André Schwalenberg

Legal and commercial requirements for the establishment of a company within the South-East Asian region, with special focus on Malaysia

2005
Acknowledgements

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Special thanks to Ms. Janet Rabbel who helped me correcting this thesis.

I dedicate this master’s thesis to my family.
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of contents</td>
<td>I</td>
</tr>
<tr>
<td>List of abbreviations</td>
<td>IV</td>
</tr>
<tr>
<td>Table of figures</td>
<td>V</td>
</tr>
<tr>
<td>Foreword</td>
<td>1</td>
</tr>
<tr>
<td>1. Malaysia – a short profile</td>
<td>2</td>
</tr>
<tr>
<td>1.1 Introduction</td>
<td>2</td>
</tr>
<tr>
<td>1.2 Geography and climate</td>
<td>2</td>
</tr>
<tr>
<td>1.3 History</td>
<td>3</td>
</tr>
<tr>
<td>1.4 Political system</td>
<td>3</td>
</tr>
<tr>
<td>1.5 Population and social patterns</td>
<td>4</td>
</tr>
<tr>
<td>1.5.1 Language</td>
<td>4</td>
</tr>
<tr>
<td>1.5.2 Religion</td>
<td>4</td>
</tr>
<tr>
<td>1.5.3 Education</td>
<td>5</td>
</tr>
<tr>
<td>1.5.4 Living standards</td>
<td>5</td>
</tr>
<tr>
<td>1.5.5 Cultural and social life</td>
<td>5</td>
</tr>
<tr>
<td>1.6 Economy</td>
<td>5</td>
</tr>
<tr>
<td>1.6.1 Manufacturing industry</td>
<td>6</td>
</tr>
<tr>
<td>1.6.2 High-tech industry</td>
<td>6</td>
</tr>
<tr>
<td>1.6.3 Service industry</td>
<td>7</td>
</tr>
<tr>
<td>1.6.4 Currency</td>
<td>8</td>
</tr>
<tr>
<td>2. Legal requirements</td>
<td>9</td>
</tr>
<tr>
<td>2.1 Company Law</td>
<td>9</td>
</tr>
<tr>
<td>2.2 Business in Malaysia</td>
<td>10</td>
</tr>
<tr>
<td>2.2.1 Sole proprietors</td>
<td>10</td>
</tr>
<tr>
<td>2.2.2 Partnerships</td>
<td>11</td>
</tr>
<tr>
<td>2.3 Companies</td>
<td>13</td>
</tr>
<tr>
<td>2.3.1 Limited companies</td>
<td>14</td>
</tr>
<tr>
<td>2.3.1.1 Companies limited by shares</td>
<td>15</td>
</tr>
<tr>
<td>2.3.1.2 Companies limited by guarantee</td>
<td>16</td>
</tr>
<tr>
<td>2.3.2 Unlimited companies</td>
<td>16</td>
</tr>
<tr>
<td>2.3.3 Limited company vs. unlimited company</td>
<td>17</td>
</tr>
<tr>
<td>2.4 Memorandum and Articles of Association</td>
<td>18</td>
</tr>
<tr>
<td>2.4.1 Memorandum of Association</td>
<td>18</td>
</tr>
<tr>
<td>2.4.2 Articles of Association</td>
<td>19</td>
</tr>
<tr>
<td>2.5 Directors – nomination and tasks</td>
<td>20</td>
</tr>
</tbody>
</table>
2.5.1 Tasks .............................................................. 21
2.5.2 Removal ......................................................... 22
2.6 Company secretary ............................................. 23
2.7 Meetings ........................................................... 25
2.8 Resolutions ....................................................... 27
    2.8.1 Ordinary resolutions .................................. 28
    2.8.2 Special resolutions .................................... 28
    2.8.3 Extraordinary resolutions .......................... 28
2.9 Winding up and striking off a company ................. 28
    2.9.1 Compulsory winding up ............................... 28
    2.9.2 Voluntary winding up ................................. 29
    2.9.3 Alternatives to winding up ......................... 31

3. Formation of a Company ........................................ 32
    3.1 Short profile of important authorities ............... 32
        3.1.1 Companies Commission of Malaysia (CCM) .... 32
        3.1.2 Malaysian Industrial Development Authority (MIDA) .... 34
        3.1.3 Ministry of Industry and Trade (MITI) ............. 35
    3.2 Registration of sole traders and partnerships ....... 35
    3.3 Registration process ...................................... 36
        3.3.1 Registration process for foreign companies .... 36
        3.3.2 Special requirements for the registration of a manufacturing company ... 37
    3.4 Documents for the CCM ................................... 38
    3.5 Commencement of business .............................. 40

4. Labour law .......................................................... 40
    4.1 Contract of service ......................................... 42
        4.1.1 Formal requirements .................................. 43
        4.1.2 Subject matter ....................................... 43
    4.2 Probationary period ....................................... 44
    4.3 Employment of children and women .................... 44
    4.4 Working hours .............................................. 45
    4.5 Holidays ..................................................... 46
        4.5.1 Public holidays ..................................... 46
        4.5.2 Annual holiday ..................................... 46
        4.5.3 Sick leave .......................................... 47
    4.6 SOCSO ......................................................... 47
    4.7 Occupational Safety and Health Act 1994, (OSHA) .... 48
    4.8 Termination of a contract of service ................. 50
    4.9 Contract for service ....................................... 53
    4.10 Employment of Expatriates ............................. 53
        4.10.1 Passes and visas ................................... 54
        4.10.2 Immigration and expatriates posts ............. 55
        4.10.3 Applying for posts ............................... 56
# Table of contents

4.11 Trade Unions..................................................................................57

5. Taxation and tax incentives for investment.........................................58

5.1 Tax system.......................................................................................59
   5.1.1 Principal taxes.......................................................................59
   5.1.2 Legislative framework.........................................................60
      5.1.2.1 Statute law.................................................................60
      5.1.2.2 Case law................................................................60
   5.1.3 Taxation of companies.........................................................61

5.2 Incentives for Investment..............................................................62
   5.2.1 Incentives for the manufacturing sector.................................62
      5.2.1.1 Pioneer Status (PS) ..................................................63
      5.2.1.2 Investment Tax Allowance (ITA)...............................63
   5.2.2 Incentives for information and communication technology....64
      5.2.2.1 Pioneer Status (PS), high-tech sector..........................64
      5.2.2.2 Accelerated capital allowance.................................65
      5.2.2.3 Other ICT incentives.................................................65
   5.2.3 General incentives..............................................................65

6. Commercial requirements..................................................................66

6.1 Framework of industry.................................................................66
   6.1.1 Industrial zones.....................................................................66
   6.1.2 Banking and finance............................................................67

6.2 Aims of government policy...........................................................69

7. Overseas and trade relations...........................................................69

7.1 Exports.........................................................................................70

7.2 Trade barriers...............................................................................70
   7.2.1 Restrictions on Import......................................................70
   7.2.2 Restrictions on investment and foreign ownership.............71
   7.2.3 Corruption.........................................................................72

8. Policy trends....................................................................................73

9. Future prospects and results............................................................74

List of literature.....................................................................................75

Appendix...............................................................................................80
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFTA</td>
<td>ASEAN Free Trade Area</td>
</tr>
<tr>
<td>AGM</td>
<td>Annual General Meeting</td>
</tr>
<tr>
<td>APEC</td>
<td>Asian Pacific Economic Co-operation</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
</tr>
<tr>
<td>C.A. 1965</td>
<td>Companies Act 1965</td>
</tr>
<tr>
<td>CCM</td>
<td>Companies Commission of Malaysia</td>
</tr>
<tr>
<td>cp</td>
<td>compare</td>
</tr>
<tr>
<td>CPI</td>
<td>Corruption Index</td>
</tr>
<tr>
<td>DFI</td>
<td>Development Finance Institution</td>
</tr>
<tr>
<td>DOSH</td>
<td>Department of Occupational Safety and Health</td>
</tr>
<tr>
<td>DTC</td>
<td>Delhi Transport Co-operation</td>
</tr>
<tr>
<td>E.A. 1955</td>
<td>Employment Act 1955</td>
</tr>
<tr>
<td>EAC</td>
<td>East Asian Community</td>
</tr>
<tr>
<td>e.g.</td>
<td>exempli gratia</td>
</tr>
<tr>
<td>EGM</td>
<td>Extraordinary General Meeting</td>
</tr>
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<td>et. sqq.</td>
<td>et sequentia</td>
</tr>
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<td>EZB</td>
<td>Europäische Zentralbank</td>
</tr>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FIC</td>
<td>Foreign Investment Committee</td>
</tr>
<tr>
<td>FIZ</td>
<td>Free Industrial Zones</td>
</tr>
<tr>
<td>FCZ</td>
<td>Free Commercial Zones</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
</tr>
<tr>
<td>I.R. 1967</td>
<td>Industrial Relations Act 1967</td>
</tr>
<tr>
<td>ITA</td>
<td>Investment Tax Allowance</td>
</tr>
<tr>
<td>ITA 1967</td>
<td>Income Tax Act 1967</td>
</tr>
<tr>
<td>i.e.</td>
<td>it est</td>
</tr>
<tr>
<td>KLSE</td>
<td>Kuala Lumpur Stock Exchange</td>
</tr>
<tr>
<td>MECIB</td>
<td>Malaysian Export Credit Insurance Berhad</td>
</tr>
<tr>
<td>MOHR</td>
<td>Ministry of Human Resources</td>
</tr>
<tr>
<td>MIDA</td>
<td>Malaysian Industrial Development Authority</td>
</tr>
<tr>
<td>MIDF</td>
<td>Malaysian Industrial Development Finance Berhad</td>
</tr>
<tr>
<td>MIEL</td>
<td>Malaysian Industrial Estates Sendirian Berhad</td>
</tr>
<tr>
<td>MIGHT</td>
<td>Malaysian Industry Group for High Technology</td>
</tr>
<tr>
<td>MITI</td>
<td>Ministry of Trade and Industry</td>
</tr>
<tr>
<td>OSHA</td>
<td>Occupational Safety and Health Act</td>
</tr>
<tr>
<td>p.</td>
<td>page</td>
</tr>
<tr>
<td>PERKESO</td>
<td>Pertubuhan Keselamatan Sosial (SOCSO)</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>Research and Development</td>
</tr>
<tr>
<td>ROC</td>
<td>Registrar of Companies</td>
</tr>
<tr>
<td>RM</td>
<td>Ringgit Malaysia</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium Scale Enterprises</td>
</tr>
<tr>
<td>SOCSO</td>
<td>Social Security Organisation</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
</tbody>
</table>
Table of figures

