

# Navigating Malaysia's legal landscape

Hi, nice to meet you. I'm Izwan

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# Goals of the presentation

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- Understanding the Malaysia's legal framework
- Overview of relevant legal issues before entering the Malaysia's market
- Relevant laws and regulations for startups / early stage companies
- Why and when you should care about an issue (and to hire a lawyer)

# Topics to be covered

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- Malaysia's legal framework
- Different business entities and options for considerations
- Employment laws and hiring regulations
- Data protection and privacy laws
- Taxation and compliance
- Navigating cross border transactions
- Intellectual property protections

# Malaysia's legal framework

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- Malaysia inherited the British legal system
- Strong English law influences such as the common law principles
- Laws are made by the Parliament, but we also have state laws governing local governments
- Every legal matter is governed by local laws and decided court cases (that may change from time to time)

# Why Malaysia?

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- Strong economic outlook and incentives
- Strategic regional positioning in Southeast Asia (eg, StanChart GBS and ExxonMobil)
- Investment-friendly policies for foreign businesses
- More private capitals (eg, Khazanah's fund of funds in VC funds and corporates) deployment in startups

# Different business entities compared

Although the law allows optionalities in terms of selecting the entity such as a branch office or representative/ regional office, the usual option for many startups is to form a new subsidiary of the parent company as it is more cost effective and offers a separate legal personality

Entity type	Representative Office ("RO") / Regional Office ("RGO")	Branch Office ("BO")	A company (i.e. a company with limited liability)
Use cases	Strictly for a business that wants to "test the water" before entering the M'sian market i.e. research the local business environment and relevant market without a legal entity	Can operate a business	A company (i.e. a 'Sdn Bhd') a fully-fledged, independent legal entity
Conditions	<ul style="list-style-type: none"><li>• <u>No</u> commercial activity permitted</li><li>• Funding must be solely external</li><li>• Opex must be at least RM300,000 per annum</li></ul>	<ul style="list-style-type: none"><li>• Must be same as the foreign parent</li><li>• Company</li><li>• Must have at least 1 branch agent</li><li>• Must have same name as its parent entity</li><li>• Required to have 1 company secretary</li></ul>	<ul style="list-style-type: none"><li>• Must appoint 1 licensed company secretary</li><li>• At least 1 domicile director</li><li>• At least 1 shareholder i.e individual or body corporate</li></ul>
Separate legal entity	Not a separate legal entity from the foreign parent company it represents		Separate legal entity
Duration	Up to 5 years (subject to renewal basis)	Perpetual until deregistered	Perpetual
Registration	Malaysian Investment Development Authority	Companies Commission of Malaysia ("CCM")	
Remarks	Not a common structure	Due to the higher filing requirements for a branch office and the corresponding costs and since the branch office's liability is not separate from its parent entity	This is the most common legal structure used by founders to carry out their business activities in Malaysia.
Set up costs (in USD)	USD3,000 or more	USD2,500 or more	USD1,000 - USD1,500

**Note: It is highly recommended to engage a licensed corporate secretarial firm with past experience in dealing with foreign startups to assist on the entity formation in Malaysia.**

