Agreement on Trade Related Aspect of Intellectual Property Rights ("TRIPS"). Hence Malaysian intellectual property rights will be granted the same recognition and protection in other TRIPS member countries provided local registration requirements are met. Malaysia has introduced a number of statutes in order to be TRIPS compliant including the Geographical Indications Act 2000 and the Protection of New Plant Varieties Act 2004.

Malaysia has also acceded to the World Intellectual Property Organisation's ("WIPO") Patents Cooperation Treaty ("PCT") and as such the PCT has been adopted into national law. The owner of a foreign patent, who is a citizen of a PCT signatory country or who has registered or is seeking registration of his patent in a PCT signatory country can apply via the International Bureau of WIPO in Geneva, or through his local patent's office for the registration of the patent in Malaysia.

Trade marks, patents and industrial designs registered in Malaysia have protection under Malaysian laws for 10 years, 20 years and 5 years, respectively. The period of registration for trade marks can be renewed indefinitely for periods of 10

years per renewal subject to payment of the prescribed renewal fees. The registration period for industrial designs can be renewed for 2 further consecutive terms of 5 years each subject to payment of the prescribed renewal fees. The basic term of a copyright is the life of the author plus 50 years after his death.

Intellectual property rights are also protected under the common law. For example, unregistered trade marks may be protected under the law of passing off and action may be brought against any person who injures the reputation or goodwill which attaches to the trade mark. Non-registrable trade secrets and other valuable confidential information are also protected under the English law doctrine of breach of confidence.

BIOTECHNOLOGY

To develop Malaysia's biotechnology potential, a National Biotechnology Policy was launched on 28 April 2005 and the Malaysian Biotechnology Corporation Sdn Bhd, a dedicated government agency, was established to oversee, promote and coordinate the development of Malaysia's biotechnology industry. Various tax incentives have also been drawn up to support biotechnology ventures. The incentives that are currently available to a qualified company undertaking biotechnology activity that has been approved with bionexus status by the Malaysian Biotechnology Corporation Sdn. Bhd. ("Bionexus Company") are:

- 100% income tax exemption for 10 years commencing from the first year the company derives profit or Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years;
- exemption of import duty and sales tax on raw materials/components and machinery/equipment;
- double deduction on expenditure incurred for research and development;
- double deduction on expenditure incurred for the promotion of exports;
- dividends distributed from the Bionexus Company will be treated as tax exempt income for its shareholders;
- tax deduction for a company that invests in a Bionexus Company, equivalent to the amount of investment made in that subsidiary provided that the investing company owns at least 70% of that subsidiary;
- concessionary tax rate of 20% on income from qualifying activities for 10 years upon the expiry of the tax exemption period to a Bionexus company;
- tax deduction equivalent to the total investment made in seed capital and early stage financing for a company or an individual investing in a Bionexus Company;
- stamp duty and real property gains tax exemption within a period of 5 years until 31 December 2011 for a Bionexus Company

undertaking merger and acquisition with a biotechnology company; and

- accelerated Industrial Building Allowance over a period of 10 years for buildings that are used solely for the purpose of biotechnology research activities.

As a party to the Cartagena Protocol, Malaysia gazetted the Biosafety Act 2007 on 30 August 2007 to regulate the release, importation, exportation and the contained use of living modified organisms.

GROWTH CORRIDORS

The Multimedia Super Corridor

The Malaysian government has created a special zone which extends from the Kuala Lumpur City Centre to the Kuala Lumpur International Airport in Sepang, known as the MSC to promote Malaysia's competitiveness in IT and multimedia.

Companies which obtain 'MSC status' from the Multimedia Development Corporation enjoy certain incentives guaranteed by the Malaysian government under a Bill of Guarantees, including:

- world class physical and information infrastructure;
- unrestricted employment of foreign knowledge workers;
- freedom of ownership of MSC status companies;
- free mobility of capital and finance;
- competitive financial incentives including 100% income tax exemption for profits derived from MSC status qualifying activities or 100% investment tax allowance for up to 10 years;
- intellectual property rights protection in line with international laws;
- freedom from censorship of the internet;
- competitive telecommunication tariffs;
- eligibility to tender for key MSC infrastructure contracts if the MSC is used as a regional hub; and
- one-stop processing of regulatory approvals.