<table>
<thead>
<tr>
<th>Figure 1: Map of Malaysia</th>
<th>Page 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure 2: Forms of Business in Malaysia</td>
<td>Page 10</td>
</tr>
<tr>
<td>Figure 3: Meetings</td>
<td>Page 25</td>
</tr>
<tr>
<td>Figure 4: Organisation Structure Companies Commission of Malaysia</td>
<td>Page 33</td>
</tr>
<tr>
<td>Figure 5: Organisation Structure Malaysian industrial Development Authority</td>
<td>Page 34</td>
</tr>
<tr>
<td>Figure 6: Fees payable to the CCM</td>
<td>Page 39</td>
</tr>
<tr>
<td>Figure 7: Relationship between Employer and Employee</td>
<td>Page 40</td>
</tr>
<tr>
<td>Figure 8: Employing of Expatriate Personnel</td>
<td>Page 56</td>
</tr>
<tr>
<td>Figure 9: Principle Taxes in Malaysia, 2005</td>
<td>Page 59</td>
</tr>
</tbody>
</table>
Foreword

Since the 1980’s, Malaysia has one of the fastest growing industrial developments in Asia. Today Malaysia is in line with all the newly industrialised countries in the world and holds a leading position inside the so-called Asian Tiger states. Within the scope of globalisation, Malaysia is on the upswing and because of its effective combination of tradition and modernity, Islam and capitalism, it has become a central point for foreign investors planning to enter the Asian market. The economic policy of Malaysia’s prime ministers Dr. Mahathir Bin Mohamad and Dr. Abdullah Ahmad Badawi, who have slowly but continuously turned Malaysia from a majoritarian agrarian state into a capital intensive industrialised country with a high development potential has been the reason for these changes. The corner stone of their political direction has been to encourage privatisation and direct foreign investments in every economic sector, with a result that huge sums of money have been invested in the promoted sectors. Nowadays, Malaysia has become the biggest microchip exporter in the world and its per capita income has doubled during the period from 1987 to 2001. Investing money in Malaysia is a profitable undertaking, but before commencing business certain requirements have to be fulfilled. This thesis gives a detailed overall view of the legal and commercial requirements needed for the formation of a company in Malaysia. It focuses on direct investments and incentives granted by the government and specifically takes a look at limited private and public companies in the manufacturing and high-tech sector. It is set in three parts: the first part is a short profile on Malaysia, the second part contains information about the legal requirements and the registration process, and the third and final part deals with the commercial requirements of this South-East Asian country.

This thesis was written in 2005 during a six month internship on Penang, Malaysia.
1. Malaysia - a short profile

1.1 Introduction

Before starting a business in Malaysia, it is indispensable to collect some background information about this multicultural country. The following paragraphs have a look on cultures which have been meeting and mixing in Malaysia since the beginning of its history. Malaysia economic history started 1500 years ago when the Malay welcomed traders from China and India. With the arrival of gold and silks, Buddhism and Hinduism also came to Malaysia. Thousand years later, Arab traders arrived in Malacca and brought with them the principles and practices of Islam. By the time the Portuguese arrived in Malaysia, the empire that they encountered was more cosmopolitan than their own.

1.2 Geography and climate

Malaysia is situated in South-East Asia, in the square bordered by longitudes 100 degrees and 120 degrees east and latitudes formed by the equator and 7 degrees north. The landmass of Malaysia comprises of the Peninsular Malaysia, at the southern tip of the Asian mainland and East Malaysia, on the island of Borneo.¹

The lowest point is the Indian Ocean with 0 meters and the highest point, situated in East Malaysia, is the so-called Gunung Kinabalu with 4,100 meters. Peninsular Malaysia, with 11 states, is at the southernmost tip of the Asian Continent. The time difference between Europe and Malaysia is GMT + 8 hours and compared to US Eastern Standard Time + 13 hours.² Furthermore, Malaysia has a total area of 330,000 square kilometres, which is equivalent to 127,000 square miles.

¹ see http://www.cia.gov/cia/publications/factbook/geos/my.html, [26.06.05]
The entire country has a tropical climate, which is warm and sunny throughout the year with temperatures averaging 26°C. The annual monsoons take place in the southwest from April to October and in the northeast from October to February with humidity mostly above 80%. The Capital of Malaysia is Kuala Lumpur but Putrajaya is referred to as the administrative centre of the country.

1.3 History

During the late 18th and 19th centuries, Great Britain established colonies and protectorates in the area of current Malaysia. These were occupied by Japan from 1942 to 1945. In 1948, the British-ruled territories on the Malay Peninsula formed the Federation of Malaya, which became independent in 1957. Malaysia was formed in 1963 when the former British colonies of Singapore and the East Malaysian states of Sabah and Sarawak on the northern coast of Borneo joined the Federation. The first few years of the country's history were marred by Indonesian efforts to control Malaysia with Philippine claims to Sabah, and Singapore's secession from the
Federation in 1965. Since 1965 Malaysia has its present today’s political and territorial form and is one of the founder members of the “Association of South-East Asian Nations” (ASEAN), which was established in 1967.

1.4 Political system

The political system in Malaysia is a constitutional monarchy, similar to the British system. It is nominally headed by a paramount ruler and a bicameral parliament consisting of a non-elected Upper House and an elected Lower House. While the king has only a formal function, the prime minister, the senate and the parliament hold the real political power. Parliament, consisting of 180 representatives, has to be elected every five years. All Peninsular Malaysian states have hereditary rulers except Melaka and Pulau Pinang (Penang); those two states along with Sabah and Sarawak in East Malaysia have governors appointed by the government. The power of the state governments is limited by the Federal Constitution. Under the terms of the Federation, Sabah and Sarawak retain certain constitutional prerogatives (e.g. the right to maintain their own immigration controls).

1.5 Population and social patterns

There are 23,953,136 people living in Malaysia and 16.3 million of them are living on the Peninsular of Malaysia. The country has a young population; approximately 83.8% of the people are under the age of 45, and 47.4 percent between the ages of 15 and 39.

The population can be mainly divided into two groups a) Bumiputras, which consists of Malaysians with cultural affinities indigenous to the region, mainly the Malays, Kadazans, Ibans, Orang Asli, and various other indigenous groups, and b) „Non-

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5 see URL: http://www.auswaertigesamt.de/[…]id=102, [26.05.05]
6 cp. Kessel, A., p. 170
Bumiputra” which consists of Malaysians of Chinese, Indian, European or Eurasian
descent, and other non-indigenous groups.8

1.5.1 Language

The official language in Malaysia is “Bahasa Malay”. It is the language of
administration for the Federal and State Governments. Certain governmental
departments will also accept correspondence in the English language.9

1.5.2 Religion

More than half the total population is of Islamic faith and the Islam is the official
religion in Malaysia.10 Other religions present on a smaller scale are Buddhism,
Hinduism and Christianity.11

1.5.3 Education

Malaysia provides free education to those between the ages of 7 and 15, and this is
extended to 19 for those who attain the required academic standards. In addition to
that there are eight universities and numerous technical and vocational institutions
that provide a stable supply of trainable labour to support industrial growth.12

1.5.4 Living standards

Malaysia has a relatively high standard of living. The average income per capita is
about RM 10,086 (1995) or approximately 2101 Euro. It has a public healthcare
system, which includes mobile health services, rural clinics and general hospitals in
every major city and specialist institutions in the more populated urban centres.

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8 see URL: http://www.cia.gov/cia/publications/factbook/geos/my.html, [26.06.05]
9 cp. Board of National Unity (Malaysia), Prime Ministers Department, p. 2-3
10 see URL: http://www.auswaertigesamt.de/www[...id=102, [26.05.05]
11 cp. Dempsey, M.W., 1982, p. 84
12 cp. Broadstone, R.C., Heires, D., 1997, p. 4

www.law-and-business.com
1.5.5 Cultural and social life

Malaysia is a multicultural country. Malay, Chinese and Indians celebrate a large number of different festivals and provide cultural and social activities for their community. Nearly every major town has its social clubs, gyms, cinemas, parks, and a good range of sports facilities. The national sport is “Badminton”.13

1.6 Economy

The Malaysian economy has buoyancy - it increased 4.2% in 2002, 5.3 % in 2003, and an estimated 7.2% in 2004, and the government has targeted 6% growth for 2005 (although the Malaysian Institute of Economic Research has projected 5.7%). Some experts express reservations about the effect of continued high oil prices, interest rates hike in the U.S. and the anticipated moderation of the growth of the Chinese economy, but are optimistic overall.14 Based on a mixed economy with agricultural, trading, financial and transport services the manufacturing sector has become the single largest component of economic activity. Private companies, as well as public companies take part in business activities.

