



ICLG

The International Comparative Legal Guide to:

Fintech 2019

3rd Edition

A practical cross-border insight into fintech law

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Two general chapters. These chapters provide an overview of artificial intelligence in fintech, and of the recent trends and challenges in the financing of cross-border fintech start-ups.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 51 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Developments in 2018 in terms of sectors were:

- Payments: Telenor Microfinance Bank, in partnership with Valyou Malaysia, has introduced a blockchain-based cross border remittance service, developed by Alipay. It is expected that the blockchain technology will boost efficiency of remittances from Malaysia to Pakistan.
- Banks: locally licensed banks continue to adopt, and/or support, fintech in their business. PayNet Malaysia launched a DuitNow function which was adopted by locally licensed banks. DuitNow enables consumers to make bank transfers only using a mobile number, without having to remember unwieldy bank account numbers.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 issued by the Securities Commission Malaysia (SC) came into force on 15 January 2019.

Cryptocurrency exchanges are temporarily prohibited from accepting new investors and will only be allowed to facilitate the withdrawal or transfer of client assets with the written instruction of the investor, until the regulatory requirements are published.

The SC also announced that no person can conduct initial coin offerings without its authorisation.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

More than 97% of Malaysian businesses are small or medium-sized businesses (SMEs). Governmental action and support for SMEs

have been available through policies (including the SME Masterplan 2012–2020) co-ordinated by SME Corporation Malaysia, and implemented by specified agencies of the government and the banking sector. Malaysia has both conventional and Islamic financial and capital markets providing debt and equity financing.

Financial institutions like banks and development financial institutions (which have specified sector objectives like the Small Medium Enterprise Development Bank Malaysia Berhad) provide debt financing. An established debt capital market also exists, in both conventional and *Shari'ah* compliant issues.

Equity financing can be raised by listing on the stock exchange of Bursa Malaysia Securities Berhad, which is further discussed in question 2.3 below, venture capital investment, or utilising an equity crowdfunding platform approved by the SCM under the equity crowdfunding framework.

Specific examples of funding sources include:

- Peer-to-peer (**P2P**) financing under the SCM guidelines.
- Malaysia Debt Ventures Berhad, Malaysia's leading technology financier, has various schemes, including an Intellectual Property Financing Scheme of RM 200 million, to enable companies with IP rights (**IPRs**) to use their IPRs as additional collateral to obtain financing.
- In addition, one programme under the SME Masterplan is the SME Investment Partner, which provides early-stage financing through the establishment of investment companies to invest in potential SMEs, not limited to fintech businesses. Various governmental and government established entities provide loans, grants and guarantee services to SMEs, disbursed directly or through the banking system.

Entities that focus specifically on financing to the technology sector include:

- Cradle Fund Sdn Bhd. (**Cradle**), owned by the Ministry of Finance. Cradle focusses on pre-seed, early, seed and start-up financing, and provides non-financial assistance to local tech start-ups. Its CIP 300 programme provides debt seed financing, and its Direct Equity 800 (**DEQ800**) programme launched in 2017 to early-stage start-ups that meet the applicable criteria.
- The Malaysian Digital Economy Corporation Sdn Bhd. (**MDEC**), wholly owned by the government, which focusses on building a sustainable digital ecosystem.
- The Malaysia Venture Capital Management Berhad (**MAVCAP**).
- The Malaysian Technology Development Corporation (**MTDC**).

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

SME Corporation Malaysia is the Central Coordinating Agency under the Ministry of International Trade and Industry (MITI) in Malaysia that formulates overall policies and strategies for SMEs, and coordinates the implementation of SME development programmes across all related government ministries and agencies.

SMEs in Malaysia are given preferential tax rates as well as a wide range of tax incentives for businesses in the manufacturing, services and agriculture sectors. Fiscal incentives are pioneer status, investment tax allowance, reinvestment allowance, accelerated capital allowance and industrial building allowance – for example:

- The angel tax incentive granted to angel investors in technology based start-ups administered by Cradle.
- Pioneer status with income tax exemption of various percentages by the Malaysian Industrial Development Authority (MIDA).
- Partial corporate tax exemption for entities in the Malaysian Digital Hub under the MDEC.
- Malaysia Tech Entrepreneur Programme under the MDEC to attract individuals and help them set up and develop their start-ups in Malaysia, subject to specified conditions.
- The Multimedia Super Corridor (MSC) Malaysia status recognition by the MDEC for ICT and ICT-facilitated businesses that meet specified criteria available to local and foreign companies. The MSC is located in cybercities and cybercentres which comply with a set of minimum standards administered by the MDEC. Specific incentives are granted to MSC Malaysia Status entities, including the MSC Malaysia Bill of Guarantees, 100% exemption from taxable statutory income, 100% investment tax allowance, eligibility for R&D grants, and the freedom to source capital and borrow funds under specific waivers from the foreign exchange administration requirements of Malaysia.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The conditions for a business to IPO in Malaysia would depend on the market it intends to list on. Bursa Malaysia Securities Berhad has three securities markets: (i) the Main Market; (ii) the ACE Market; and (iii) the LEAP Market.

The LEAP Market was introduced to provide SMEs and other companies, from all industries including fintech, with greater fundraising access and visibility. Only sophisticated investors (comprising entities set out in Part 1 of Schedules 6 and 7 to the Capital Markets and Services Act 2007 (CMSA) may invest in the LEAP Market. The LEAP Market provides opportunities for start-up fintech companies, which may generally find it difficult to meet the Main Market or ACE Market listing requirements.

To list on the LEAP Market, an applicant must:

- be a public company incorporated in Malaysia;
- not be: (i) a subsidiary or holding company of a corporation currently listed on the Main Market or ACE Market of the Exchange, and the listing of such applicant will result in the existing listed corporation within the group ceasing to have a separate autonomous business of its own and not be capable of sustaining its listing in the future; (ii) an investment holding corporation with no immediate or prospective business operations within its group; or (iii) an incubator, including a technology incubator;

- engage an adviser, approved by Bursa Malaysia Securities Berhad, to carry out both the initial listing activities and post-listing activities, to assess the suitability for listing and submit the application for admission to the LEAP Market; and
- achieve a minimum shareholding spread of 10% of its ordinary shares upon admission to the LEAP Market.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

There were no notable exits in 2018.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Other than the order issued by the SC referred to in question 3.2 below, there is no specific regulatory framework for fintech businesses in Malaysia, apart from the incentives and functions of governmental or government-owned entities referred to under sections 1 and 2 above. Where a fintech business falls within any business, or includes an activity that is regulated or licensed in Malaysia, the regulatory and legal requirements to conduct such business or activity must be complied with in accordance with the applicable Malaysian laws.

Fintech activities which involve banking, investment banking, insurance or *takaful*, money changing, remittance, operating a payment system or issuing payment instruments business will come under the purview of the Central Bank of Malaysia, Bank Negara Malaysia (BNM). The Financial Services Act 2013 (FSA) is the statute that regulates and provides supervision of conventional financial institutions, payment systems and operators thereof and the oversight of the money market and foreign exchange market. BNM also regulates the Islamic financial sector, largely under the Islamic Financial Services Act 2013.

In 2016:

- BNM launched the Financial Technology Regulatory Sandbox Framework (the **BNM Framework**) to provide a regulatory environment that is conducive for the deployment of fintech innovations. This includes reviewing and adapting regulatory requirements that may unintentionally inhibit innovation or render them non-viable. The BNM Framework provides for innovation by fintech companies to be deployed and tested in a live environment, within specified parameters and timeframes, and whether to allow the product, service or solution to be introduced to the market on a wider scale. If allowed, the participating fintech companies intending to carry out regulated businesses will be assessed based on applicable licensing, approval and registration criteria under the applicable laws.
- BNM has also established the Financial Technology Enabler Group (**FTEG**) to support innovations that will improve the quality, efficiency and accessibility of financial services in Malaysia.

The SC, which regulates the Malaysian capital markets, has adopted a Digital Markets Strategy intended to enhance access to financing, increase investor participation, augment the institutional market and develop synergistic ecosystems for the capital markets in Malaysia. Stockbroking, provision of investment advice, financial planning, dealing in derivatives and advising on corporate finance are among the activities regulated by the SC under the CMSA.

In 2015:

- the SC launched the “Alliance of FinTech Community” (aFINity@SC), an initiative to catalyse greater interest towards the development of emerging technology-driven innovations in financial services, whether existing or prospectively developing in Malaysia. In December 2017, the SC invited parties interested in establishing and operating an Alternative Trading System (ATS) in Malaysia to participate in its regulatory sandbox sessions.
- Malaysia became the first country in ASEAN to have a regulatory framework for equity crowdfunding for the purpose of early-stage financing for start-ups and entrepreneurs.
- Since 2015, there has existed a regulatory sandbox set up by the SC for fintech providers on whom regulation is imposed on a graduated scale, in line with the growth of the market and complexity of the product.

