



# Investing in Malaysia 2022



Audit / Tax / Advisory

Smart decisions. Lasting value.

# Table of contents

Welcome	<b>3</b>
Establishing the business entity	<b>4</b>
Tax information	<b>8</b>
IPO quick facts	<b>13</b>
Human resource requirements	<b>17</b>
Withdrawal procedures	<b>19</b>

# Welcome

## to the Crowe Global Investing in Malaysia 2022 guidebook.

This guide forms a part of the Investing in Asia Pacific 2022 series and provides a quick reference for those interested in investing in Malaysia. While it is not exhaustive, this guide aims to answer some of the key questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

The guidebook will cover five main topics as follows:

- Establishing the business entity
- Tax information
- IPO quick facts
- Human resource requirements
- Withdrawal procedures



# Establishing the business entity

## Formation and costs

### **Company / Branch**

Company registration takes about five (5) to ten (10) days while its formation may take up to one (1) month. There are no special licences or approvals required except for certain sensitive industries e.g. financial institutions, telecommunications, etc.

The application cost of forming a company is in the region of MYR 3,000, while registration fees for foreign companies shall be payable in accordance to the share capital as set by the Company Commission of Malaysia not exceeding RM70,000. Annual maintenance fees for secretarial, tax and audit services for a dormant company are in the region of MYR 6,000.

### **Representative Office**

A representative office requires registration with the Malaysian Industrial Development Authority (MIDA) and/or Ministry of International Trade and Industry (MITI) and takes approximately two (2) months. The cost of registering a representative office is in the region of MYR 5,000. Annual maintenance fees are minimal as a representative office does not require secretarial, tax or audit services.

## Investment incentives

### **Company**

- Reinvestment allowance – no prior approval required.
- Pioneer status or Investment Tax Allowance for promoted products or promoted industries – prior approval required from the MIDA and takes to six (6) weeks from the date of complete information received.
- MSC Malaysia (formerly Multimedia Super Corridor) status – prior approval required from the Malaysian Digital Economy Corporation [formerly Multimedia Development Corporation (MDeC)] and takes about (3) to six (6) months.

### **Branch**

Reinvestment allowance – no prior approval required.

### **Representative Office**

Representative offices are not allowed to do business in Malaysia.

## Foreign ownership restrictions

### **Company**

Generally, no foreign ownership restriction except for certain sectors e.g. financial services, wholesale and distributive trade, education, communications and multimedia, and energy supply, etc.

### **Branch / Representative Office**

No restriction on foreign ownership.

## Work permits and visas

### **Company**

Work permits are allowed for key posts in companies approved by the MIDA. The application takes about three (3) months.

### **Branch**

Work permits are only allowed if the foreign company can prove that local staff are not able to perform the work of the foreigner.

### **Representative Office**

Work permits are only allowed if the foreign company can prove that local staff are not able to perform the work of the foreigner. For rep office, at least one (1) work permit will usually be allowed.

## Accounting standards and audit requirements

### **Company**

- Companies have to follow either one (1) of the two (2) accounting frameworks in Malaysia; Malaysian Financial Reporting Standards (“MFRSs”) or Malaysian Private Entities Reporting Standard (“MPERS”). MFRSs are equivalent to IFRSs in all material aspects.
- All companies incorporated under the Malaysian Companies Act require an annual audit except for private companies with revenue less than MYR 100,000 and total assets value less than MYR 300,000 and not more than five (5) employees in the current and the past two (2) financial years.

### **Branch**

- Branches have to follow either MFRSs or MPERS.
- All branches require an annual audit with similar audit exemption criteria of private companies as stated above.

### **Representative Office**

- Representative offices are not required by law to be audited.

## Residential directors/promoters requirements

### **Company / Branch / Representative Office**

Minimum of one (1) director for private company or two (2) directors for public company who are residents in Malaysia.