1.6.1 Manufacturing industry

The manufacturing sector in Malaysia is increasing steadily: in the fourth quarter of 2004 by 1.7%, compared to the third quarter of 2004.15 The government enacted the “Promotions of Incentives Act” in 1986, to support companies investing in the previously mentioned sector, thus maintaining this steady rise. This means that every

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13 cp. Board of National Unity (Malaysia), Prime Ministers Department, p. 2-3
company that has commenced operating in this sector since this date, may apply for approval of the Pioneer Status, or the Investment Tax Allowance (ITA).

### 1.6.2 High-tech industry

Based on cheap workforce, the manufacturing sector has until now been the most important sector in the Malaysian business scene, but now the high-tech sector seems to be booming; predictions for 2004 are a growth rate of 15% and 1.3 billion sales, and the 2005 budget has identified Information and Communication Technology (ICT) as a key engine of growth and a major component of the economy.\(^{16}\)

To ensure that only high-tech companies receive this financial advantage, the Incentive Act contains the following definition:

\begin{quote}
A company operating in the high tech sector is engaged in promoted activities or in the production of promoted products in areas of new and emerging technologies
\end{quote}

and

\begin{quote}
the percentage of local R&D expenditure to gross sales should be at least 1% on an annual basis. The company has three years from the date of operation or the commencement of business to comply with this requirement.\(^{17}\)
\end{quote}

and

\begin{quote}
scientific and technical staff having degrees or diplomas with a minimum of 5 years experience in related fields should comprise at least 7% of the company’s total workforce.\(^{18}\)
\end{quote}

\(^{16}\) see URL:www. Summitreports.com/Malaysia2004/high-tech.com, [13.05.05]  
\(^{17}\) cp. MIDA, (Getting Started – Incentives for Investment, 2005), p. 15  
\(^{18}\) cp. MIDA, (Getting Started – Incentives for Investment, 2005), p. 15
The Malaysian Government strictly controls a development policy in the high-tech sector. This means that investors are encouraged to establish projects that would involve the transfer of high level technology.\(^{19}\) Companies in the field of high technology are certainly also allowed to apply for tax incentives such as for Pioneer Status or investment tax allowance which is granted by the government.\(^{20}\) To achieve this goal, the Malaysian Industrial Development Authority (MIDA) and the Malaysian Industry Group for High Technology (MIGHT), represent the government and regulate those companies which meet these regulations.

1.6.3 Service industry

The service sector comprises four main sub-sectors: electricity, transport, commerce/trade and finance, but the well known synonym for the service industry is the tourism sector.\(^{21}\) Since the “Visit Malaysia Year” in 1990, the tourist industry has improved enormously. At the same time as the growth, the demand for hotels and restaurant facilities has increased. One of the main measures of the Malaysian government to maintain this steady growth, is to introduce tax incentives for service projects in the communications, public utilities and transportation subsectors. The emphasis on these three subsectors is consistent with the privatisation policy and enhances the contribution of the services sector to the nation’s economic development.

1.6.4 Currency

The official currency in Malaysia is the Malaysian Ringgit. One Malaysian Ringgit (RM) is divided into 100 cent. The Ringgit was pegged at US$1 to RM 3.80 on 2 September 1998 by Malaysia’s central bank, Bank Negara Malaysia. Major foreign

\(^{19}\) cp. Broadstone, R.C., Heires, D.,1997, p. 11  
\(^{20}\) see URL: www.Summitreports.com/Malaysia2004/high-tech.com, [13.05.05]  
\(^{21}\) cp. Abdul R. I. and Dr. Ab. W.M., “Productivity Measurement in the Service Sector”, p. 80  
www.law-and-business.com
exchange rates as at 4 February 2005 (average of buying and selling rates), quoted by the Bank Negara Malaysia: \( Euro \ 1 = RM \ 4.9273 \) and \( US\$ \ 1 = RM \ 3.800.22 \).\footnote{cp. MIDA, (The costs of doing business in Malaysia, 2005), p. 1}
2. Legal requirements

2.1 Company Law

Malaysian Law contains a number of different ways, in which persons may associate for purposes of business. It is based on English Case Law, which means, that a lot of modern and important decisions concerning company law are to be found in judicial decisions. In addition, there is an enormous volume of statutory rules, which have been created, in less then a century. The following is a brief overview of the most important statutory rules, which have to be considered:

a) The Companies Act 1985
   In 1985 statute of law on companies was consolidated in the Companies Act 1985, which is supplemented by the Business Names Act 1985 and by the Company Security Act 1985 – both deal with special topics relating to companies.\(^{23}\) The Companies Act 1985 is also the principle statute of the company law.

b) The Insolvency Act 1986
   In addition to the Companies Act, the Insolvency Act consolidated the law on corporate as well as the individual insolvency in 1986.

c) The Company Directors Disqualification Act
   This act was separately re-enacted in the Companies Directors Disqualification Act 1986 as a measure of the major law reform.

In addition to the above-mentioned regulations the Insolvency Rules 1986 and the Financial Service Act 1986 have to be considered. The latter repeals Part III of the Companies Act 1985 on company prospectuses. One reason for the repeal was the initiation of a new system applicable to listed and unlisted securities.

In particular the information to be given by way of “listing particulars” is prescribed by stock exchange regulations, published in what is know as “The Yellow Book”.\(^{24}\)

\(^{23}\) cp. Cracknell, D.G., 1993, p. 1

\(^{24}\) cp. Cracknell, D.G., 1993, p. 2
2.2 Business in Malaysia

To make the right decisions concerning, for example, structure and liability, depends on many circumstances such as market, finance, capital resources, liability and other criteria. The Malaysian legislator knows about this important step and offers a couple of different company structures, to find the best way of running a business in South-East Asia. Figure 1 below shows the different methods of conducting businesses in Malaysia:

![Figure 1: Forms of business in Malaysia](Source: Own source)

The company structures shown above will be described and explicated in the following paragraphs. Furthermore this part of the thesis takes a closer look at the different structures of companies specifically those of limited companies. The reason for this is simple: growing markets in Asia require more and more companies, which give consideration to huge sums of capital and growing risks. For this reason limited companies are becoming more and more important for investors. Today about 98% of all companies are private companies.25

2.1.1. Sole proprietors

If a person wants to start a singly owned business, this type of company will be the right choice for him. Before starting business however, the sole proprietorship has to

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25 cp. Lawson, R., 1998 p. 32

www.law-and-business.com
be registered at the Registrar of Business.\textsuperscript{26} The business owner can handle the management on his own but he will, subject to contractual restrictions, incur unlimited personal liability for his business transactions and will be subject to taxation in a personal capacity.\textsuperscript{27} Unlimited liability bears the risk, that creditors can sue the owner for all debts incurred. In the case of bankruptcy or insolvency, the creditors have the possibility to obtain a court order, which allows claiming against the personnel assets of the sole trader. This order can include all kinds of personal assets, like savings, property and cars if other assets are insufficient to cover the debts.\textsuperscript{28}

There is however an important advantage with this kind of business: the sole proprietor is not required to disclose his financial statements to the general public.\textsuperscript{29}

\subsection{2.2.2 Partnerships}

Partnerships, contrary to sole traders, consist of a relationship between two or more persons, carrying on a joint business in common with a view of profit.\textsuperscript{30} This company forms a basis for mutual trust and confidence and is normally used for small businesses. It is important to know that in contrast to a company, a partnership is not an incorporated enterprise with own legal body. That means, that the partners, and not the partnership, are the parties of all legal transactions.\textsuperscript{31}

Partnerships are governed by the Partnerships Act, which was enacted in 1961. \textit{Section 26 and 27} of this act state that the partners are allowed to regulate their relationship with an agreement. If such an agreement does not meet the rules of the Partnerships Act, or if an agreement is not made, provisions of the above mentioned statutory rule will become applicable.\textsuperscript{32}

If an agreement or other regulations concerning profits and losses do not exist, the Partnership Act states in the above mentioned sections, that profits and losses have

\begin{itemize}
  \item [26] cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 3
  \item [27] see URL:http://www.hsasia.net/Malaysia/malaysiabasicbusinessstructures.htm, [23.03.05]
  \item [28] see URL:http://www.lawyerment.com.my/library/doc/biz/slprsp/, [25.05.05]
  \item [29] cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 3
  \item [31] cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 214
\end{itemize}
to be shared equally. This regulation makes them mutual agents for each other, which also means that they are normally jointly and severally liable for each other’s transactions.\(^{33}\) On the death of a partner, the remaining partners are liable with their personal assets as long as unsettled debts remain.\(^{34}\) The liability to third parties is not limited and it has to be mentioned that they are liable to contribute to each other’s liability and entitled to claim an indemnity from the partner at fault.\(^{35}\)

No interest is payable on the capital each individual partner has invested in the company, but if a partner gives a loan to his company, he is allowed to receive interest at the rate of 8% per annum.\(^{36}\) In order to run a business, it is necessary that decisions to be made. Regarding the management of business in a partnership, each individual partner is entitled to participate.

Although every partner is allowed to take part in the management of the business, no partner is entitled to a salary for managerial activities. Changes concerning the nature of business have to be decided with consent of all the existing partners and if a new partner wishes to join the company, this can only be done with the unanimous consent of all the partners.\(^{37}\) Furthermore every partner is allowed to have a copy of the company accounts and he is also entitled to have access to the partnership book, which has to be kept at a principle place of business. Expulsion of any partner must be in the form of expressed agreement between the partners concerned.\(^{38}\)

In 1907 the Limited Partnership was Act was enacted. This Act permits the limitation of the liability of sleeping partners, where a limited partnership is set up. Permission ends, when the sleeping partners take part in the management of business. The liability of the other partners is always unlimited.\(^{39}\) With this in mind, protection for the creditors is allowed.

