

INCORPORATION OF A LIMITED LIABILITY COMPANY IN MALAYSIA

There are two types of limited liability companies in Malaysia, namely a private limited and a public limited company which are required to be registered with the Companies Commission of Malaysia (“CCM”) for incorporation.

PRIVATE LIMITED COMPANY

A private company limited by shares, i.e., a private limited company (known in the Malaysian language as *Sendirian Berhad* or *Sdn Bhd*) is the most common type of business entity incorporated in Malaysia.

Foreigners are only allowed to incorporate a private limited company in Malaysia and no other types of business entities. They can register a private limited company with 100% foreign ownership in industries including but not limited to medical healthcare, education, legal services, accounting, and taxation services following liberalisation of the 45 services sub-sectors by the Malaysian Government since 2009. For consultancy and advisory business, having a minimum paid-up capital of RM500,000.00 is required whereas for import, export, restaurant, or trading business a paid-up capital of RM1,000,000.00 is needed.

REQUIREMENTS OF INCORPORATION OF A PRIVATE LIMITED COMPANY

- (a) at least one director who is at least 18 years old and ordinarily resides in Malaysia by having a principal place of residence in Malaysia (a Resident Director); and
- (b) one promoter and minimum one member (shareholder) who must either be a natural person or corporate body, Malaysian or foreigner.

The director can also act as the sole shareholder in the company.

PROCEDURE

Incorporation information/documents that are required:

- (a) The proposed company name
- (b) The status of a private or public company
- (c) The proposed type of business
- (d) Minimum paid-up capital of RM1.00
- (e) The address of registered office (through engagement of company secretary)
- (f) The business address
- (g) Complete details of directors(s) and promoter(s) including identity card/passport
- (h) Declaration from directors(s) and promoter(s)
- (i) Declaration of compliance from individuals responsible for incorporation
- (j) Registration fee of RM1,000.00

If documents are in order, a Notice of Registration will be issued by CCM within 4-7 days after submission of documents by company secretary.

SHARE CAPITAL

Minimum one (1) share issued at the price determined by the director(s).

REQUIREMENT OF CONSTITUTION

Under the current regime, a private limited company now can choose not to adopt a constitution. If this is the case, the company, its directors, and each member of the company shall have the rights, powers, duties, and obligations set out in the Companies Act 2016 (“CA 2016”).

EXECUTION OF DOCUMENTS

Under the CA 2016, it is no longer mandatory for a private limited company to have a common seal. The execution of documents can be done by either one of the options below:

- (a) If a private limited company adopts common seal, by affixing of the common seal subject to limitations and conditions in the constitution of a private limited company;
- (b) If a private limited company does not adopt common seal, signatures of two authorised persons, one of whom should be the director; OR
- (c) In the case of a sole director, by that director in the presence of a witness.

However, a common seal is recommended to be made if the company intends to invest in real estate to comply with the relevant land registry’s rules and policy.

CORPORATE INCOME TAX

Income tax applicable to Small and Medium Enterprises (SMEs) with a paid-up capital of up to RM2.5 million at the beginning of the basis period:

The first RM600,000	17%
In excess of RM600,000	24%

Whereas a company with paid-up capital above RM2.5million at the beginning of the basis period shall be 24%.

PUBLIC LIMITED COMPANY

A public limited company is a company limited by shares and which offers its shares to the public (known in the Malaysian language as *Berhad*, *Bhd*). They are the largest companies in Malaysia as the public owns the shareholding rights of these companies and are renowned on national and international platforms. They include banks like Malayan Banking Berhad, CIMB Bank Berhad and Public Bank Berhad. They also have strict financial standards as they must disclose their reports to the public who are stakeholders.

Unlike a private limited company, a public limited company must have at least two shareholders (while having no limitations to the number of shareholders it possesses), two directors and a company secretary who must be citizens of Malaysia. It must be located in Malaysia.

While certain aspects such as the incorporation procedure, requirement of constitution and the execution of documents and corporate income tax in respect of a public limited company are the same as those of a private limited company, nevertheless a public company with share capital which has not issued a prospectus inviting the public to subscribe for its shares or has not issued a prospectus under the Capital Markets and Services Act 2007, cannot commence any business or exercise any borrowing power until a statement in lieu of prospectus which complies with CA 2016 has been lodged with CCM and a statutory declaration verifying the requirements under the relevant paragraphs in CA 2016 have been complied with.

For enquiries, please feel free to contact us as follows. Our team is always readily to serve you.

Address: Suite 8.01, Level 8, Wisma E&C, No. 2, Lorong Dungun Kiri, Damansara Heights, 50490 Kuala Lumpur,
Malaysia

Tel: +603-2704 0368

Fax: +603-2704 0369

Email: seelin@ymplaw.com

Website: www.ymplaw.com