A series of cyber laws designed to put Malaysia at the forefront of law reform in relation to the regulation of information technology and multimedia have also been put in place following the creation of the MSC. They include:

- Computer Crimes Act, 1997;
- Digital Signature Act, 1997;
- Telemedicine Act, 1997;
- Communications and Multimedia Act, 1998;
- Optical Discs Act, 2000; and
- Layout Designs of Integrated Circuits Act, 2000.

Iskandar Malaysia

Iskandar Malaysia ("Iskandar") is a special economic zone in the southern state of Johor. Companies

undertaking creative industries, educational services, financial advisory and consulting services, healthcare services, logistic services and tourism related services (“Qualifying Activities”) can apply to the Iskandar Development Region Authority (“IDRA”) to obtain ‘IDRA status’ and enjoy a host of incentives for their operations within the IDR. The incentives include:

- corporate income tax exemption for 10 years, upon commencement of operations in respect of income from Qualifying Activities carried out within the approved location for customers located within the approved locality and outside Malaysia or wholly outside Malaysia provided that it is before the end of year 2015;
- withholding tax exemption on payments for services and royalties to non-residents for 10 years upon commencement of operations;
- exemption from FIC rules;
- freedom to source capital globally;
- unrestricted employment of foreign employees within the approved zones; and
- flexibilities under the foreign exchange administration rules.

Other corridors

There are 4 other regional economic zones namely the Northern Corridor Economic Zone, and the Eastern Corridor Economic Zone in Peninsula Malaysia and the Sabah Development Corridor and the Sarawak Corridor of Renewable Energy in East Malaysia. These are part of Malaysia’s development planning and various incentives will be given to spur the economic growth in these areas.

EMPLOYMENT

Generally, parties are free to agree on the terms of employment contracts. However, a minimum level of statutory protection under the Employment Act, 1955 is afforded to manual workers and employees whose monthly salaries do not exceed RM1,500. This protection mainly relates to medical benefits and leave taking.

The Industrial Relations Act, 1967 ensures that employees are fairly treated and that due process is observed in the termination of employment. Generally, an employer does not have unfettered right to hire and fire his employees. An employer is only entitled to terminate employees for just cause or excuse and such a right is subject to industrial adjudication. Just cause and excuse could be either misconduct, negligence or poor performance and the onus is on the employer to establish his allegations. Given such a burden, proper procedures must be adopted in order to show that just cause or excuse exist.

The Trade Unions Act, 1959 permits the formation of employee unions. However, the powers of these unions are limited.

All Malaysian employees (other than domestic helpers and those above 55 years old) are required to make a statutory contribution of 11% of their gross salary to the Employee Provident Fund (“EPF”). [The rate of contribution from employees has been temporarily reduced to 8% till December 2010 to boost economic growth in view of the global financial crisis.] Employers are required to make a statutory contribution of 12% of the employee’s gross salary to EPF. Foreign citizens are exempted from making EPF contributions but they may elect to contribute, if they wish.

IMMIGRATION PROCEDURES

All persons entering Malaysia must possess a valid international passport or other internationally recognized travel document valid for travel to Malaysia. The passport or travel document must be valid for at least 6 months beyond the date of entry to Malaysia. Persons who are not in possession of a recognised passport must apply for a document in lieu of a passport at any Malaysian Representative Office abroad.

A visit pass for the purpose of a social, tourist or business visit may be obtained at the point of entry if the visitor can satisfy the immigration authority at the point of entry that he has a valid passport and visa (where applicable) which allows him to stay temporarily. The types of passes issued are as follows:

- Visit Pass (Social or Tourist); and
- Visit Pass (Business).