\(^{33}\) cp. Cracknell, D.G., 1993, p. 6  
\(^{34}\) cp. Lawson, R., 1998, p. 32  
\(^{35}\) cp. Cracknell, D.G., 1993, p. 6  
\(^{36}\) cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 3  
\(^{37}\) cp. Lawson, R., 1998, p. 28  
\(^{38}\) cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 3  
\(^{39}\) cp. Cracknell, D.G., 1993, p. 6
2.3 Companies

Malaysian Law permits the formation of different kinds of companies, with features adapted to the circumstances of the case. The aim is to provide a reasonable degree of flexibility and freedom for everyone who undertakes a business in Malaysia. The main difference between the other business forms and a company is, that from the date the company is registered at the Companies Commission of Malaysia (CCM) it becomes a separate legal entity with rights and obligations. It is allowed to enter into contracts, hire people for work and incur debts.\(^{40}\) Clearly stated: the members of the company control and own it, but they are not parties to its legal transactions nor are they agents of the company.\(^{41}\)

Most foreign investors consider incorporating a branch or company in Malaysia through which all operations are carried out. Both entities need written approval from the Ministry of Foreign Trade, before they are allowed to commence business. Malaysia’s Government tries to encourage foreign companies, to incorporate a branch or a company for undertaking projects and unincorporated joint ventures with local companies, specifically in the public sector.\(^{42}\) The choice of such structures is usually necessitated by the tax environment in the home country of the foreign company.\(^{43}\)

Another point to observe is that commercial enterprises, such as companies cannot only be formed privately but also publicly; that means by an Act of Parliament or by Royal charter.

Furthermore, there is the possibility to convert an already existing company so as to make it into a company of a different type. If a company changes its structure it has to

\(^{40}\) cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 214
\(^{41}\) cp. Cracknell, D.G., 1993, p. 6
\(^{42}\) cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 4
apply to the registrar for validation of the change by issue of a certificate or re-
registration (at the registry) of the company in its new category.44

2.3.1 Limited Companies

In contrast to partnerships and sole traders companies provide ideal structures for
businesses, which are more complex. They can provide bigger structures and
increase the opportunities for businessmen to deal with larger amounts of goods and
money. Another advantage is, that the liability of its members can be limited by
means of a memorandum of association and its articles of association.45 The
following section describes limited and unlimited companies, their legal basis,
management, structure and meetings. The companies concerned may be formed
either as private or public companies.46

In addition to the normal requirements of incorporations, a public company must,
before it allots shares or debentures, file a prospectus in relation to its affairs with the
Registrar of Companies (ROC) or produce a statement in lieu of prospectus, if no
public issue is made.47 Apart from these different features, both company forms are
accommodated under the Companies Act 1965 (C.A. 1965).

According to section 26 and 27 of the C.A. 1965, a private company can be converted
into a public company by registering a statement in lieu of a prospectus and by
complying with certain other formalities.48 In comparison, a public company can be
converted to a private company, provided it can satisfy the conditions applicable to
private companies and provided its articles of association are changed to incorporate
the required restrictions, Section 26, paragraph 1, C.A. 1965. For the formation of a
private limited company (Ltd.), a minimum paid-up capital of only RM 2 is needed,
while for the formation of a public limited company a paid-up capital of not less than

43 cp. Broadstone, R.C., Heires, D., 1997, p. 84
44 cp. Cracknell, D.G., 1993, p. 20
45 cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 233
47 cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 217
RM 60 million (if it seeks to be listed on the Kuala Lumpur Stock Exchange Main Board) or not less than RM 40 million (if it seeks to be listed on the KLSE Second Board) is required.49

Section 14, paragraph 2 of the C.A. 1965 defines three forms of limited companies:

1.) company limited by shares
2.) company limited by guarantee or company limited both by shares and guarantee
3.) unlimited company

One reason for the attractiveness of limited companies to company founders is, that it offers an opportunity to restrict the liability of its members by a statement in the memorandum.50

2.3.1.1 Companies limited by shares

First of all it has to be mentioned that Malaysian Company Law accepts two different types of companies limited by shares: a private (Sendirian Berhad51) and a public (Berhad52) one. Significant for a private limited company are some special restrictions and prohibitions within the C.A. 1965 and company memorandum. One restriction is the number of members. The Company must have a minimum of two members and can only have a maximum of 50 members, C.A. 1965, part III, division 1, section 15, subsection 1b.53 It is not unusual to regulate the number of members between these two limits in the company memorandum. In addition the memorandum contains a clause, which states that the transfer of shares has to be approved by the directors C.A. 1965, part III, division 1, section 15, subsection 2. The reason for this rule is to avoid inviting the public and the directors are able to control the joining of members more easily. Another restriction states that the public is not allowed to deposit money

48 cp. Broadstone, R.C., Heires, D.,1997, p. 84
49 see URL: http://allmalaysia.info/msiacommerce/resources/business.asp, [29.08.2005]
51 Malayan Term for private limited company; abridgement (Sdn Bhd)
52 Malayan Term for public limited company; abridgement ( Bhd)
with the company for a fixed period, or to subscribe for any shares or debentures of the company C.A. 1965, part III, division 1, section 15,c.

The use of shares is the most well known and popular way of liability-limitation. A special rule within the memorandum fixes the limitation. The exact effect of such a clause is, that the company members are only liable for the amount of the issue price of the shares, which has been fixed at the time of the issue. The result is: they have no further liability to the company, if the shares are paid fully. But what happens, if the share holder has not paid the amount full. In this special case the member is also liable with his personal assets but only to the amount of the issue price.

The public version of a company limited by shares permits, in contrast to a private company, to offer its shares to be offered to the public for subscription. Everyone is allowed to buy or to sell his shares without an approval of the companies' directors. Every transfer can be carried out freely. Shares in Malaysia are bought and sold at the Stock Exchange in Kuala Lumpur, which was incorporated in 1976. It is one of the world's fastest growing exchanges, the third largest in the developing world in terms of market capitalization, and the largest in ASEAN.

2.3.1.2 Companies limited by guarantee

As the name already says the liability of the member is also limited but it is not limited by shares but limited by guarantee. The basis for this limitation are two clauses fixed in the memorandum of the company. The first one is the same as in the company limited by shares, and defines that the liability of the companys' members is limited but the in second clause every member agrees to contribute to the company's assets in the case of liquidation or insolvency. Each member has to fulfill his payment

54 cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 233
55 cp. Cracknell, D.G., 1993, p. 21
58 see URL: http://www.bisnetwork.net/bisnet/countries/malaysia20.htm
59 cp. Cracknell, D.G., 1993, p. 21
obligation only for debts, which occur during his time of membership, and he is still liable within one year after he has finished his membership provided that the present members are not able to fulfill their obligation. This type of company form is mostly chosen by benefit societies, mutual insurance associations and sports clubs, which are normally not founded to be profit making.  

2.3.2 Unlimited companies

Part III, division 1, section 14, paragraph 2d C.A. 1965 opens up opportunities for founders to incorporate an unlimited company. As with a limited company, an unlimited company needs a special memorandum and articles. The decisive point is, that neither the memorandum nor the articles contain clauses, which limit liability. That means, that all the companies’ members are personally responsible for all the business debts. The position of creditors and past members is the same as for members of a company limited by guarantee or limited by shares. It is not necessary for unlimited company to forward a copy of its annual accounts to the registry and can keep a secret of its financial transactions. The unlimited company looses this advantage if it has subsidiary undertakings or when it is controlled by a limited company. This kind of company structure is ideal for businesses without risk such as to hold property.

2.3.3 Limited company vs. unlimited company

There are some advantages of a limited company: The first one being, that its members are not liable for debts beyond the share capital they have subscribed. The second advantage is that it is easy to transfer the ownership, and the third one is, that in case of death, or other changes, there is no need to wind up the company.

60 cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 215
61 cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 4
64 cp. Keenan, D., 2002, p. 36
On the other hand it has to be noted that a private limited company has to comply with the strict requirements of the C.A. 1965. This means, that the public have access to the financial affairs of the company, that the company has to appoint auditors to verify and report its financial statements and that every company needs a company secretary. In addition the costs involved in forming a limited company are high.65

2.4 Memorandum and Articles of Association

The following two paragraphs focus on two certificates: the Memorandum of Association (hereinafter memorandum) and the Articles of Association (hereinafter articles) of a company. Both of them are necessary for the formation and registration of a company. Furthermore they regulate internal structure and hierarchy, relations to other members and to the outside world.66 Some formalities and requirements have to be noted and to be kept for both. But like most of the documents they are in a standard format and almost every printer in Malaysia sells them. When the forms have been completed, they are stamped and sent to the Companies Commission of Malaysia. The fees charged for stamping are RM 100 for the original memorandum and RM 10 for a duplicate.67

2.4.1 Memorandum of Association

The memorandum of Association is the most important document needed for the formation and registration of a company. It has to be established for every kind of company, whether private or public. Because of its importance the C.A. 1965, division 1, section 18, specifies the requirements of the memorandum. Some of the main matters are specifications concerning the objects and powers of the company and the rules for business connections within the company, specifically for the directors among each other. The memorandum also contains information regarding the registered

66 cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 226
offices, the liability of its members and the amount of the share capital registered.\textsuperscript{68} In a company limited by guarantee, the amount to be contributed by each member, in the case of being wound up has to be listed.\textsuperscript{69} To make it official, the memorandum has to be signed by a minimum of two subscribers, duly dated. Each of them has to be mentioned with full name, address and occupation. In addition, the signatures have to be testified by a witness. As in the case of the subscribers the witness has to be mentioned with full particulars and it is not allowed that subscriber and witness are one and the same person.\textsuperscript{70}

\section*{2.4.2 Articles of Association}

The Articles of Association (‘the articles hereafter’) embody the written constitution of a company. Every article has a special clause and regulates a topic, which is indispensable for handling the internal relationship of the company, such as the issues of shares, the convening and conduct of general meetings, the appointment and powers of directors, the payment of dividends and the issue of notices to members.\textsuperscript{71} Since 1862 every company act contains an example of articles, which is called “Table A”. Table A regulates the share capital, classes of shares, voting rights, board meetings, rights and duties of directors and secretary, dividends accounting, dissolution and transfer of shares, \textit{fourth schedule, sections 4, 30, Table A, C.A. 1965}.

