

# A BRIEF INTRODUCTION ABOUT SETTING UP BUSINESS IN MALAYSIA

Author: Evelyn Eng | 25 December, 2019

## Introduction

Persons who wish to setup business in Malaysia must register their business either under the Registration of Businesses Act 1956 ("ROBA 1956") or Companies Act 2016 ("CA 2016") or Limited Liability Partnerships Act 2012. The different forms of business vehicle available in Malaysia includes:-

- a. Company Limited by Shares
- b. Company Limited by Guarantee
- c. Unlimited Company
- d. Limited Liability Partnership
- e. Partnership
- f. Sole Proprietorship
- g. Branch of a Foreign Company

## Most common form of business vehicle used in Malaysia

The most common form of business vehicle used in Malaysia is incorporation of company. By the CA 2016, a private company can now be incorporated with a single member/ single director who ordinarily reside in Malaysia with a principal place of residence in Malaysia. A public company can be incorporated with a single member; however, the Main Market Listing Requirements issued by Bursa Malaysia requires a minimum of 2 directors in the company. A director of the company does not necessary to be a shareholder of that company.

The most common forms of business vehicles used by foreign companies to conduct business in Malaysia are as follows:-

- a. Incorporation of a new company
- b. Branches
- c. Subsidiaries
- d. Joint ventures with local investors

The choice of business vehicle depends on the nature of the business and investment made.

## Restrictions on foreign investment

There are generally minimal restrictions on foreign investment in Malaysia. Subject to the qualifications set out below, foreign investors can hold 100% equity in all investments in new projects, as well as investments in expansion and/or diversification projects in existing companies.

For each different industry, there are sector-specific regulations issued by the relevant governmental departments that need to be complied. Some sectorial regulations impose

certain restrictions on the foreign ownership of the equity of a company, and some need prior regulatory approvals before the commencement of business operations.

The principal industries that are subject to restrictions on foreign investment include:

- a. Financial services
- b. Capital markets
- c. The insurance and Islamic insurance (*takaful*) industries
- d. The petroleum industry
- e. Communications and multimedia
- f. Wholesale and distributive trade (in relation to hypermarkets and food and restaurant businesses)
- g. Education
- h. Freight forwarding and shipping
- i. Water
- j. Energy supply
- k. Professional services
- l. Security and employment agencies

Besides restrictions limiting the extent of foreign investment in these sectors, there are also provisions requiring a minimum ownership by certain indigenous ethnic groups in Malaysia, known as *bumiputera* ownership. These policies exist to safeguard the interests of these indigenous groups.

### **Other Requirements**

There are of course other requirements (statutory, regulatory, bye-laws, guidelines etc) for foreign investments which are industry specific, among others taxation, investment incentives, banking and finance, foreign exchange administration, employment law, foreign investment in real property, environmental law and intellectual property which should also be taken into consideration.

**Evelyn Eng**  
Partner