

# International Comparative Legal Guides



Practical cross-border insights into fintech law

# Fintech 2022

**Sixth Edition**

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# Malaysia

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## 1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there 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)?

### Capital Market

- The Securities Commission Malaysia (SC) has indicated, in its Capital Market Masterplan 3, that Malaysia continues to be a prominent global Islamic capital market hub. It is indicated in the Capital Market Masterplan 3 that, according to the Global Islamic Fintech Report 2021, Malaysia led the ranking on the Global Islamic Fintech Index. The index is used to represent the countries with the most conducive environment to promote the growth of Islamic fintech.
- Introduction of apps that enable users to invest in money market funds digitally:
  - In January 2021, Versa Asia Sdn Bhd, a digital cash management platform, was launched in partnership with Affin Hwang Asset Management.
  - In March 2021, TNG Digital Sdn Bhd launched Go+, a new TNG e-wallet, which enables users to invest money in the e-wallet. The underlying fund for Go+ is a money market fund managed by Principal Asset Management Berhad, which aims to provide investors with liquidity and income. The money in Go+ is not considered electronic money.
  - In November 2021, Raiz Reward was introduced by Raiz. Raiz Reward is a cash reward programme that provides its users with cash rewards when shopping with Raiz's brand partners. Thereafter, the cash rewards would then be invested in the markets.
- GAX MD Sdn Bhd launched Malaysia's first environmental, social and governance (ESG) digital investment management portfolio called MYTHEO Global ESG. According to GAX, the portfolio will invest primarily in ESG-related equity exchange-traded-funds, particularly those that have an investment policy that takes into consideration ESG issues.
- In the ESG space, the SC and Bank Negara Malaysia (BNM) announced on 10 December 2021 that:
  - The Joint Committee on Climate Change (JC3) will issue a Reference Guide on Climate Risk Management and Scenario Analysis, which sets out expectations

for financial institutions to integrate climate-related risks considerations into their business and risk strategies (Reference Guide), for public consultation in December.

- This will be followed by the issuance of a Task Force on Climate-related Financial Disclosures (TCFD) – aligned Application Guide for disclosures on climate-related risks by financial institutions for public consultation in January 2022, which would be the mandatory basic requirements from 2024. Financial institutions regulated by BNM are expected to adopt additional “stretch recommendations” that are aligned with TCFD disclosures by the end of 2024.
- Disclosure guides for businesses, on the other hand, will be developed in 2022.

### Banking

- BNM has set out its vision for Malaysia's financial sector to capitalise on digitalisation in its Financial Sector Blueprint 2022–2026. The Governor of BNM announced that BNM is committed to fostering conditions to future-proof key infrastructures that serve as the backbone of the digital economy, and this includes ensuring that real-time payment systems, data infrastructures and standards can cater to a wide range of players and use cases in the financial sector. The goals that BNM has set out include the support of technology and data-driven innovation, improving the financial sector's competitiveness, extending access to and responsible use of financial solutions, and ensuring that financial intermediation stays effective to meet the economy's future demands.
- In November 2021, BNM announced that it, together with Payments Network Malaysia Sdn Bhd (PayNet), has participated with international partners on a proof of concept (POC) to improve the cost and speed of cross-border payments. The POC is known as Project Nexus and will explore the feasibility of linking the real-time payment systems in Malaysia, Singapore and the euro area.
- BNM also issued a discussion paper on the Licensing Framework for Digital Insurers and Takaful Operators and sought public feedback by 28 February 2022. The discussion paper:
  - states that BNM is developing the Digital Insurance and Takaful Framework to facilitate the licensing of a new set of digital insurers and *takaful* operators under the Financial Services Act 2013 (FSA) and Islamic Financial Services Act 2013, respectively;
  - provides that existing licensed insurers and *takaful* operators wishing to carry out digital insurance and *takaful* business separately from their existing business

may apply to carry on digital insurance or *takaful* business through a separate entity (that is, its subsidiary) or through a joint venture agreement. However, existing licensed insurers and *takaful* operators are not required to obtain a separate licence to digitalise their current business operations; and

- sets out the proposed entry requirements and key assessment criteria for the licensing of DITOs, potential temporary or foundational regulatory flexibilities, the overall regulatory framework, as well as market infrastructure to support the development of digital insurance and *takaful* in Malaysia.
- In the ESG space, BNM has issued an exposure draft on Climate Risk Management and Scenario Analysis. The exposure draft, among others:
  - is intended to complement the Climate Change and Principle-based Taxonomy, the Value-based Intermediation Financing and Investment Impact Assessment Framework (**VBIAF**) and the VBIAF Sectoral Guides. The VBIAF is jointly developed by the VBI Community of Practitioners (**CoP**), the International Centre for Education in Islamic Finance (**INCEIF**) and The World Bank Group (Malaysia Office), and is intended to serve as a reference for other financial institutions intending to incorporate ESG risk considerations in their own risk management system; and
  - sets out the proposed requirements and guidance on Climate Risk Management and Scenario Analysis to ensure that financial institutions strengthen the management of financial risks stemming from climate change to enhance the resilience of the financial sector against climate-related risks and to facilitate an orderly transition to a low-carbon economy.
- On 8 December 2021, UOB Malaysia launched U-energy, the first integrated financing platform in Asia, to drive the development and adoption of energy efficiency projects for buildings and homes in Malaysia. UOB Malaysia indicated that it will assist Malaysian businesses and homeowners to save on electricity bills, cut carbon emissions and achieve their sustainability goals.