With regard to companies limited by shares, the C.A. 1965 contains a special rule: A company limited by shares has the right to adopt its own articles or adopt the statutory model articles (Table A) instead.\textsuperscript{72} \textit{Section 29, paragraph 2 of the C.A. 1965} states, that the articles have to be in written form, divided into numbered paragraphs and that a witness has to attest the signature and add his address.\textsuperscript{73} After the regulations have been agreed and registered, they bind members, companies and if need to be third parties.

\textsuperscript{68} cp. cp. Cracknell, D.G., 1993, p.6
\textsuperscript{69} cp. Keenen, D., 2002, p. 23
\textsuperscript{70} cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 21
\textsuperscript{71} cp. Broadstone, R.C., Heires, D.,1997, p. 85
\textsuperscript{72} cp. Cracknell, D.G., 1993, p. 53
2.5 Directors nomination and tasks

The articles and the memorandum regulate the relationship between the parties involved in the company such as members, shareholders, and company directors. Furthermore they give them and the public information about the handling of internal affairs, treatment of shareholder and other important matters. But in order to transpose the theory of the above-mentioned statutes into reality and to make decisions concerning the business carried out, managers are needed. In the language of the law, they are called directors. Part V, division 2, section 122 et sqq. of the C.A. 1965 is the legal basis for the topic “Directors and Officers”. In practice that means that before a company can commence business, it has to appoint at least two directors. The C.A. 1965 provides different ways to fulfil this requirement but usually the shareholders of the company appoint their directors. It has to be mentioned that there is no statutory rule, which states, that a director has to be a shareholder. Nevertheless, the members of a company have the opportunity to place an alternative clause in their articles. Malaysian company law provides three more ways of appointing directors:

a) They can be appointed by the subscribers of the memorandum. This method is very common, when the first directors have to be named.

b) They can be appointed by an ordinary resolution of the members in a General Meeting

c) They can be appointed by the Board of Directors.

After appointing its directors, the company is allowed to commence business. There are essentially differences concerning the power of the managers between partnerships and companies: in a partnership every partner is automatically an agent

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74 cp. Broadstone, R.C., Heires, D.,1997, p. 89
75 cp. Lawson, R., 1998, p. 9
of the company and as a member and proprietor he is liable for all occurring debts without limitation. This duty is balanced out by the right to make all decisions on his own or if there are a number of partners to take part in the decision making process. The directors are faced with a different situation. They are entitled to take action concerning the management of the company by the Articles of Association. Their power of representation and their power to take over the management can be restricted by the articles, but only within the company and not externally.\textsuperscript{77}

A company needs at least two directors who are ordinary residents of Malaysia, \textit{section 122, paragraph 1 C.A. 1965}. Local founders have to be 18 years old before they are allowed to apply for registration of a company, \textit{section 122, paragraph 2 C.A. 1965}. A more recent ruling states that a director is not allowed to hold more than 15 directorships in public and 10 directorships in private companies.\textsuperscript{78} People who have been convicted for an offence relating to dishonesty or fraud, insider dealing, or faulty maintenance of company account books are also not allowed to become company directors. These significant rules are also supplemented by a regulation which states that a director should retire at the age of seventy. \textit{Section 129, paragraph 1 C.A. 1965}. In addition, a director who becomes insolvent, insane or absents himself should cease to hold office.\textsuperscript{79}

\subsection*{2.5.1 Tasks}

In general, every director has to act according to the “bona fide” rules, which means that every action taken has to be in the interests of the company.\textsuperscript{80} The thoughts behind this onerous rule are to avoid a conflict of interests, to act for the benefit of the company, to have regard to the interests of the employees, to act with attention and diligence to the business of the company, to exercise powers for a proper purpose

\textsuperscript{76} cp. Keenen, D., 2002, p. 291
\textsuperscript{77} cp. Keenen, D., 2002, p. 301
\textsuperscript{78} Cp. Practice Note No. 13/2000, “Requirements relating to directors and signatory and statutory Declaration accompanying annual audited accounts”, Bursa Malaysia
\textsuperscript{79} cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 131
\textsuperscript{80} cp. Lawson, R., 1998, p. 9
and to account for profit. The legal basis for these regulations has been laid down in the C.A. 1965, division 2, section 122 ET. sqq. in conjunction with Table A, section 73.

Furthermore, these two sources provide the directors with the power to borrow money and to mortgage or charge their undertaking, property, and uncalled capital. They also entitle them to issue debentures and other securities and to carry out any measures relating to the company’s business, C.A. 1965, Table A, section 74.

In contrast to the liability of sole proprietors, a director is not liable for any debts incurred by the company. The only exception for this maxim is, if he signs a guarantee or security on behalf of the company, or undertakes a personal guarantee. Even if a director is not directly liable for outstanding debts, the tax revenue office may charge or prosecute him, if it finds any irregularities during an account audit, or if the audited accounts and tax returns to the Revenue Tax Office are not submitted.

2.5.2 Removal

Paragraph 2.4.1 shows the requirements for installing a director of the C.A. 1965, which have to be fulfilled by a prospective director. But the C.A. 1965 also contains rules for the removal of directors. Part V, division 2, section 128 of the C.A. 1965 deals with this important topic. It states that a company is allowed to remove a director by an ordinary resolution despite an appointment in the company’s memorandum or an additional contract or articles of association. In such cases it has to be taken into account, that if the director concerned represents the interests of a certain group of shareholders or debenture holders, he cannot be removed until a successor has been appointed, C.A 1967, division 2, section 128 subsection 1. In the case of a private company limited by shares, a director who is holds a majority, can remove any director by calling a extraordinary general meeting. Furthermore, it is

not possible to remove one of only two directors - in this special case the company has to be dissolved by consent.\textsuperscript{85}

\subsection*{2.6 Company secretary}

\textit{C.A. 1965, division 2, section 139, subsection 1} states, that every limited company must have a secretary. The secretary has to be of age and he has to have his principal or only place of residence in Malaysia and he has to be a natural person, \textit{section 139, paragraph 1} \textit{C.A. 1965}. The ulterior motive of this rule is to provide that only living persons can become a company secretary. This means that the responsibility cannot be divided, because companies or organisations are not able to take on this position. In general the secretary is responsible for all administrative duties of the company, which means that he is the head of the administration.\textsuperscript{86} In addition he has to ensure that the statutory rules are met. In the case of not meeting the rules or breaching them, he will personally be liable to criminal penalties if he commits any wrongful act in relation to his statutory duties.\textsuperscript{87} The responsibilities of a secretary vary from company to company. They depend on branch, size and organisation of the company and are given on the basis of the \textit{Table A section 97}, by the directors to the secretary.\textsuperscript{88} The duties of a secretary are:

- organizing and being present at all company meetings, taking down the minutes of such meetings
- being responsible for the keeping of the company books, share register, register of charges, minute books
- filing annual returns and certain solutions
- informing all members about meetings, as directed by the board of directors
- observing share transfers

\textsuperscript{85} cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 133
\textsuperscript{86} cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 274
\textsuperscript{87} cp. Keenen, D., 2002, p. 309
\textsuperscript{88} cp. Walmsley, K., 1993, p. 1993
Legal requirements

- countersigning all essential instruments and documents pertaining to share certificates
- safe keeping of the common seal of the company

There are many differences of opinion regarding the legal position of a company secretary. Some see the company secretary as an officer, some as an agent and some as a servant.\(^89\) Mention is made of this topic “Legal Position of a Company Secretary”.\(^90\) Regardless of the above mentioned problems there are some essential requirements, which every secretary has to fulfil:

a) he must be a member of a professional body prescribed by the Ministry from time to time, *C.A. 1965, division 1, section 139a, subsection a*

b) he must be licensed at the CCM, *C.A. 1965, division 1, section 139a, subsection b*

c) he is not under charge of bankruptcy

d) he has never been convicted of any offence under *sub-section 1 of section 130 (dishonesty, fraud, etc.)*

There is no limit concerning the number of secretary offices a person can hold.\(^91\) It is not forbidden, that a director and a secretary are one and the same person, but there is a restriction to be noted in the case of for example witnessing the common seal: a person who is a director and secretary in the same company cannot act in both capacities.\(^92\) The removal of a company secretary is based on a decision made at a board meeting.\(^93\) Only a simple majority is needed for a decision to be passed. If a director holds the position of a company’s secretary as well, he needs only to give up the function of a secretary but will remain a director.