In 2016, the SC introduced the regulatory framework for P2P lending, allowing SMEs access to this avenue for debt funding.

In May 2017, the SC introduced the Digital Investment Management framework, setting out licensing and conduct requirements for the offering of automated discretionary portfolio management services to investors.

In January 2019, the SC announced the issuance of a Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 to prescribe certain digital currency and digital tokens as securities for the purposes of securities law.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Yes, the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 came into force on 15 January 2019. The order prescribes digital currency and digital tokens, each as defined therein, as securities and thus falling within the purview of the SC under the CMSA.

All the provisions of the CMSA applicable to securities will apply to each such digital currency save for Division 3 of Part VI of the CMSA. The SC is expected to issue guidelines for initial coin offerings by the end of the first quarter of 2019.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory ‘sandbox’ options for fintechs in your jurisdiction?

Malaysia is very receptive to fintech innovation and technology. Specific agencies and incentives are in place to facilitate the development of the digital economy. MDEC is an agency under the Ministry of Communications and Multimedia Malaysia which has been entrusted to develop, coordinate, and promote Malaysia’s digital economy, information and communications technology industry, and the adoption of digital technology amongst Malaysians. Its Malaysia Digital Hub has been set up to attract technology investments, support local technology innovation and create a sustainable digital ecosystem in Malaysia.

Both BNM and the SC have policies encouraging fintech by the initiatives referred to above, and offer regulatory flexibility to entities approved in their respective sandboxes.

The SC announced, in December 2018, a successful completion of its pilot project, Project Castor. Project Castor is a project whereby the

SC sought to explore the technical implementation and feasibility of using distributed ledger technology as the underlying market infrastructure for unlisted and over-the-counter (OTC) markets. A blueprint entitled Capital Market Architecture Blueprint in a Decentralised World has been issued, and it outlines the regulator’s vision for “a future multi-tiered market environment” which contains both centralised and decentralised markets, with the latter underpinned by distributed ledger technology. According to the blueprint, the regulator used equity crowdfunding and Ethereum-based tokens to represent equity and monies. It also used smart contracts to codify the rules of offerings and distribute the appropriate tokens and assets once offerings were closed, as well as for KYC/AML requirements.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

A fintech business, or financial services business established outside Malaysia offering fintech products and services, must comply with the Malaysian laws applicable to the service or product offered. Malaysian licensing laws apply to financial services and the regulated activities set out in the CMSA, unless any waiver or exemption specifically applies by law or is granted by the regulator.

BNM’s regulatory sandbox is open to all fintech companies including those without any presence in Malaysia, but fintech companies with potential to contribute to the creation of high value-added jobs in Malaysia will be viewed more favourably by BNM. Most of the financial services businesses regulated by BNM and the regulated activities supervised by the SC have to be conducted by a locally incorporated entity, so any foreign entity will have to establish a local company to apply for the relevant licence or approval.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Yes. The Personal Data Protection Act 2010 (PDPA) came into force in 2013 and regulates the collection, use, processing and disclosure of personal data in Malaysia in respect of commercial transactions. The legal basis for the PDPA is to ensure information security, network reliability and integrity through the regulation of processing of personal data by a data user in any commercial transaction and protection of personal data. “Commercial transactions” by definition includes any transaction of a commercial nature, whether by way of a contract or not, including any matter relating to the supply or exchange of goods or services, agencies, investment, finance, banking and insurance, but does not include a credit reporting business under the Credit Reporting Agencies Act 2010. As such, the PDPA would be applicable to fintech businesses who are in operation within Malaysia. “Personal data” has been defined widely as any information in respect of commercial transactions, which:

- (a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose;
- (b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data user, including any sensitive personal data and expression of opinion about the data subject; but does not include any information that is processed for the purpose of a credit reporting business carried on by a credit reporting agency under the Credit Reporting Agencies Act 2010.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The PDPA applies to all data users in Malaysia. Moreover, the PDPA applies to data users not established in Malaysia, but which use equipment in Malaysia to process personal data other than for the purposes of transit through Malaysia.

In general, the transfer of data out of Malaysia is not allowed unless the transfer is to a place specified by the Minister and notified by Gazette, namely to such countries that have in place substantially similar data protection laws as the PDPA, or an equivalent adequate level of protection. There is currently no gazette notification of any permitted country released by the Minister to date.