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

Except for those specifically approved by the SC, digital asset exchanges (**DAXs**) are prohibited from operating in Malaysia. The SC has currently registered four DAX operators: Luno Malaysia; SINEGY Technologies; Tokenize Technology; and MX Global. Operating an exchange without prior authorisation is an offence under the securities law of Malaysia, and offenders may be liable to a fine or imprisonment, or both.

The SC and BNM has emphasised that despite developments in policies and regulations relating to cryptocurrencies and digital assets (discussed in section 3 below), digital assets are not a payment instrument regulated by BNM and are not legally accepted for the exchange of goods and services as legal tender in Malaysia.

The issuance of certain digital tokens and digital currencies is regulated by the SC, as referred to in question 3.2 below.

The SC took enforcement actions, including a public reprimand against Binance for illegally operating a DAX in Malaysia, despite being included in the SC's Investor Alert List, in July 2020.

## 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)?

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

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

- Malaysia Debt Ventures Berhad, Malaysia's leading technology financier, which has various schemes, including an Intellectual Property Financing Scheme of RM200 million, to enable companies with intellectual property rights (**IPRs**) to use their IPRs as additional collateral to obtain financing;
- Cradle Fund Sdn Bhd. (**Cradle**), owned by the Ministry of Finance. Cradle focuses on pre-seed, early, seed and start-up financing, and provides non-financial assistance to local tech start-ups. In 2020, Cradle launched its CIP Ignite and CIP Accelerate grant programmes, focusing on assisting technology companies and spin-offs from universities and research institutes to develop prototypes and subsequently commercialise products;
- the Malaysian Digital Economy Corporation Sdn Bhd. (**MDEC**), wholly owned by the government, which focuses on building a sustainable digital ecosystem;
- the Malaysia Venture Capital Management Berhad (**MAVCAP**); and
- 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?

Small medium enterprises (**SMEs**) account for 98% of businesses in Malaysia. 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 include:

- 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 MDEC.

- The Malaysia Tech Entrepreneur Programme under 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 MDEC for ICT and ICT-facilitated businesses that meet specified criteria available to local and foreign companies. 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 research and development (R&D) grants, and the freedom to source capital and borrow funds under specific waivers from the foreign exchange policy requirements of Malaysia.

The Minister of Finance in his Budget Speech for 2022 announced, among others, the following incentives for the digital ecosystems:

- To increase digital adoption among SMEs, the government will enhance the SME Digitization Grant Scheme initiative. The funding of the scheme will be increased to RM200 million, with RM50 million dedicated towards Bumiputera microentrepreneurs in rural areas.
- Stamp duty exemption on loan/financing agreements executed from 1 January 2022 to 31 December 2026 for peer-to-peer (P2P) financing made through P2P financing platforms registered and recognised by the SC.
- Favourable income tax rates will be given to digital technology providers – 0% to 10% income tax rate for up to 10 years (for new companies), or 10% for up to 10 years for existing companies. These will be applicable for applications received by the Malaysian Investment Development Authority from 30 October 2021 to 31 December 2025.
- Income tax allowance of up to 100% on qualifying capital expenditure and for up to 10 years, which can be set off against up to 100% of the statutory income for digital infrastructure providers. These will be applicable for applications received by the Malaysian Investment Development Authority from 30 October 2021 to 31 December 2025.

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

The conditions for a business to conduct an IPO in Malaysia would depend on the market it intends to list on. Bursa Malaysia 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 may invest in the LEAP Market. The LEAP Market provides opportunities for start-up fintech companies that may otherwise 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, to carry out both the initial listing activities and post-listing activities, 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?

- Razer Pay e-wallet was discontinued in September 2021.
- CTOS Digital Bhd, an investment holding company with subsidiaries that are principally involved in the business of credit reporting and offer a range of services, including e-KYC, advanced analytics, credit reports and scoring as well as fraud protection and monitoring, was successfully listed on the stock exchange of Bursa Malaysia.
- In October 2021, MoneyLion Inc. (headquartered in New York) was listed on the New York Stock Exchange. One of its co-founders is a Malaysian. MoneyLion also has an office in Malaysia to serve as the R&D tech hub, where the core focus will be on artificial intelligence.