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\(^{89}\) cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), 141-143
\(^{90}\) Although it is realized that this is an important topic, for purposes of this thesis, an in depth study of this topic will not be entered into as this could be very well be another topic of discussion in a further thesis.
\(^{91}\) cp. Chen Chuan, (Company Formation in Malaysia, 2004), p. 139
\(^{92}\) cp. Keenen, D., 2002, p. 9
\(^{93}\) cp. Keenen, D., 2002, p. 311
2.7 Meetings

Every company has to hold certain meetings such as general meetings of shareholders and extraordinary meetings.\textsuperscript{94} The articles of the company provide the meetings e.g. section 36, 37 of the Table A.\textsuperscript{95} Figure two shows the three different kinds of general meetings:

![Meetings diagram]

There are, of course, other meetings, such as class or board meetings, but this thesis will only take a closer look on at the different kinds of general meetings. The reasons for these are the special requirements and the fact that all shareholders take part in general meetings. Furthermore, decisions are made which are binding for the whole membership.\textsuperscript{96}

\textsuperscript{94} cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 263
\textsuperscript{95} cp. Keenen, D., 2002, p. 379
\textsuperscript{96} cp. Cracknell, D.G., 1993, p. 167
Every company has to hold a general meeting each year (AGM). *Section 143 subsection 1, division 3, C.A. 1965* states also that it is not allowed to have a period of more then fifteen months between two annual meetings. The only exception to this regulation concerning the incorporation of a company is when a company has been incorporated, the above-mentioned period is then extended to eighteen months.

The general meeting gives the shareholders an opportunity to ask the directors questions concerning accounts, reports and general matters. In other words: it is a safeguard for them to receive information from the board of directors.⁹⁷ Incidentally a meeting has to be held, whether the directors wish it or not – in addition, a private limited company is not allowed to pass a resolution which says, that a general meeting is not necessary.

An extraordinary annual meeting (EGM) is regulated in *section 144, division 2 of the C.A. 1965*. It may be called, when there are special reasons to hold a meeting.⁹⁸ The directors of the company decide if such a meeting should take place. They can call a meeting, whenever they think it necessary. The above-mentioned method of holding a meeting bases on an impulse from inside the company but if this system does not work, the court has the power to call a meeting by directing one member of the company to constitute a valid meeting. If an auditor recognises a serious loss of capital in a public limited company, he is authorized to requisition a meeting on his resignation.⁹⁹

Above all, minorities have the right to requisition an extraordinary general meeting. In this case a special procedure has to be mentioned: a certain number of members can convene an extraordinary general meeting when they hold 1/10 of the paid up capital and represent 1/10 of the voting rights. That means that there has to be a minimum of two members, holding together 1/10 of the paid capital, who can call a meeting, *section 145, C.A. 1965*. If such a requisition is made, the requisitionist has to deposit the requisition at the company’s registered office. Moreover the requisition must state the reasons for which the meeting is being called. These requirements are to make

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⁹⁸ cp. Cracknell, D.G., 1993, p. 175
the whole procedure official. After the directors have received the requisition, they have to convene a meeting within 21 days. If the directors do not convene such a meeting during this period, the requisitionist is allowed to convene a meeting within a time period of three months. The company has to pay the occurring costs for this meeting.\textsuperscript{100}

2.8 Resolutions

The decision making process within a company, whether private or public, is based on resolutions passed in a meeting. Generally there are three different ways of passing a resolution depending usually on the individual circumstances. This paragraph will give a brief overview, about:

1.) ordinary resolutions
2.) special resolutions
3.) extraordinary resolutions

It is important to know, that every resolution can be passed independently of the kind of meeting. That means an ordinary resolution can be passed in a general meeting as well as an extraordinary meeting. Table A of the Companies Act provides the possibility to pass a resolution in writing – but in this case high demands of the requirements are made on public companies and in practice written resolutions are not likely to be a viable proposition in them.\textsuperscript{101}

2.8.1 Ordinary resolutions

Contrary to an extraordinary and a special resolution, an ordinary resolution is used where the articles so provide.\textsuperscript{102} Clearly stated: there is no statutory rule in the Act, which regulates the appliance, instead the Articles of Memorandum have to be modified. A simple majority is needed (50+1), to pass a resolution but this need only

\textsuperscript{100} cp. Keenan, D., 2002, p. 382
\textsuperscript{101} cp. Keenan, D., 2002, p. 401
\textsuperscript{102} cp. Cracknell, D.G., 1993, p.168
\textsuperscript{103} cp. Keenan, D., 2002, p. 402
be a majority of those members who are taking part and who are allowed to vote and not company members. It is important to know, that whenever the company law uses the phrase “approval of the members”, a ordinary majority is enough to get approval.\textsuperscript{103}

2.8.2 Special resolutions

A majority of three-quarters of the members is needed to pass a special resolution. After the acclamation, all votes of the members, who are entitled to vote in person, are counted. It is to be noted that notice must duly be given not less than 21 days before the meeting takes place.\textsuperscript{104} A special resolution is used for deciding fundamental issues such as altering the regulations or varying class rights, section 152, paragraph 1, C.A. 1965.

2.8.3 Extraordinary resolutions

This is passed with a majority of three-quarters of votes cast by those voting. In order to pass this resolution at an AGM it is required that 21 days notice be given to the shareholders.\textsuperscript{105} To pass this resolution at an EGM 14 day’s notice is acceptable. Unlimited Companies must only provide 7 days notice before voting on this type of resolution. If there is no period of notice specified, normally 14 days minimum notice for any general meeting is enough.\textsuperscript{106}

2.9 Winding up and striking off a company

If a business is to be brought to an end, there are different processes to reach this goal. Mainly they are two different ways of ending a company’s life:

\textsuperscript{104} cp. Keenan, D., 2002, p. 401
\textsuperscript{105} see URL: http://www.companieshouse.gov.uk/about/pdf/gba7.pdf, [30.08.05]
\textsuperscript{106} cp. Cracknell, D.G., 1993, p. 169
1.) compulsory winding up by the court, section 211, letter a), C.A. 1965
2.) voluntary winding up, section 211, letter b), C.A. 1965

The Companies Act 1967 regulates in part X “Winding up”, division 1 the modes of winding up a company. There are also other alternatives for winding up a company. Some of them have in common that the process is carried out by a liquidator. This is always the case, when there is an order from the court to stop the actions of a company or when the members of a company put a special clause in the articles which states, that there has to be an liquidator or an accountancy company as an observer.\textsuperscript{107} The duties and powers of a liquidator are handled in section 227, subdivision 2, division 1 Companies Act 1967. Basically, the liquidator carries out the following functions: to settle the list of contributors, to collect the companies assets, to discharge the company’s liabilities to its creditors, to redistribute the surplus (if any) to the contributions according to the rights attached to their shares of the company’s capitals.

2.9.1 Compulsory winding up

If a company gets into financial difficulties the court may wind it up.\textsuperscript{108} In this serious situation, a petition for winding up may be presented by the company, by the court or by a creditor, section 217, subdivision (1) general, division 2 in conjunction with section 218. Other reasons for winding up a company by the court can be that the directors have acted in their own interests in the affairs of their company or the company does not commence business within one year after its incorporation.\textsuperscript{109} The court can decide whether to make an order or not, but if it does so, a liquidator has to be appointed to wind up the company.\textsuperscript{110} The next step is for the company to apply

\textsuperscript{107} cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 290
\textsuperscript{108} cp. Broadstone, R.C., Heires, D., 1997, p. 93
\textsuperscript{109} cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 291
for an order to dissolve the company. This order will be registered with the registrar of the company and the company will be dissolved from the date of the court order.¹¹¹

2.9.2 Voluntary winding up

In order to wind up a company in the most common way – the voluntary way – one of the following criteria have to be fulfilled: a) there has to be a clause in the memorandum, which states which reasons excite the liquidation of a company, or b) some members use their right to initiate a resolution in a general meeting, which states that the business has to be wound up in the way mentioned.¹¹² Even if a company is insolvent or is expected to become insolvent, creditors and directors mostly decide to wind up the company voluntarily, because this creates less formalities and it is less expensive.¹¹³ No matter which kind of resolution is utilized - it has to be publicised in a newspaper available throughout Malaysia within ten days. The reason for this is simple: all parties that are involved or have contacts to the company shall be able to make use of their rights in an appropriate way. Basically there are three different possible reasons for winding up the company voluntarily:

1. The articles state in which case (e.g. after a certain period of time) the company has to be wound up – in this case an ordinary resolution is needed. In order for a resolution to be passed, 50% of the members have to vote for the winding up of the company, section 251, paragraph 1, subdivision 1, division 1

2. The company resolves a special resolution, which means that 75% of all votes are needed to pass the resolution, for example for alteration of a company

¹¹³ cp. Cracknell, D.G., 1993, p. 253
object or creation of reserve capital section 251, paragraph 2, subdivision 1, division 1.\textsuperscript{114}

3. If the company resolves an extraordinary resolution, notice has to be given to the members and a three-quarter majority is needed for it to be passed. A resolution is used for winding up the company voluntarily when it cannot pay its debts.\textsuperscript{115} Furthermore, the resolution has to be filed at the CCM in Kuala Lumpur section 251, paragraph 3, subdivision 1, division 1.

The other possibility concerning the winding up of a company is the so-called “Members’ voluntary winding up”.\textsuperscript{116} If the company is be wound up in this way a general meeting has to be summoned. During this meeting an ordinary resolution is needed to end the company’s life and to appoint one or more liquidators plus their remuneration. Furthermore, directors have to make and deliver a declaration of solvency to the registrar because Malaysian company law assumes that a company, which is going to be liquidated, is insolvent, regardless if this is the case or not.\textsuperscript{117} This assumption has to be made until the directors accept personal responsibility for stating that they believe their company is solvent. After making the declaration (Form 66), the company has to pay its debts within 12 months. If the company is not able to pay its debts within the above-mentioned period, the liquidator has to summon a meeting of the creditors. Then the “voluntary liquidation” becomes “creditors liquidation”.