## Foreign ownership over tangible assets

### **Company / Branch / Representative Office**

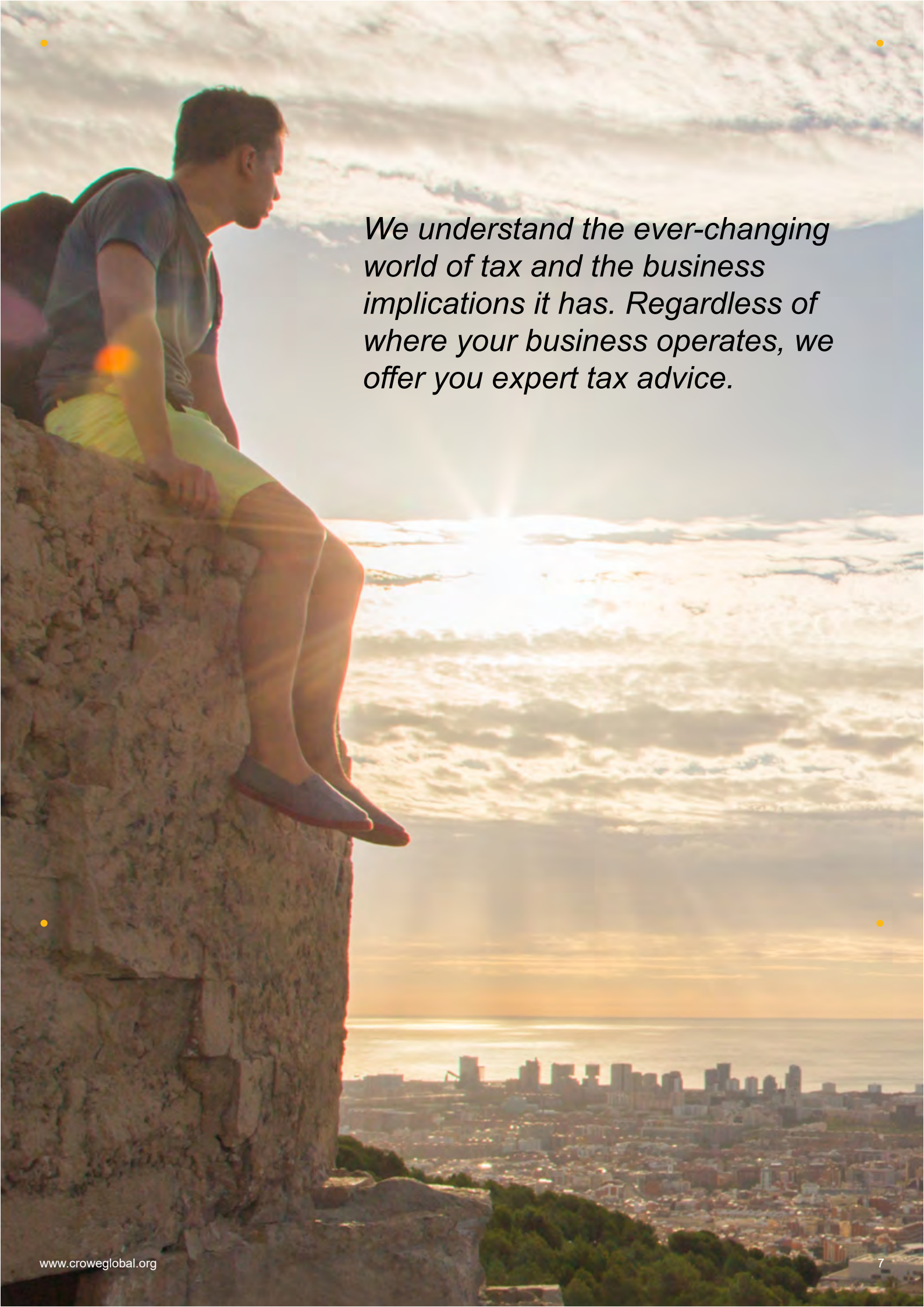
- Foreign owned companies are not allowed to own certain properties such as those built on Malay Reserve Land.
- Acquisition of property by foreign interests has to be registered under a local company and will be subjected to conditions pertaining to equity, employment, capital and land redevelopment.
- Acquisition of agricultural land is only allowed under certain conditions.
- Companies that own properties which are worth more than MYR 20 million will be subject to a 30% Bumiputera shareholding requirement.

## Country quirks

Companies are the most common form of entity for doing business in Malaysia.