## 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.

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 that 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 BNM. The 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.

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 Capital Markets and Services Act 2007 (CMSA).

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

Yes, the SC is the primary regulator of the digital asset industry in Malaysia and has developed a regulatory framework that treats certain digital currencies and digital tokens as securities for the purposes of securities law. As part of this framework, the SC has issued the Digital Asset Order and the Digital Asset Guidelines. These digital asset-specific regulations must be read along with the relevant provisions of securities laws that apply to digital assets; namely, those in the CMSA.

Under the Digital Asset Guidelines, prospective issuers wishing to issue digital assets for the purposes of fundraising do so via initial exchange offerings (IEOs). Only digital tokens

that have been prescribed as securities under the Digital Asset Order may be offered via an IEO. Issuers raising funds via an IEO may only do so via an IEO and not through any other means. IEOs are conducted through IEO operators who approve applications from prospective issuers. IEO operators are electronic platform operators registered under the Digital Asset Guidelines to operate an IEO platform.

However, both BNM and the SC have stressed that, at the current time, digital assets are not a payment instrument regulated by BNM and are not legally accepted for the exchange of goods and services as legal tender in Malaysia.

### 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 that 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. It has helped to launch several initiatives pursuant to this goal, including:

- the Malaysia Digital Hub: a programme that has been set up to attract technology investments, support local technology innovation and create a sustainable digital ecosystem in Malaysia; and
- Orbit: a co-working space that serves both as a physical fintech innovation hub and a nexus point for both local and foreign fintech players, allowing start-ups to engage with industry leaders to ease solution development and early market entry.

Both BNM and the SC have policies encouraging fintech through the initiatives referred to above. For instance, BNM offers regulatory flexibility to entities approved in its Regulatory Sandbox, which was introduced to enable innovation of fintech to be deployed and tested in a live environment within view of regulators. This ensures compliance and promotes sustainability for early-stage fintech businesses. The Sandbox also allows BNM to review and adapt regulatory requirements or procedures that may unintentionally inhibit innovation or render them non-viable.

In 2021, Bursa Malaysia, the primary exchange in Malaysia, announced the successful completion of its Dematerialisation POC for structured warrants issuance. This Dematerialisation POC uses distributed ledger technology (DLT) to transform a dematerialised deposit process and explore its potential benefits to the core equity business.

### 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. 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 as to allow smoother monitoring of compliance with the Malaysian laws. Therefore, any foreign entity will usually 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 credit reporting business under the Credit Reporting Agencies Act 2010. As such, the PDPA would be applicable to fintech businesses that are in operation within Malaysia and process personal data, such as name, address, identification card number, and bank account details.

"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 data users outside of Malaysia that use equipment in Malaysia to process personal data other than for the purposes of transit through Malaysia. A data user that falls within this category is required to nominate a representative established in Malaysia, for purposes of the PDPA.

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.

However, the PDPA provides that a data user may transfer personal data outside of Malaysia under certain conditions, including, among others, where:

- data subjects have given consent for the transfer;
- the transfer is necessary for the performance of a contract between the data subject and the data user; and
- the transfer is necessary for the conclusion or performance of a contract between the data user and a third party, which either is entered into at the request of the data subject or is in the interests of the data subject.

#### 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 RM10,000 and RM500,000 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, or other similar officer of the body corporate;
- (b) purporting to act in such capacity; or
- (c) 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 that 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?

The following cyber security laws or regulations have general application and may apply to fintech businesses operating in Malaysia:

- (a) the Communications and Multimedia Act 1998;
- (b) the Communications and Multimedia Commission Act 1998;
- (c) the Computer Crimes Act 1997;
- (d) the Copyright Act 1987;
- (e) the Consumer Protection Act 1999;
- (f) the Consumer Protection (Electronic Trade Transactions) Regulations 2012;
- (g) the Digital Signature Act 1997;
- (h) the Direct Sales and Anti-Pyramid Scheme Act 1993;
- (i) the Electronic Commerce Act 2006;
- (j) the Malaysian Communications and Multimedia Content Code (Version 6, published in 2012);
- (k) the Penal Code;
- (l) the PDPA;
- (m) the Personal Data Protection Regulations 2013;
- (n) the Personal Data Protection Standard 2015; and
- (o) the 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.

Entities providing financial services, 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 AMLA and the requirements of BNM. 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. 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.

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

A fintech business operating in Malaysia must comply with the Malaysian laws and regulations relevant to its activities, location and legal structure. For example, 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 main employment legislation in Malaysia includes:

- (a) the Employment Act 1955 (**EA**);
- (b) the Industrial Relations Act (**IRA**) 1967;
- (c) the Trade Unions Act 1959;
- (d) the Employment (Restriction) Act 1968;
- (e) the Factories and Machinery Act 1967;
- (f) the Employees' Social Security Act 1969;
- (g) the Employees Provident Fund Act 1991;
- (h) the Minimum Wages Order 2020;
- (i) the Minimum Retirement Age Act 2012; and
- (j) the PDPA.