The expression “not able to pay its debts” has to be seen in a commercial sense: the existing assets are insufficient to meet the existing liabilities.\textsuperscript{118}

As previously mentioned, the third way of winding up a company is the so called “creditors’ voluntary winding-up”.\textsuperscript{119} When the liquidator initiates it in this way the creditors assume control over the liquidation. A meeting of the creditors has to occur

\begin{footnotes}
\item[114] cp. Broadstone, R.C., Heires, D., 1997, p. 92
\item[116] cp. Cracknell, D.G., 1993, p. 253
\item[117] see URL: http://www.companieshouse.gov.uk/about/pdf/gba7.pdf, [30.08.05]
\item[118] cp. Goh Chen Chuan, (Company Formation in Malaysia, 2004), p. 203
\item[119] cp. Broadstone, R.C., Heires, D., 1997, p. 93
\end{footnotes}
within a time period of 14 days, after the members meeting has taken place. The change of the liquidation process gives the creditors the power to appoint a new liquidator and a liquidation committee, which observes that the statutory rules are met. At the same time the directors are released from their obligations and lose their power to the liquidator and the liquidation committee which controls that the legal regulations are kept.

When the decision is made to end the life of a company and after the affairs of the company are fully wound up, the liquidator has to pass a resolution within seven

days to the Companies Commission of Malaysia (CCM) and he is required to hold a final meeting for the purpose of presenting the accounts before the members or creditors of the company (as appropriate). The company will then be dissolved at the end of three months after the lodgement of the relevant documents (such as the return of the holding of the final meeting, its date and a copy of the accounts).

2.9.3 Alternatives for winding up

Apart from the different procedures of winding up, there are two other ways in which a company may be dissolved: a) striking off at the instigation of the registrar and b) application to strike off. The registrar will initiate a striking off, when there are reasonable causes for the company not to take part in business or the CCM has not received the required documents or correspondence sent to the company’s registered office by the Registrar or they have been returned undelivered. The company itself can apply to be struck off, if it is not trading, but has sent all important documents to the Registrar.

3. Formation of a company

The establishment of a company in Malaysia is generally a simple undertaking, nevertheless certain requirements have to be fulfilled. The following paragraph describes this process and gives an overview about the involved authorities.

3.1 Short profile of important authorities

3.1.1 Companies Commission of Malaysia (CCM)

The so called “Suruhanjaya Syarikat Malaysia” or “Companies Commission of Malaysia” is responsible for the administration of companies, whether local of foreign.

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122 see URL: “Doing Business in Malaysia – Company Law and Accounting”; http://www.us-asean.org/Malaysia/business_guide/Company_Law.asp#11.%20Liquidation , [13.08.05]
It is situated in Kuala Lumpur and its tasks are to administer and enforce regulations such as the Companies Act 1965, the Trust Companies Act 1949, Kootu Funds Act 1971, the Registration Business Act 1956 and all the subsidiary legislation under the Acts as specified. The commission further provides business and corporate information, serves as an agent for the government in collecting and enforcing payment of prescribed fees, and carries out research on matters relating to co-operations, companies and businesses. The commission's structure is shown below:

Figure 4: Organisation Structure CCM, 2005
Source: http://www.ssm.gov.my/org_structure.htm

125 see URL: http://www.ssm.gov.my/functionsccm.htm [26.04.05]
www.law-and-business.com
Every company considering carrying out business in Malaysia has to apply to this authority. If all requirements are fulfilled, the CCM will approve the incorporation.126

3.1.2 Malaysian Industrial Development Authority (MIDA)

The Malaysian Industrial Development Authority (MIDA) is also situated in Kuala Lumpur and promotes foreign and local investments, manufacturing and services sectors in the first instance. It plans and carries out measures for the industrial development in Malaysia, e.g. consulting companies, in the implementation and operation of their projects. In addition the MIDA assists companies and authorities to find solutions, for problems which occur concerning the handling of policies and procedures.127 MIDA is also responsible for granting tax incentives for different commercial sectors and considers applications sent by companies in such matters.128 It also consults and recommends policies and strategies to the Minster of International Trade and Industry.129 The authority is divided into two main divisions:

![Organisation Structure MIDA, 2005](http://www.ssm.gov.my/org_structure.htm)

Figure 5: Organisation Structure MIDA, 2005
Source: http://www.ssm.gov.my/org_structure.htm

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126 cp. MIDA 2005, "Methods of Conducting Business in Malaysia", p.11
127 see URL: http://www.mida.gov.my/,[23.06.05]
128 cp. MIDA, (Malaysia getting started – Incentives for Investment, 2005), p. 13
129 cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 2
3.1.3 Ministry of International Trade and Industry (MITI)

In Malaysia, foreign investment in the manufacturing sector is regulated by the Ministry of International Trade and Industry (MITI). MITI is the authority that grants manufacturing licences under the Industrial Coordination Act 1975. In addition, the Malaysian Industrial Development Authority (MIDA) was established to act as a one-stop centre to administer the regulations of investment in the manufacturing sector. MIDA acts under the auspices of MITI, and is empowered to promote and co-ordinate industrial development in Malaysia. The major functions of MIDA are to recommend to MITI policies and strategies on industrial promotion and development, to evaluate applications for investment incentives, and to process applications for manufacturing licenses.\(^\text{130}\)

3.2 Registration of sole traders and partnerships

In accordance with the Registration of Business Act 1956, sole traders and partnerships are not required to register when they run a business which is only exercised by those who possess certain qualifications, like lawyers, doctors and accountants, etc. The law prescribes the required qualifications and it also prescribes that those names of lawyers and doctors have to be registered, or recorded otherwise.\(^\text{131}\) This applies also to societies, which are registered or exempted under any written law, but only at the time they are in force relating to the registration of societies or co-operative societies.\(^\text{132}\)

\(^{130}\) cp. cp. Jaswant, S., 2004, p. 2
3.3 Registration process

Every company wanting to run a business in Malaysia has to apply for registration to the “Companies Commission of Malaysia” (CCM) in Kuala Lumpur or through any of its branch offices. This application must be made on a prescribed form “Request for availability of name” (see A2) and a fee of RM 30 is charged.

It quite often happens that business has already started, although the owner of the company has not applied for registration to the CCM. In such cases, the founder has to send his application and the required documents to the CCM within 30 days. One problem concerning the commencement of business without approval from the CCM (see A 10) is the use of a company’s name, which has not been registered. The owner of the company is not allowed to use the name until he has obtained approval from the CCM. This is for the protection of the creditor and also for the protection of already existing copyrights.

3.3.1 Registration process for foreign companies

The registration process for foreigners is similar to the registration process for locals, with only one difference: foreigners are only allowed to register a company when at least two of the company directors are ordinary residents in Malaysia. This means, that their principal or only place of residence is within Malaysia. The Companies C.A. 1965, division 2, contains regulations about so-called “Foreign Companies”. Under Malaysian Law a foreign company is defined as a company, which is incorporated outside Malaysia, but has set up places of business within Malaysia, or carries on business in Malaysia, division 2, section 329 Companies Act 1965.

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133 cp. MIDA (Methods of Conducting Business in Malaysia, 2005), p. 4
134 cp. MIDA (Getting Started – Procedure for Incorporation, 2005), p. 6
3.3.2 Special requirements for the registration of a manufacturing company

The main reasons for foreign companies to run a business in Malaysia, are the low wages for workforce. Company founders from abroad invest their money not only in human workforce but also in expensive machinery. A number of well-known companies such as Robert Bosch, Osram and Intel have already built their assembly plants in Malaysia and employ a large number of workers. A special requirement for the establishment of an assembly plant has to be mentioned: the application of the manufacturing licence. The founder has to apply for this at the Ministry of International Trade and Industry (hereafter MITI).136 After the government has received the application, it examines by using the following criteria whether the founder has a manufacturing company.137

“Manufacturing activity” as the making, altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; and includes the assembly of parts and ship repairing but shall not include any activity normally associated with retail or wholesale trade.” Industrial Co-Ordination Act 1975, section 2, definitions.

Every company, which falls under this paragraph is a so called “Manufacturing Company” under the terms Malaysian law and it will usually take 30 take days for the MITI to give its approval and the founder to receive his license.

If the establishment has been approved, the founder can build his plant and hold 100% equity:

a) if he is permitted to hold 100% equity of a company irrespective of the level of exports138 or

136 cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 3
137 cp. MIDA (Malaysia - Getting Started, 2005), p. 3
138 cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 3
b) if the shareholders’ funds or the existing foreign manufacturing companies have now reached RM 2.5 million, or the company has engaged 75 or more full-time employees.\footnote{cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 3}

3.4 Documents for the CCM

After the CCM has received the application, the administration of the CCM will check whether the name of the company is available. Should the name be approved, it will be reserved for three months from the date of approval. Within these three months, the founder has to submit the documents mentioned in the Companies Act 1965 division 2, paragraph 329 for registration.\footnote{cp. Goh Chen Chuan, 2004, p.3}

These are:

a) a certified copy of the certification of its incorporation showing its place of incorporation or origin or a document of similar effect (see A 7)

b) a certified copy of its charter statute of memorandum and articles or other instruments constituting or defining it constitution

c) a list of its directors and secretary containing similar particulars has to be submitted by the company on an official form (see A 9). Where the list includes directors resident in Malaysia who are members of the local board of directors, a memorandum must be duly executed by or on behalf of the foreign company stating the powers of the local directors

d) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such a manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name and address of one or more persons resident in Malaysia, not including in a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company\footnote{cp. US Department of State (Doing Business in Malaysia, 2004), p.4} and
e) a statutory declaration in the prescribed form “Statutory Declaration by Agent of Foreign Company” (see A 8) and
f) registration fees for the authorized capital of the company (see A 5, A 6, A 7)