Foreign visitors, who have entered Malaysia on a social pass may apply to the Immigration Department to convert their pass into a business visit pass. A person seeking employment in Malaysia, must apply for one of the following passes:

- Visit Pass(Temporary Employment/Professional);
- Employment Pass (for foreigners entering the country to take up employment for a minimum period of 2 years and earn a monthly income of RM5,000 or more); or
- Dependant’s Pass (for the wife and child of any foreigner who applied for or have been issued with an Employment Pass).

All such applications must be sponsored by a Malaysian who agrees to be responsible for the maintenance and repatriation of the visitors from Malaysia should it become necessary. Foreign spouse of a Malaysian citizen (legally married under Malaysian law) with a permanent job offer can apply for an employment pass. Spouses of expatriates with professional qualifications are allowed to work in Malaysia.

Foreign owned companies are allowed to bring in expatriate personnel in areas where there is a shortage of trained Malaysians to do the job and for

'key posts', that is, managerial posts essential for companies to safeguard their interests and investments. The banking, insurance and capital market industries are accorded greater flexibility to employ foreign specialist expatriates that have expertise to contribute to the development of the financial system in Malaysia.

An expatriate officer who is transferred from one post to another within the same company is also required to obtain a new employment pass. A new expatriate officer replacing another is also required to obtain a fresh employment pass. The holder of an employment pass will be issued with a multiple entry visa valid for the period that corresponds with the validity period of the employment pass.

Foreigners who fulfill certain criteria can apply under the Malaysian My Second Home Programme to stay in Malaysia (together with their spouses, unmarried children below 21 years old and parents above 60 years old as dependants) on a social visit pass with multiple entry visa for 10 years, renewable indefinitely.

ENVIRONMENT

The Environmental Quality Act, 1974 is the existing legislation that governs the prevention, abatement, control of pollution and enhancement of the environment in Malaysia. This Act and the regulations thereunder establish standards for projects.

In efforts to promote energy conservation and discourage excessive energy consumption, companies are given tax incentives for provision of energy conservation activities.

DISPUTE RESOLUTION

Civil claims may be commenced in the Subordinate Courts or the High Court depending on the size of the claim. The jurisdiction of the Magistrates Court and Sessions Court is limited to RM25,000 and generally, all claims above RM250,000 must commence in the High Court. The Subordinate Courts do not have power to grant equitable or injunctive relief. Trials are lengthy and drawn out

affairs, sometimes lasting many years. If a monetary claim can be supported by clear evidence, a summary procedure may be adopted to obtain judgment without a trial. This procedure may permit a plaintiff to obtain judgment within 6 months to 1 year. This procedure is seldom used for other claims.

The Malaysian Mediation Centre and the Mediation Committee under auspices of the Bar Council of Malaysia are actively promoting mediation as an alternative method of dispute resolution. Mediators do not generally refer to any legal authorities and play a facilitating role in assisting conflicting parties to reach an agreement. As a mediator's decision is not binding, the parties still have the option of resorting to legal action in court.

Arbitration is encouraged in Malaysia and there are comprehensive arrays of facilities and services to facilitate arbitration in Malaysia. Both domestic and international arbitrations are governed by the Arbitration Act, 2005 which is based on the UNCITRAL Model Law on International Commercial Arbitrations. However, Part III of the Arbitration Act contains 7 provisions which apply only to domestic arbitrations unless parties to international arbitrations have 'opted in' for these provision to apply to their arbitrations. One of the key provisions in Part III of the Arbitration Act is Section 42 which provides for references to the High Court on points of law arising during and after the arbitration. Parties are free to determine the number of arbitrators but in the absence of any determination, the arbitration tribunal shall consist of 3 arbitrators for international arbitration and 1 arbitrator for domestic arbitration. The substantive law for international arbitrations will be decided based on the common law principles for determining 'proper law'.

The Kuala Lumpur Regional Centre for Arbitration established under the auspices of the Asian-African Legal Consultative Committee (an inter-governmental organisation) acts as the appointing authority for arbitrators, where there is no agreed procedure in the arbitration agreement or where the agreed procedure has failed.

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Important Notice: The contents of this document are no more than a general guide for investors, outlining some of the main issues which should be considered. It is necessarily selective and should not be used as a substitute for formal professional advice.