# Other market entry strategies

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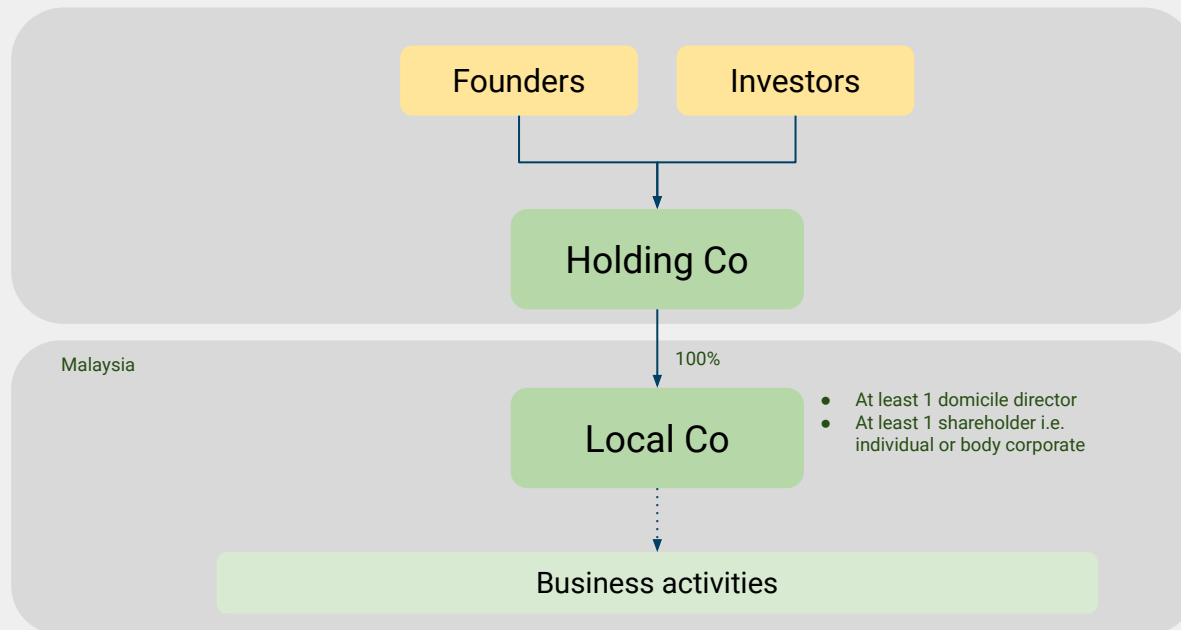


- Subsidiaries vs partnerships
- Joint ventures and strategic alliances

# 'Plain vanilla' legal structure illustrated

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Unless the business activity requires a local equity ownership participation, ordinarily, a foreign startup is usually formed as a 100% owned subsidiary of the holding/ parent company which forms part of the group company



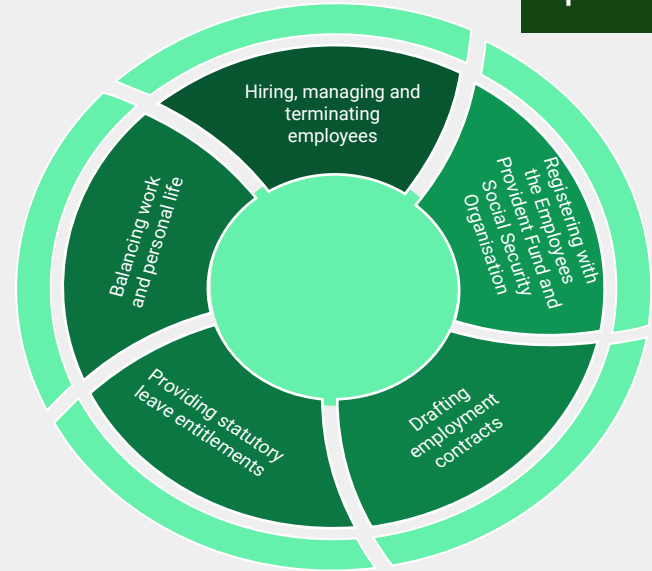
**Note:** The final legal structure may depend on the business model (i.e. any joint venture with a local partner) or local shareholding requirements (depending on the sector / industry)



# Employment laws and hiring regulations

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- Employer's obligations apply to all companies!
- If you are a director, you may be personally liable to any breach of employment laws (eg, minimum wage, overtime pay, SOCSO, EPF)
- Classification of employee vs independent contractor (usually used in the gig worker economy)
- Get a good employment contract template!