# International Specialists



A man with a backpack is sitting on a stone ledge, looking out over a city at sunset. The sun is low on the horizon, creating a golden glow over the city and the ocean. The man is wearing a grey t-shirt, yellow shorts, and blue shoes. The city below is densely packed with buildings, and the ocean is visible in the distance. The sky is filled with soft, golden clouds.

*We understand the ever-changing world of tax and the business implications it has. Regardless of where your business operates, we offer you expert tax advice.*

# Tax information

## Tax rates on corporate income

The standard corporate tax rate for resident companies is 24%. Small and medium-sized companies (i.e. with paid up ordinary share capital of not more than MYR 2.5 million) are charged a concessionary tax rate of 17% on the first MYR 600,000 of chargeable income with effect from year of assessment (YA) 2020 if their gross business income is not more than MYR 50 million for the relevant YA and at the standard tax rate on the subsequent chargeable income.

For YA 2022, there is a one-off “Prosperity Tax” which applies to companies other than small and medium-sized companies whereby these companies are taxed on:

1. The chargeable income on the first MYR 100 million is subject to 24% tax rate: and
2. The remaining chargeable income is subject to 33% tax rate.

## Other taxes

Sales Tax	Effective 1 September 2018, Sales tax applies - 5% or 10% depending on class of good
Services Tax	Effective 1 September 2018, Service tax applies – 6%
Value Added Tax (VAT)	No VAT in Malaysia
Import duties	Import duties on goods imported into Malaysia - various rates.
Real property gains tax	30% on gains from disposal of real properties or shares in real property companies within three (3) years from acquisition, 20% for disposals in the fourth (4) year, 15% for disposals in the fifth (5) year and 10% for disposals in the sixth (6) year or thereafter.



## Stamp Duty

Stamp duty is chargeable on certain instruments or documents. Some examples are provided as follows

Example of dutiable transaction	Stamp Duty rate
Sale or transfer of property (excluding stock, shares or other marketable securities)	Rising scale of 1% to 4% on the market value of the property
Sale or transfer of stock, shares or other marketable securities	0.3% on the price or value on the date of transfer, whichever is higher

## Branch income

Taxed at the normal tax rate applicable to companies.

## Income determination

- Inventory valuation - weighted average and FIFO are acceptable.
- Capital gains - not taxable except for capital gains on disposal of real property or shares in real property companies which are subject to real property gains tax.
- Intercompany dividends from overseas - taxable upon the dividend being remitted into Malaysia.
- Intercompany dividends from local companies - not taxable, all dividends are single tier dividends.
- Foreign income – taxable upon the income being remitted into Malaysia.
- Stock dividends - not taxable.

# Trusted Advisors

## Tax incentives

- Reinvestment allowance – tax exemption equivalent to 60% of capital expenditure on qualifying plant and factory building.
- Pioneer status – 100% or 70% tax holiday for five (5) to ten (10) years.
- Investment Tax Allowance - tax exemption equivalent to 60% or 100% of qualifying capital expenditure incurred within a period of five (5) to ten (10) years.
- MSC Malaysia (formerly Multimedia Super Corridor) status – 100% or 70% tax holiday for five (5) or ten (10) years.

## Group taxation policies

Group relief is allowed for up to 70% of the adjusted loss of the surrendering company but subject to conditions. With effect from YA 2019, a company may only surrender its losses for a period of three (3) consecutive YAs and the three (3)-year period commences from the year immediately following the commencement of operations. Group consolidated returns are not allowed.

## Deductions

- Depreciation and depletion – depreciation allowances are given in the form of capital allowances at the prescribed rates.
- Ten (10)-year limitation on the carry forward of unabsorbed business losses, pioneer losses, reinvestment allowances and investment allowances effective from the YA 2019.
- Payments to foreign affiliates – transfer pricing rules apply. Some payments are subject to withholding tax e.g. technical fees for services rendered in Malaysia, commissions, rentals for hire of moveable equipment, interest, royalties, etc.
- Interest is allowed for tax deduction but subject to restriction if the loans borrowed are used to invest in non-business assets.
- Taxes – not deductible except for indirect taxes e.g. import duties on imported goods, excise duties and export duties.
- Entertainment – tax deductible but subject to exceptions. For example, entertainment of potential clients and suppliers are not allowed for tax deductions.

