

ESTABLISHING YOUR BUSINESS IN MALAYSIA

- The fundamental elements

This Newsletter aims to provide you with a broad overview of business entities you may choose for establishing your business in Malaysia. Upon successful incorporation of your business entity, it is also vital that you take note of the relevant legislations that govern your business entity and stay in compliance of the reporting and filing requirements.

Bank Negara Malaysia has forecasted that the Malaysian economy will grow in year 2018 to 5.5-6.0% from 5.0-5.5% previously. There is an optimistic outlook on the direction of the Malaysian economy and business entities in Malaysia are at the frontline to reap the benefits of such growth.

What is the nature of your business?

It is important to first identify if your business, given its nature, is subject to any regulatory restraints and/or compliance requirements. Notwithstanding the series of announcements by the Malaysian Government since 2009 on liberalisation of various sectors of the economy, restrictions in specific and specialised industries remain mainly to protect the local industries and interest in such sectors. The main regulatory bodies in this respect are the Malaysian Investment Development Authority (MIDA) and Ministry of International Trade and Industry (MITI) in addition to the specific regulatory bodies in charge of different sectors of businesses.

Which type of business entity suits your business?

Once you have established the nature of your business, you may now ascertain the appropriate entity to carry out your business. In Malaysia, there are essentially 7 types of business entities: sole proprietorship, partnership, limited liability partnership, private limited company, public limited company, company limited by guarantee and foreign company. All business entities in Malaysia are governed by the Companies Commission of Malaysia ("CCM") or more commonly known as 'Suruhanjaya Syarikat Malaysia (SSM)'.

In this edition, we summarise the 4 most common forms of business entities: sole proprietorship, partnerships, private limited companies and limited liability partnerships by giving you a brief introduction in the ensuing paragraphs.

Sole Proprietorships are businesses wholly owned by a single individual using personal name per his/her identity card or trade name whilst **Partnerships** are businesses owned by 2 or more persons but not exceeding 20 persons. The Registration of Businesses Act, 1956 is the governing legislation.

Private Limited Companies (Sdn Bhd) are companies limited by shares having not more than 50 members whose liabilities are limited to the amount unpaid on shares held by such members. The governing legislation is Companies Act, 2016 ("CA 2016") and CA 2016 which came into force on 31 January 2017 also governs public limited companies, companies limited by guarantee and foreign companies.

Limited Liability Partnerships (LLP) are business vehicles which combines the characteristics of a company and a conventional partnership, creating an entity with separate legal personality. The Limited Liability Partnerships Act, 2012 is the governing legislation.

What to note when incorporating or registering your business entity?

In respect of these common forms of business entity, registration can either be done over the counter at CCM or online via the Ezbiz Online services at ezbiz.ssm.com.my.

Sole Proprietorships / Partnerships

- Registration must be done with CCM within 30 days from the date of commencement of business.
- Registration can be completed within 1 hour of payment.
- Every business owner/partner is required to sign on a Form A and be present at the CCM's counter for registration.
- The choice of business name is subject to compliance with the

Private Limited Companies

- Minimum requirement for incorporation is 1 director who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.
- For approval of name, application must be made to CCM to confirm on availability of the desired name. Approved names, with no objections, can be reserved for 30 days from the date of application.
- Application can be made vide a *super form*, which is an electronic template accessible

Limited Liability Partnerships

- A compliance officer which is either one of the partners or a person who is qualified to act as a secretary under the CA 2016 whom is at least 18 years of age, a citizen/permanent resident of Malaysia and ordinarily resides in Malaysia shall be appointed.
- The compliance officer has to register with CCM via the MYLLP portal (<https://myllp.com.my>) and visit the nearest CCM office for verification in

Registration of Businesses Rules, 1957 (Rule 15).

- Registration fee: RM30.00 by use of personal name and RM60.00 by use of trade name.
- Validity period: 1 year and not exceeding 5 years.
- Renewal of business registrations shall be made within 30 days before the expiry of the subsisting registration and in any event, within 12 months after expiration of registration, failing which, the entity in question has to re-register its business.
- An entity whose registration term has not expired can opt to terminate its business. A Notice for Termination of Registered Business (Form C) must be submitted to CCM within 30 days from the date of business termination.
- Conclusive evidence of registration: Business Registration Certificate (which can be obtained within an hour of making payment).

through the MyCoID 2016 (<https://mycoid2016.ssm.com.my>).

- For incorporation, an applicant is required to provide information including the proposed company name, company status, business nature, details of proposed director(s) and member(s) as well as declaration from the director(s). CCM may request for such other additional documents as it may require registering the company.
- A company secretary shall be appointed by the company within 30 days from the date of incorporation.
- An auditor shall be appointed no later than 30 days before the expiry of the period for submission to CCM the financial statements for each financial year of the company.
- No requirement for annual general meetings ("AGM"). The holding of AGMs is only applicable to public companies.
- Directors shall prepare its financial statements within 18 months from incorporation or within 6 months of its FYE.
- Financial statements of the company shall be approved by the board and be circulated to its members within 6 months of FYE and lodged with the CCM within 30 days from the date of circulation.
- If the company opts to have a constitution, it shall lodge the constitution with CCM within 30 days after its adoption by way of a special resolution.
- A company continues to exist from incorporation until unless wound up or struck off.
- Registration fee: RM1,000.00.
- Conclusive evidence of registration: Notice of Registration.
- A certificate of incorporation of the Sdn Bhd can be obtained from CCM by application with payment of a prescribed fee.

order to enable such officer to lodge and submit documents with CCM.

- The application shall contain, amongst others, the proposed name, general business nature, details of the partners to the LLP. If the LLP is formed for the purposes of carrying on any professional practice, the application shall be accompanied by an approval letter from its appropriate governing body.
- Registration fee: RM500.00
- Validity period: 1 year and not exceeding 5 years.
- On an annual basis after incorporation, every LLP is required to lodge with CCM, a declaration by any 2 partners of the LLP stating whether the LLP is able to pay its debts due in the normal course of business.
- Conclusive evidence of registration: Notice of Registration.
- A certificate of registration can be obtained from CCM by application with payment of a prescribed fee.

The introduction of a more inclusive and flexible CA 2016 is also indicative of the future direction that Malaysia is taking for business entities and sectors. With these developments and the liberalisation efforts of the Malaysian government, setting up of businesses in Malaysia is looking more convenient, promising and rewarding.

All information in this Newsletter is correct as at **31 January 2018** unless otherwise stated.

The author to this newsletter is [Kiranjit Kaur](#). Kiran was qualified as an advocate and solicitor since 2014 and is currently a Senior Legal Associate of Donny & Ong. She mainly advises on corporate commercial matters with particular focus on cross-border transactions.

Disclaimer

Our publications or newsletters are for general guidance only and shall not be construed as a professional legal advice rendered by us. It is not intended to form the basis of your decision in respect of any transaction or matter contemplated. The content is updated as at the date of the Newsletter and it includes information from publicly available sources. Should you have any specific enquiry on the subject matter, please contact us for more information.

CONTACT US

| T +603 6211 1316
 | F +603 6211 1876
 | A A-2-10, Plaza Damas 3, Jalan Sri Hartamas 1, 50480 Kuala Lumpur
 | W www.donnyong.com
 | E admin@donnyong.com


DONNY & ONG
 ADVOCATES AND SOLICITORS
 柯王律师事务所