Under the IRA, an employer that is unable to prove just cause or excuse for dismissal may be ordered by the Industrial Court to



reinstate the employee concerned. What amounts to “just cause or excuse” would depend on the particular facts and circumstances of each case. The Industrial Court requires employers to provide cause and justify the reasons for terminating the services of the employee when a dispute has arisen.

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

The EA provides for the minimum terms and conditions of employment in respect of employees in the private sector who come within its purview. Employees covered under the EA include:

- irrespective of their occupation, persons who have entered into a contract of service under which their wages do not exceed RM2,000 per month;
- those whose wages exceed RM2,000 per month who are engaged in manual labour; or
- those who supervise other employees engaged in manual labour employed by the same employer.

The minimum standards imposed by the EA for employees covered under the EA include:

- payment of wages, advances of wages and restrictions in the deduction of workers’ wages;
- maternity protection;
- protection of female workers by prohibiting them from carrying out night work, underground work and in certain places of work;
- prescribing the rest days in each week and maximum hours of work a day;
- prescribing public holidays each year, annual leave, sick leave and overtime rates payable for extra hours of work; and
- termination and lay-off benefits.

In regard to terms and conditions of employment that are not provided for under the EA, employers and employees are free to negotiate and include such terms and conditions in the contract of service.

### 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 Malaysia Status from MDEC. Companies with MSC Malaysia Status are eligible to apply for employment passes for foreign knowledge workers with the immigration unit of MDEC.

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 at <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, i.e., among others, the

Patents Act 1983, the Copyright Act 1987 and the Industrial Designs Act 1996, and confidential information under the common law in Malaysia.

### 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, subject to any contrary agreement:

- (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.

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.

#### Trademarks

Under the new Trademarks Act 2019, any person claiming to be the *bona fide* proprietor of a trademark may apply to the Registrar for the registration of that mark if the person is using or intends to use or has authorised or intends to authorise another person to use the trademark in the course of trade. While the proprietor of a registered trademark 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 trademark, 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 common law rights such as passing off, one must have a patent,

trademark or industrial design registration in Malaysia to enjoy protection of these rights in Malaysia.

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

- (a) The Paris Convention for the Protection of Industrial Property 1883.
- (b) The Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS Agreement**).
- (c) The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (**Nice Classification**).
- (d) The Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (**Vienna Classification**).
- (e) The Madrid Protocol (implemented on 27 December 2019).
- (f) The Patent Cooperation Treaty.
- (g) The Berne Convention for the Protection of Literary and Artistic Works 1886, as revised by the Paris Act of 1971.
- (h) The World Intellectual Property Organization (**WIPO**) Copyright Treaty.
- (i) The WIPO Performances and Phonograms Treaty.

#### 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 IPR for a value. There has been significant progress in the development and the implementation of IP monetisation mechanisms, including:

- The Industrial Designs (Amendment) Act 2013, which came into force on 1 July 2014, allows for a registered industrial design to be the subject of a security interest in the same way as other personal or movable property.

- Malaysia's new Trademarks Act 2019 came into force on 27 December 2019 and provides for multi-class filings as well as the implementation of the Madrid Protocol, which assists with the monetising of trademark rights in Malaysia and elsewhere. A registered trademark is recognised as personal or movable property and may be the subject of a security interest.
- The Malaysian Competition Commission (**MyCC**) Guidelines on Intellectual Property Rights and Competition Law, effective from 6 April 2019, was issued to provide guidance on MyCC's approach on the interface between competition and activities or dealings relating to IP assets. While exclusivity of rights and monetisation of IP encourages innovation and improved product or service quality, the Guidelines provide for situations involving IP where the Competition Act 2010 will be applicable and certain acts may be deemed to be anti-competitive or the abuse of a dominant position.
- Proposal for income tax exemption of up to 10 years on qualifying IP income derived from patent and copyright software of qualifying activities in Malaysia's 2020 Budget. There has also been a proposal to improve the R&D framework in Malaysia by allocating funds to intensify R&D projects in Malaysia.

Efforts have also been taken to assist and encourage continuity in the registration of IPRs during the COVID-19 pandemic. Amongst those efforts was the enactment of the Trademarks (Waiver and Modification of Fee) Regulations 2020 and the Patents (Waiver of Fee) Regulations 2020, whereby MyIPO offered fee exemptions for specific trademark and patent matters between 1 January 2021 and 30 June 2021 for companies and individuals affected by COVID-19. These matters included waiver of surcharge for late payment of patent annual fees and waiver of fees for extension of time for proceedings other than for opposition.



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