The PDPA provides that a data user may transfer personal data outside of Malaysia under the following conditions:

- (a) the data subject has given their consent for the transfer;
- (b) the transfer is necessary for the performance of a contract between the data subject and the data user;
- (c) the transfer is necessary for the conclusion or performance of a contract between the data user and a third party, which:
 - (i) is entered into at the request of the data subject; or
 - (ii) is in the interests of the data subject;
- (d) the transfer is for the purpose of any legal proceedings or for the purpose of obtaining legal advice or for establishing, exercising or defending legal rights;
- (e) the data user has reasonable grounds for believing that in all circumstances of the case:
 - (i) the transfer is for the avoidance or mitigation of adverse action against the data subject;
 - (ii) it is not practicable to obtain the consent in writing of the data subject to that transfer; and
 - (iii) if it was practicable to obtain such consent, the data subject would have given his consent;
- (f) the data user has taken all reasonable precautions and exercised all due diligence to ensure that the personal data will not in that place be processed in any manner which, if that place is Malaysia, would be a contravention of the PDPA; and
- (g) the transfer is necessary in order to protect the vital interests of the data subject; or the transfer is necessary as it is in the public interest in circumstances as determined by the Minister.

On 4 April 2017, the Personal Data Protection Commission issued the Personal Data Protection (Transfer of Personal Data To Places Outside Malaysia) Order 2017, a public consultation setting out jurisdictions which it is considering recommending to be approved as places to which personal data may be transferred outside Malaysia. Among the criteria considered by the Commissioner in preparing a list of those places are:

- (i) places that have comprehensive data protection law (which can be from a single piece of comprehensive personal data protection legislation, or otherwise a combination of several laws and regulations in that place);

- (ii) places that have no comprehensive data protection law but are subject to binding commitments (multilateral/bilateral agreements and others); and
- (iii) places that have no data protection law but have a code of practice or national co-regulatory mechanisms.

The Personal Data Protection (Transfer of Personal Data To Places Outside Malaysia) Order 2017 has not been finalised to date.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Failure to comply with the PDPA will result in the imposition of a fine between RM 10,000 to RM 500,000 and/or imprisonment of up to three years, depending on which section/rule has been breached. Pursuant to Section 133 of the PDPA, where a body corporate commits an offence under the PDPA, any person who at the time of the commission of the offence was:

- (a) a director, chief executive officer, chief operating officer, manager, secretary;
- (b) other similar officer of the body corporate;
- (c) was purporting to act in such capacity; or
- (d) was responsible for the management of any of the affairs of the body corporate,

may also be charged severally or jointly and be deemed to have committed that offence in the event the body corporate is found liable.

The said person may escape liability if he proves that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Yes. The following cyber security laws or regulations have general application in Malaysia:

- (a) Communications and Multimedia Act 1998;
- (b) Communications and Multimedia Commission Act 1998;
- (c) Computer Crimes Act 1997;
- (d) Copyright Act 1987;
- (e) Consumer Protection Act 1999;
- (f) Consumer Protection (Electronic Trade Transactions) Regulations 2012;
- (g) Digital Signature Act 1997;
- (h) Electronic Commerce Act 2006;
- (i) Malaysian Communications and Multimedia Content Code (Version 6, published in 2012);
- (j) Penal Code;
- (k) Personal Data Protection Act 2010;
- (l) Personal Data Protection Regulations 2013;
- (m) Personal Data Protection Standard 2015; and
- (n) Strategic Trade Act 2010.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Malaysia is a member of the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering. The Anti-Money

Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (**AMLA**) reflects the FATF recommendations on money-laundering and anti-terrorism financing. The main offence of money laundering is engaging in a transaction that involves, acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses, removes from, or brings into, Malaysia, proceeds of an unlawful activity or instrumentalities of an offence. Further, the Minister of Home Affairs may declare an entity known to have committed, participated in or facilitated, or known to have attempted to commit, participate in or facilitate, a terrorist act to be a specified entity. These include United Nations Security Council Resolutions (**UNSCR**) 1267 and 1988 (and the Al-Qaida Sanction List) as well as a Malaysian list in line with UNSCR 1373. No citizen or entity incorporated in Malaysia may knowingly provide or collect any property for use by a specified entity.

