

ESTABLISHING YOUR BUSINESS PRESENCE IN MALAYSIA

To start a business in Malaysia, the first step is to choose the type of business vehicle that best suits your needs. The following are the types of business vehicles available in Malaysia:

(a) **Sole Proprietorship**

A sole proprietorship is a business owned by a single individual, operating under either a personal name or a trade name. It does not have a separate legal personality, meaning the sole proprietor is entitled to all profits but is also personally liable for all debts and obligations of the business without limit.

To qualify as a sole proprietor, the individual must be a Malaysian citizen or permanent resident and at least 18 years old. The sole proprietor requires to register the business with the Companies Commission of Malaysia (“**CCM**”) within 30 days from the date of commencement of business.

(b) **Partnership**

A partnership is owned by 2 to 20 individuals, operating under a trade name. Personal names cannot be registered as partnerships. All partners share personal, joint and several liability for the debts and obligations of the partnership without limit.

Similarly to sole proprietorship, a partnership must be registered with CCM within 30 days from the date of commencement of business. All the partners must be Malaysian citizens or permanent residents and at least 18 years old.

While not mandatory, the partners may enter into a partnership agreement to clearly define the rights and obligations of each partner.

(c) **Limited Liability Partnership**

A limited liability partnership (“**LLP**”) is an alternative business vehicle regulated under the Limited Liability Partnerships Act 2012, which combines the characteristics of a private company and a conventional partnership. An LLP has a legal personality separate from its partners, meaning that the liabilities of the LLP are limited to the assets of the LLP.

CLIENT ALERT

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An LLP can be established by a minimum of 2 persons, who may be individuals or corporate entities, wholly or partly, for carrying on any lawful business with a view of profit in accordance with the terms of the LLP agreement.

LLPs are suitable for start-ups, small & medium sized enterprises (SMEs), professionals (e.g. auditors), joint ventures or venture capitalists.

(d) Company Limited by Shares

A company limited by shares is the most common company structure in Malaysia. It is a body corporate with a legal personality separate from its shareholders. The liability of its shareholders is limited to the amount, if any, unpaid on shares held by the shareholders.

A company limited by shares can either be a private company (a "Sendirian Berhad" or "Sdn Bhd") with no more than 50 shareholders or a public company (a "Berhad" or "Bhd") which may have more than 50 shareholders.

A private company must have at least 1 resident director, while a public company requires a minimum of 2 resident directors. A resident director is a director who ordinarily resides in Malaysia and has his principal place of residence in Malaysia.

A private company can be converted into a public company and vice versa.

(e) Company Limited by Guarantee

A company limited by guarantee is typically used for non-profit purposes. Only a company limited by guarantee may be formed with objectives of providing recreation or amusement, promoting commerce and industry, art, science, religion, charity, pension or superannuation schemes, or any other object useful for the community or the country.

The liability of members in a company limited by guarantee is limited to the amount which the members have undertaken to contribute to the assets of the company in the event of winding up.

A company limited by guarantee must be a public company and therefore required to have at least 2 resident directors.

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(f) **Unlimited Company**

A company is an unlimited company if there is no limit on the liability of its shareholders. This means that the members are personally liable for the company's debts in the event of winding up.

This company structure is rarely used in Malaysia and is typically incorporated to form mutual funds that hold assets for investment purposes rather than conducting business. It offers flexibility for shareholders to sell their shares back to the company.

(g) **Branch of a Foreign Company**

Instead of incorporating a local entity, a foreign company may carry on a business in Malaysia by registering a branch in Malaysia with CCM.

This structure enables a foreign company to operate business in Malaysia without having to appoint a local director. However, the foreign company must appoint an agent in Malaysia who will be answerable for all acts, matters and things that are required to be done by the foreign company under the Companies Act 2016 ("CA 2016"). The agent will also be personally liable for any penalties imposed on the foreign company for contraventions of the CA 2016.

A branch office of a foreign company is not a separate legal entity and is an extension of the foreign company. Consequently, the foreign company is liable for all debts and liabilities of the branch office in Malaysia.

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