## Withholding tax

• Dividends	NIL
• Interest	15% unless reduced by tax treaty
• Royalties	10% unless reduced by tax treaty
• Technical fee	10% unless reduced by tax treaty
• Commission	10%. Nil if the commission income is treated as the payee's business income
• Branch profit	NA

## Tax administration for company

Tax returns have to be filed annually within seven (7) months from a company's financial year end.

Payment of tax – companies have to estimate their tax at the beginning of a year and pay the tax progressively via twelve (12) monthly installments. The balance of tax has to be paid upon submission of the tax returns.

## Taxable incomes for non-resident companies and individuals

- Non-resident companies are taxed in the same way as resident companies for the income derived from Malaysia.
- Non-resident individuals are taxed at a flat tax rate of 30% on income derived from Malaysia and cannot enjoy personal reliefs and rebates.

## Other pertinent information

Malaysia operates a self-assessment system where the taxpayer assesses his own tax liability which may be subject to tax audit by the authorities.



*Our specialists develop strategies that respond to current issues businesses face and anticipate the implications of future changes.*

# IPO quick facts

## Bourses in the country

1. Bursa Malaysia Securities Berhad  
– Main Market.
2. Bursa Malaysia Securities Berhad  
– ACE Market.
3. Bursa Malaysia Securities Berhad  
– LEAP Market.

## Admission requirements

### Main Market

#### A. Mode of Listing

##### Profit Test

Uninterrupted profit after tax of three (3) to five (5) full financial years, with an aggregate of at least MYR 20 million, after-tax profit of at least MYR 6 million for the most recent full financial year, and has been operating in the same core business over at least the profit track record prior to submission.

##### Market Capitalisation Test

A total market capitalisation of at least MYR 500 million upon listing, and has been incorporated and generated operating revenue for at least one (1) full financial year prior to submission.

### Infrastructure Project Corporation Test

The company must have the right to build and operate an infrastructure project in or outside Malaysia with project costs of not less than MYR 500 million, and for which the concession or licence has been awarded by a government or a state agency in or outside Malaysia, with remaining concession or licence period of at least fifteen (15) years from the date of submission.

#### B. Public spread

At least 25% of the Company's total number of shares, and a minimum of 1,000 public shareholders holding not less than 100 shares each.

#### C. Bumiputera Equity Requirement\*

- Allocation of 50% of the public spread requirement to Bumiputera investors at the point of listing.

\* *Companies with MSC status, BioNexus status and companies with predominantly foreign-based operations are exempted from the Bumiputera equity requirement.*

# Diverse Industry Knowledge



#### **D. Qualitative requirements**

1. No requirement on sponsorship.
2. An identifiable core business which it has majority ownership and management control.
3. Core business should not be holding of investment in other listed companies.
4. Continuity of substantially the same management for at least three (3) full financial years prior to submission, or for market capitalisation test, since the commencement of operations (if less than three (3) full financial years).
5. Sufficient level of working capital for at least twelve (12) months from the date of prospectus.
6. Positive cashflow from operating activities for listing via profit test and market capitalisation test
7. No accumulated losses based on its latest audited financial statements for listing via profit test.
8. Additional requirements for mineral, oil and gas exploration and extraction corporations or assets:  
- sufficient level of working capital for at least eighteen (18) months from the date of prospectus.

#### **ACE Market**

##### **A. Mode of Listing**

No minimum operating track record or profit requirement.

##### **B. Public spread**

At least 25% of the company's total number of shares, and a minimum of 200 public shareholders holding not less than 100 shares each.

##### **C. Bumiputera equity requirement\***

1. No requirement at the point of listing
2. Allocation of 12.5% of the enlarged share capital to Ministry of International Trade and Industry (MITI) – recognised Bumiputera investors within one (1) year after achieving Main Market profit track record, or five (5) years after being listed on ACE Market, whichever is earlier.

\* *Companies with MSC status, BioNexus status and companies with predominantly foreign-based operations are exempted from the Bumiputera equity requirement.*

#### **D. Qualitative requirements**

1. Engage a Sponsor to assess the suitability for listing.
2. Sponsorship is required for at least three (3) years post listing.
3. Core business should not be holding of investment in other listed companies.
4. Continuity of substantially the same management for at least three (3) full financial years prior to submission or since its incorporation (if less than three (3) full financial years).
5. Sufficient level of working capital for at least twelve (12) months.