Entities providing financial services, and licensed stockbrokers, derivatives dealers and fund managers under the CMSA are reporting institutions under the AMLA. Entities designated as reporting institutions have to conduct customer due diligence, report suspicious transactions to BNM and maintain specific records in accordance with the provisions of the Act and the requirements of BNM. Certain obligations are prescriptive, while others are risk-based (for example, enhanced due diligence has to be conducted where aspects of a transaction are classified as high-risk). Specific anti-money laundering requirements apply to reporting institutions that exchange digital currency for fiat money, exchange money for digital currency, or exchange one digital currency for another digital currency in Malaysia.

The Malaysian Anti-Corruption Commission (**MACC**) enforces the Malaysian Anti-Corruption Commission Act 2009 (the **MAC Act**). The main offences under the MAC Act relate to giving or receiving gratification. Gratification is widely defined in the MAC Act, and includes:

- any gift, reward, property or interest in property, financial benefit, or any other similar advantage;
- any office, dignity, employment, contract of services, and agreement to give employment or render services in any capacity;
- any payment, release, discharge, discount, deduction or liquidation of any liability;
- any valuable consideration of any kind;
- any forbearance to demand any money or money's worth or valuable thing;
- any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding items.

In proceedings relating to any of the offences described above, any gratification received or solicited, given, offered or promised, by or to an accused is presumed to have been done so corruptly, unless the contrary is proved. The MAC Act imposes an obligation on persons to report bribery transactions to the MACC or the police. Failure to do so will result in a fine or imprisonment or to both on conviction of the offence. The MAC Act applies to the commission of offences whether within or outside Malaysia.

The MACC maintains a database of offenders found guilty of corruption.

The **Malaysian Penal Code** also prohibits the commission of the criminal offences of bribery and corruption, such as taking a gratification in order to, by corrupt or illegal means, influence a public servant, and criminal breach of trust. Whoever commits criminal breach of trust shall be punished with imprisonment for a term of up to 10 years and with whipping, and shall also be liable to a fine. A criminal breach of trust is committed where a person dishonestly misappropriates, or converts to his own use, any property that he is entrusted with or where the person has dominion over such property, or the person dishonestly uses or disposes of that property in violation of any direction of law or of any legal contract.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

There is no law specifically applicable to fintech businesses only in Malaysia. A fintech business operating in Malaysia must comply with the Malaysian laws and regulations relevant to its activities, location and legal structure. The provisions of the Electronic Commerce Act 2006 govern the validity of electronic communications and transactions.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The following legislation is applicable in relation to employment in Malaysia:

- (a) Employment Act 1966 (**EA**);
- (b) Children and Young Persons (Employment) Act 1966;
- (c) Industrial Relations Act 1967;
- (d) Employment (Restriction) Act 1968;
- (e) Occupational Safety and Health Act 1994;
- (f) Factories and Machinery Act 1967;
- (g) Minimum Wages Order 2016;
- (h) Minimum Retirement Age Act 2012; and
- (i) Workman's Compensation Act 1952.

The EA applies to all employees with a monthly wage of MYR 2,000 or below. The minimum notice period should be as prescribed in the employment contract or the EA, whichever is longer. The minimum notice period prescribed under the EA is as follows:

- (a) four weeks' notice (for employment of less than two years);
- (b) six weeks' notice (for employment of two years or more but less than five years); and
- (c) eight weeks' notice (for employment of five years or more).

5.2 What, if any, mandatory employment benefits must be provided to staff?

Under the EA, employees in Malaysia are entitled to paid annual leave and sick leave (depending on the number of years of service), payment for overtime work, maternity leave of 60 days, and paid holiday of at least the 11 gazetted public holidays including National Day and Labour Day.

The Employees Provident Fund Act 1991 requires employees and their employers to contribute towards their retirement savings, and

allows the employees to withdraw these savings at retirement or for specified purposes before then.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

The Employment (Restriction) Act 1968 requires non-Malaysian citizens to obtain a valid work permit before they can be employed.

Fintech companies may be eligible to apply for MSC Status from the MDEC. Companies with MSC Status are eligible to apply for special employment passes and exemptions to employ foreign knowledge workers.