Highlights of the different roles and obligations of an employer in M'sia

**Note: Employment laws in Malaysia are “pro-employee” except for obvious misconduct. Any proposed dismissal by an employer should be exercised with caution and due care to reduce any likelihood of unlawful dismissals claim against the employer.**

# Visa and working permits

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- Generally, the work visa is needed before you can start your business in M'sia
- The process may take between 4 weeks depending on the completeness of the documents
- If the business is in the tech industry, you may get MDEC to assist to facilitate the visa submission
- Alternatively, you may need to apply for normal visa under the professional work permit

**MDEC**<sup>TM</sup>



**Note: Application approval is usually processed by MDEC and Issuance of Pass is by Malaysian Immigration office in Malaysia. It is highly advisable to consult your usual contact before undertaking any application to ensure you apply to the appropriate visa scheme programme.**

# Visa and working permits

Type	Employment Pass (EP)	Residence Pass (RP-MTE)
Use cases	Used by normal foreign expats	A 'fast track' for technology entrepreneurs
Duration	Up to 5 years	Up to 5 years (renewable for another 5 years)
Salary	At least RM5,000 salary per month	Not required
Dependents	Allowed	
Proof of funds	At least RM500,000 paid up capital of the company	At least RM50,000 in his or her bank account statement
Sponsor	Not required	At least 1 local sponsor
Other conditions		At least > 2 years track record of established business

**Note:** Application approval is usually processed by MDEC and Issuance of Pass is by Malaysian Immigration office in Malaysia. It is highly advisable to consult your usual contact before undertaking any application to ensure you apply to the appropriate visa scheme programme.

# Data protection and privacy laws

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- Enacted in 2010, the Personal Data Protection Act 2010 (“PDPA”) is the primary legislation governing the protection of personal data in Malaysia in commercial transactions
- Newly amended act in 2024 include the role of the ‘Data Protection Officer’ (“DPO”) and mandatory data breach notification
- Cross- border data transfers considerations (i..e. transferring personal data out of Malaysia, including compliance with the PDPA's conditions.)
- Impact of global data protection laws (eg, GDPR) may influence PDPA’s regime.



**Note: Existing privacy policies may likely need to be reviewed to address any new compliance requirements. Consequently it is advisable to seek legal advice for issues or uncertainties regarding data protection obligations.**

# Taxation and compliance

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- As a company, you need to make an annual tax declaration
- You may qualify for tax incentives and exemptions
  - Malaysia Digital Tax Incentive
  - Malaysia Digital Status (formerly known as MSC Status)
- A 6% service tax is also imposed on digital services by a foreign company
- Get a tax agent to assist on the tax compliance and reporting obligations



**Note: Before deciding on the entity formation, it is highly advisable to consult with a tax adviser to assess your likely tax implications based on your proposed business structure in Malaysia.**

# Navigating cross-border transactions

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- **Contract law and dispute resolution**
  - Key contract clauses to protect interests
  - Choice of law and jurisdiction in cross-border agreements
  - Alternative dispute resolution mechanisms
- **Foreign exchange regulations**
  - Rules on remittance and repatriation of profits
  - Managing currency risk

**Note: If you plan to use existing documents and agreements, you should get a local qualified lawyer to review the documents in view of ensuring compliance to the Malaysian laws and its regulations**

# Dispute resolution

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- **Litigation procedures and courts in Malaysia**
- **Alternative dispute resolution (ADR) mechanisms in Malaysia**
  - Mediation
  - Arbitration
- **International arbitration options (AIAC, SIAC, HKIAC)**



**Note: If you plan to use existing documents and agreements, you should get a local qualified lawyer to review the documents in view of ensuring compliance to the Malaysian laws and its regulations**

# Intellectual property protections

- Intellectual Property Corporation of Malaysia (“MyIPO”) is responsible for the development and management of intellectual property system in Malaysia
  - Patents (Patents Act 1983)
  - Trademarks (Trademarks Act 2019)
  - Copyright (Copyright Act 1987)
  - Industrial Designs (Industrial Designs Act 1996)
- Non-disclosure agreements (NDAs) are common legal tools that protect your startup’s sensitive information during collaborations, joint ventures, and more



**Note: It is highly recommended to consult with a local IP agent to obtain specific advice on IP protection and enforcement in Malaysia.**



# Foreign investment in Malaysia

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- Generally, any foreign investor is free to make any investments (i.e. hold private equities in startups) in Malaysia, unless the investment relates to restricted industries (eg, education and healthcare industries)
- Separate discussion needed on specific incentives for foreign investors (grants, tax reliefs) based on the industries / businesses

# Q&A / Contact

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