#### **LEAP Market**

##### **A. Company size and trading record**

No minimum operating track record or profit requirement.

##### **B. Public spread**

At least 10% of the total number of ordinary shares for which listing is sought at admission.

##### **C. Bumiputera equity requirement**

No requirement at the point of listing.

##### **D. Qualitative requirements**

1. Approved Adviser is to be engaged to assess the suitability for listing.
2. Continuing Adviser is to be secured and maintained for at least three (3) years post listing and the Approved Adviser who submitted the listing application must act as the Continuing Adviser for at least one (1) FY upon admission.
3. A clearly identifiable core business.
4. Sophisticated Investors only (as prescribed under the Capital Markets and Services Act 2007).

## Moratorium imposed

Main Market	ACE Market	LEAP Market
<ul style="list-style-type: none"> <li>Promoters' entire shareholdings for six (6) months from the date of admission.</li> <li>Subsequent sell down with conditions for companies listed as Infrastructure Project Corporation test.</li> </ul>	<ul style="list-style-type: none"> <li>Promoters' entire shareholdings for six (6) months from the date of admission.</li> <li>Subsequently, at least 45% must be retained for another six (6) months and thereafter, further sell down is allowed on a staggered basis over a period of three (3) years.</li> </ul>	<ul style="list-style-type: none"> <li>Promoters' entire shareholdings for twelve (12) months from the date of admission.</li> <li>Subsequently, at least 45% must be Retained for another thirty-six (36) months.</li> </ul>

## Transaction with related parties

- Must be based on terms and conditions which are not unfavourable to the company.
- All trade debts exceeding the normal credit period and all non-trade debts, owing by the interested persons to the company or its subsidiary companies must be fully settled prior to listing.

## Estimated cost involved

Main Market	ACE Market
Depending on the size and complexity of the case as well as the amount to be raised.	MYR 1.5 – MYR 3 million.

## Requirements for External Auditors to be appointed

A company is to appoint an auditor for each financial year of the company, unless being exempted by the Registrar from the requirement according to the conditions as determined by the Registrar. Must be a member of the Malaysian Institute of Accountants and registered with Malaysian Audit Oversight Board as auditors for public interest entities.

# Listing of Special Purpose Acquisition Companies (“SPAC”)

- SPAC is allowed to be listed on Main Market only.
- Must be incorporated in Malaysia under the Companies Act 2016.
- Minimum fund raised of MYR 150 million.
- Members of its management team must have the experience, qualification and competence to achieve the SPAC’s business objective and strategy disclosed in the prospectus, and to perform their individual roles, including understanding of the nature of their obligations and those of the SPAC.
- Management team must in aggregate own at least 10% equity interest in the SPAC on the date of its listing.
- Moratorium on securities is imposed on management team’s entire interest from the date of listing until completion of the qualifying acquisition. Upon completion of the qualifying acquisition, sell down is allowed on a staggered basis over a period of two (2) years.
- Must place at least 90% of the gross proceeds raised in a trust account and may only be released by the custodian upon termination of the trust account. At least 80% of the amount in trust account shall be used for qualifying acquisition.
- Must complete qualifying acquisition within thirty-six (36) months from the listing date.

## Timeline

Six (6) to nine (9) months.

## Language required for:

- Prospectus: Any language\*
- Annual reports: Any language\*
- Audit reports: Any language\*

*\* If in a language other than Bahasa Malaysia or English, to be accompanied by a Bahasa Malaysia or English translation conformed to be correct.*

## Approving authorities

Securities Commission of Malaysia, Bursa Securities Malaysia Berhad and other relevant authorities (where applicable).

## Listing of foreign companies

1. Primary listing is allowed on Main Market and ACE Market.
2. Secondary listing is allowed on Main Market only.
3. Additional listing criteria:
  - a. Already has a primary listing on the main market of a foreign securities exchange specified by the Securities Commission Malaysia.
  - b. Fully comply with the listing rules of the said securities exchange.
  - c. The securities exchange where the applicant is primarily listed must have standards of disclosure rules at least equivalent to those of Bursa Malaysia.