Under the Malaysia Tech Entrepreneur Programme provided by MDEC, a tech founder with no track record of established business may apply for a one-year pass, and an individual who is an established entrepreneur may obtain a five-year pass to stay in Malaysia, subject to meeting specified application requirements as set out in <https://www.mtep.my/>.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions are protectable under the patent, copyright and industrial design laws as well as confidential information under the common law in Malaysia. This would include the Patents Act 1983, the Copyright Act 1987 and the Industrial Designs Act 1996.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Copyright

Under the Copyright Act 1987, copyright shall initially vest in the author of the copyrighted work. The Copyright Act 1987 provides for presumptions in cases of commissioned work or work made in the course of employment. As such:

- (a) where the work is commissioned by a person who is not the author's employer, copyright is deemed to be transferred to the person who commissions the work; or
- (b) where the work is made in the course of the author's employment, the copyright is deemed to be transferred to the author's employers.

However, this is subject to any contrary agreement.

Where the work is made by or under the direction or control of the government, government organisation or international body, the copyright shall initially vest in the government, government organisation or international body.

Trade Marks

Under the Trade Marks Act 1976, any person claiming to be the proprietor of a trade mark used or proposed to be used by him may apply to the Registrar for the registration of that mark. While the proprietor of a registered trade mark is the person whose name appears on the Register as the owner, the concept of proprietorship for the purposes of an application for registration depends on who is entitled to the exclusive use of the trade mark, i.e. the first person to

use the mark in the course of trade and to develop business goodwill in relation to that mark.

Patents

Under the Patents Act 1983, the right to a patent belongs to the inventor unless the invention is made by an employee (including government employees, and employees of a government organisation or enterprise) or pursuant to a commission, in which case the right to the invention will be deemed to accrue to the employer or the person who commissioned the work, subject to any contrary agreement.

Industrial Designs

Under the Industrial Designs Act 1996, the author of the industrial design is entitled to make an application for registration, except for:

- (a) industrial designs created pursuant to a commission or money or money's worth – the person who commissioned the work is the original owner;
- (b) industrial designs created by an employee in the course of employment – the employer is the original owner; and
- (c) industrial designs subject to any contrary agreement.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Except for copyright where registration is voluntary and there are common law rights such as passing off, one must have a patent, trade mark or industrial design registration in Malaysia to enjoy protection of these rights in Malaysia.

Malaysia is a member of the following Intellectual Property international treaties/conventions/agreements:

- (a) Paris Convention for the Protection of Industrial Property 1883.
- (b) Agreement on Trade-Related Aspects of Intellectual Property Rights.
- (c) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.
- (d) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.
- (e) Madrid Protocol.
- (f) Patent Cooperation Treaty.
- (g) Berne Convention for the Protection of Literary and Artistic Works 1886, as revised by the Paris Act of 1971.
- (h) World Intellectual Property Organisation (WIPO) Copyright Treaty.
- (i) WIPO Performances and Phonograms Treaty.

Malaysia is in the process of implementing the Madrid Protocol (the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks) in the near future. The Madrid Protocol is an international treaty administered by the International Bureau of the WIPO and provides for a multinational system for trade mark owners to obtain trademark registrations in various countries with a single application.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

There are currently no specific rules or restrictions on monetisation or exploitation of IP in Malaysia. IP in Malaysia is generally exploited either by way of creating licences for the use of IP or co-development

of new inventions/products, or selling the IP rights for a value. There has been significant progress in the development and the implementation of IP monetisation mechanisms. Essentially, the aim was to harness the value of locally-nurtured IP as revenue-generating streams. As such, the MDEC developed the IP valuation Module which was launched on 7 March 2013. This was used to assist SMEs in evaluating their IP.

The Industrial Designs (Amendment) Act 2013 came into force on 1 July 2014 and provides for the amendments that allow for a registered industrial design to be the subject of a security interest in the same way as other personal or movable property. This interest has to be recorded in the Register of Industrial Designs.

Additionally, the IP Financing Scheme (**IPFS**) was introduced specifically for SMEs to provide them with easier access to credit through their IP assets instead of movable assets. The sum of RM19 million was allocated for training programmes for local IP

evaluators conducted by the Intellectual Property Corporation of Malaysia (**MyIPO**), as well as to create an IP right market platform. The IP right market platform is vital to enable SMEs to fully utilise the opportunities to set up their IPR for sale and licensing. The MyIPO has recently begun implementation of an integrated online system to facilitate the registration and verification of intellectual property, which is expected to be finalised in 2019.

Furthermore, the Malaysian Competition Commission (**MyCC**) recently published a draft guideline on intellectual property rights and competition law in 2018, which laid out guidelines on any competition issues under the Competition Act 2010 relating to intellectual property rights. The draft guideline provides for situations in which certain acts in relation to intellectual property rights are deemed anti-competitive and may attract liability under the Competition Act 2010.



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