# Human resource requirements

## Special labour standards to take heed of

### Hours of Work

An employee shall not be required under his contract of service to work :

1. more than five (5) consecutive hours without a period of leisure of not less than thirty (30) minutes duration;
2. more than eight (8) hours in one day;
3. in excess of a spread over period of ten (10) hours in one (1) day;
4. more than forty-eight (48) hours in one (1) week:

### Children & Young Person Employment

“Young person” means any person who has not completed his sixteenth year of age. Young person is prohibited:

1. to work between the hours of 8 o'clock in the evening and 7 o'clock in the morning;
2. to work for more than three (3) consecutive hours without a period of rest of at least thirty (30) minutes;
3. to work for more than six (6) hours in a day or,
4. to commence work on any day without having had a period of not less than fourteen (14) consecutive hours free from work.

### Minimum wage

MYR 1,500/month (with effect from 1 May, 2022)

## Social welfare: insurance, pension, etc

### Social security:

**EMPLOYEES' SOCIAL SECURITY FUND**  
Monthly contribution by employer and employee as per Third Schedule.

### Insurance:

**EMPLOYMENT INSURANCE SCHEME**  
Monthly contribution by employer and employee as per schedule.

### Pension:

**EMPLOYEE PROVIDENT FUND.**  
Monthly contribution by employee and employer at 9% and 12% of wages respectively. (effective from 1 January 2022 till 30 June 2022).

### Human Resource:

**HUMAN RESOURCE DEVELOPMENT FUND (HRDF)**  
Monthly contribution by employer at 1% of wages.

## Requirements for retirement benefits

It is not mandatory to set retirement benefits.

## Brief information on labour unions

It is not mandatory to set union within a Company.

## Legal annual leave and public holidays

### **Public Holiday**

Every employee shall be entitled to a paid holiday at the ordinary rate of pay for ten (10) gazette public holiday in any one (1) calendar year.

### **Annual Leave**

An employee shall be entitled to paid annual leave of:

1. eight (8) days for every twelve (12) months of continuous service with the same employer if he has been employed by that employer for a period of less than two (2) years;
2. twelve (12) days for every twelve (12) months of continuous service with the same employer if he has been employed by that employer for a period of two (2) years or more but less than five (5) years; and
3. sixteen (16) days for every twelve (12) months of continuous service with the same employer if he has been employed by that employer for a period of five (5) years or more.

### **Medical Leave**

An employee shall be entitled to paid medical leave of:

1. fourteen (14) days in the aggregate in each calendar year, if the employee has been employed for less than two (2) years;
2. eighteen (18) days in the aggregate in each calendar year, if the employee has been employed for two (2) years or more but less than five (5) years;
3. twenty-two (22) days in the aggregate in each calendar year, if the employee has been employed for five (5) years or more.

## Country quirks

### **Lawful Deduction**

No deduction shall be made by an employer from the wages, other than statutory deductions. If any, prior approval must be granted from the Director General of Labour.

# Personal Service



# Withdrawal procedures

## Company: legal procedures required for liquidation

Voluntary liquidation can be in the form of a member's liquidation whereby the company must be solvent (i.e. sufficient assets to pay off the liabilities within a period of twelve (12) months from date of liquidation). If the company is not solvent, then a creditors' voluntary liquidation can be subjected to the company whereby generally majority of the creditors in value need to approve the liquidation.

## Company: tax requirements

Liquidation proceeds are generally not taxable. However generally, the liquidator needs to obtain the necessary tax clearances from the local tax authority in relation to the company's tax matters prior to the finalisation of the liquidation process.

## Branch: legal procedures required for closing branch

Same as for company.

## Branch: tax requirements

Tax clearance is required for branches prior to closure. Branch profits may be remitted back to Head Office without any tax implications.

## Representative office: legal procedures required for closing office

Inform the Ministry of International Trade and Industry.

## Representative office: tax requirements

No tax on closure of representative offices. Representative offices are not allowed to do business in Malaysia and therefore should not have any profits that are subjected to tax.



## Contact Information

Poon Yew Hoe  
Managing Partner/ Tax Partner  
yewhoe.poon@crowe.my

Yuen Lok Mok  
Regional Executive Director,  
Asia Pacific  
Crowe Global  
yuenlok.mok@crowe.org

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