It is necessary to translate documents, when they are in a foreign language into English or Bahasa Malaysia, because these languages are national languages. The translation has also to be certified, section 360 of the C.A.1965. After the Registrar has received the required documents in the correct language and the fee has been paid, the company will be registered as a foreign company under division 2 or Part XI of the C.A. 1965. The applicant will receive a certificate upon the registration.142

In the case of changes in the particulars of the company, the founder has to take care that these changes are filed within one month. An appropriate fee has also to be paid. The fee, which has to be paid for companies limited by shares, depends on the share capital of the company and is allegorised in the figure 6 below143:

<table>
<thead>
<tr>
<th>Authorised Capital (RM)</th>
<th>Fee Payable (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 100.000</td>
<td></td>
</tr>
<tr>
<td>100.001 to 500.000</td>
<td>1.000</td>
</tr>
<tr>
<td>500.001 to 1 million</td>
<td>3.000</td>
</tr>
<tr>
<td>1.000.001 to 5 million</td>
<td>5.000</td>
</tr>
<tr>
<td>5.000.001 to 10 million</td>
<td>8.000</td>
</tr>
<tr>
<td>10.000.001 to 25 million</td>
<td>10.000</td>
</tr>
<tr>
<td>25.000.001 to 50 million</td>
<td>20.000</td>
</tr>
<tr>
<td>50.000.001 to 100 million</td>
<td>40.000</td>
</tr>
<tr>
<td>100.000.000 and above</td>
<td>70.000</td>
</tr>
</tbody>
</table>

142 cp. Goh Chen Chuan(Company Formation in Malaysia, August 2004), p. 8
143 cp. MIDA (Methods of Conducting Business in Malaysia, 2005), p. 4
3.5 Commencement of business

As soon as the founder has submitted the prescribed documents to the CCM, he is allowed to start business. Within a period of seven working days, the new company will receive a registration number from the CCM and all necessary information is then available to the public.\(^{144}\) The founder receives a certificate which states that his business is now recorded at the CCM. As part of the formation documents, it has to be kept where the main business of the company takes place.

4. Labour law

Labour Law, as all Malaysian laws, is based on case law, even if there are statutory rules like the \textit{Employment Act 1955}, \textit{Industrial Relations Act 1967} and the \textit{Trade Unions Act}, which was enacted in 1959.\(^ {145}\) This section will give a brief overview of the most important topics, like contracts of service, breach of contract and employment of expatriates and will explain the main structures of the labour law. The term employment is synonymous for the relationship between employer and employee.\(^ {146}\) It links both sides. Normally the employer offers terms and conditions of service to the employee and the employee accepts them, if he thinks they are satisfactory.\(^ {147}\) The following figure shows the main principles of the employer – employee relationship under Malaysian law:

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{employer_employee.png}
\caption{Relationship between Employer and Employee, "A Handbook of Malaysian Labour Laws: with explanation and annotation"
Source: D'Cruz, M.N, 2003, p.90}
\end{figure}

\(^ {144}\) cp. Goh Chen Chuan, 2004, p. 3
\(^ {145}\) cp. Aminuddin, M. 1990, p.5
\(^ {146}\) cp. Triebel, Hodgson, Kellenter, Müller, p. 189
\(^ {147}\) cp. D'Cruz, M.N. 2003, p. 90
After the employee accepts the offer, the employer cannot unilaterally change the contract. The reasons for this principle are a number of orders, pronounced by several courts in Malaysia. For example:

Dehli Transport Corporation v. DTC Mazdoor Congress & Ors. (Supreme Court in 1990) the Court observed:

**Employment as employees right to livelihood:**

“The right to live includes the right to livelihood. The right to livelihood therefore cannot depend on the imagination of individuals in authority. Employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income the right to work becomes as fundamental. Fundamental rights can ill afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.”

Or

Chang Min Tat FCJ in Dr. A. Dutt v. Assunta Hospital (1981) 1MLJ 304

**The right to hire and fire**

“…the right to ‘fire’ implies a ‘hire’, in the social legislation of the Act, is limited, to termination with just cause or excuse. Any other interpretation would fail to recognise that in entering into a contract of employment the employer holds the sword by the hilt and requires the employee to grasp it by the blade…”

The aim of these orders is to balance out the power between employer and employee and to ensure that the ‘hire and fire mentality’ does not take place.
4.1 Contract of service

As in Germany, apart from some exceptions, a contract is the basis for a relationship between employer and employee. Part 2 of the Employment Act 1955 (in the following E.A. 1955) deals with “Contracts of Service” and defines in section 2, E.A. 1955 the term contract:

“Contract of service “ means any agreement, whether oral or in writing and whether expressed or implied, whereby one person agrees to employ another as an employee and that the other agrees to serve his employer as his employee. This also applies to an apprenticeship contract.”

The E.A. 1955 is applicable to all employees in the Malaysian Peninsular and the Federal Territory of Lubuan whose monthly wages do not exceed RM 1,500 and all manual workers irrespective of their wages. Even so, employees who earn between RM 1500 and RM 5000 a month can still seek redress from the Department of Labour with regard to wages and any other payments in cash as stipulated in their contract of service.

Following this regulation and definition, it has to be noted, that a so called “contract of service” may also include an apprenticeship contract and that the terms of such a contract may either be expressed or implied. Furthermore, an employee has the right to receive a commencement of employment contract within 13 weeks, which contains the main terms and conditions of employment, if he works more then 16 hours a week, or if he has worked for at least 8 hours a week for five years or more for the same employer.

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150 see Triebel, Hodgson, Kellenter, Müller, 1995, p. 291
151 cp. MIDA 2005, (Manpower for Industry, 2005), p.73
152 cp. D’Cruz, M.N. 2003, p. 21
4.1.1 Formal requirements

Section 10, *paragraph part 1 of the E.A. 1955* defines, that a contract, which is for a specified period of time, exceeding one month, or specified for the performance of a piece of work, where the time required for the completion of the work exceeds one month, has to be in writing.\(^{154}\) Furthermore, a contract must state under which conditions it may be terminated *section 10, paragraph 2, part 2 of the E.A. 1955*.

4.1.2 Subject matter

The employer is not allowed to restrain his employees from joining or taking part in trade union activities by modifying the contract in such a manner, *section 5, I.R. 1967*. This is because the legislator tries to avoid the employees being unprotected against such actions from the employer.\(^{155}\) Another characteristic of the contract of service is, that if it is for a specified time, or for the performance of a specified piece of work, it terminates if the specified period of term expires or when the specified piece of work is completed. It is not unusual to insert a clause relating to *section 12, paragraph 1, part 2 of the E.A. 1955* into the contract which states that in the case of termination of contract, notice has to be given. As an integral part of the contract, the period of notice must be the same for either party *section 10, paragraph 2, part 2 of the E.A. 1955*. Concerning the modification of an employment contract there is a mechanism in the E.A. 1955 which implies that if a contract contains terms and conditions, which are less favourable than those stipulated, such conditions are null and void. If the contract contains terms and conditions, which are more favourable than the conditions stipulated in the E.A. 1955 they can be put into force – provided that they are not illegal, *section 7 E.A. 1955 and section 7a E. A. 1955*.

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\(^{154}\) cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 291
\(^{155}\) cp. Aminuddin, M. 1990, p. 5
4.2 Probationary period

A period for finding out whether both parties suit each other, is called “Probationary Period”. During this time, the employer may test the employee’s attitude and adaptability for the job and the employee can decide whether he feels comfortable in his new workplace or not. Most contracts of service have a clause, which enables the employer to extend the probationary period. Normally an extension is for 1-3 months and has to be given to the employee in writing, before this period ends. To ensure that the employee improves his behaviour, the employer may inform him about the specific areas where he expects the improvement.

4.3 Employment of children and women

Malaysian Labour Law restricts the work of women and children. Thus the government regulates in part VIII, section 34, 35, 36 of the E.A. 1955 the woman labour and enacted the Children and young Persons Act in 1966.

The restrictions concerning the employment of women can be roughly divided into two subsections:

a.) prohibition of night work
b.) prohibition of underground work

According to section 34, E.A. 1955 the general rule states that an employer is not allowed to require women for work between 10 p.m. to 5 a.m. and that there has a free-time of 11 hours to be granted until they commence work. An exception concerning section 34 is regulated in the Employment Regulations (Employment of women), which were enacted in 1958. It states that no female employee referred to the above named section shall work between the hours of one o’clock and five o’clock in the morning. For customizing these regulations, section 36 of the E.A. 1955

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156 cp. D’Cruz, M.N. 2003, p. 65
157 cp. D’Cruz, M.N. 2003, p.163
provides, that the Minister of Human Resources is empowered to permit or prohibit to employment of female employees under certain circumstances.\textsuperscript{158}

The second focal point is concerned with the prohibition of underground work for women. It is regulated in \textit{section 35 of the E.A. 1955}. But for Malaysia, as an industrial site for companies from all over the world, with western values, based on English Law und international code of behaviours, this rule is seldom enforced.

Another extremely important topic regarding labour is the employment of children. The Children and Young Persons Act prohibits the employment of children under the age of 14.\textsuperscript{159} The act permits some exceptions, such as light work in a family enterprise, work in public entertainment, work performed for the government in a school or in training institutions, or work as an approved apprentice. In no case may children work more than 6 hours per day, more than 6 days per week, or at night.\textsuperscript{160} Beside the employment of children does the Malaysian Law has some special rules for the employment of so-called young persons: In this case, only employment in suitable light work according to capacity permitted. This could be for example, as a domestic servant for example in a shop, office, factory or workshop. Employers are also allowed to acquire young persons for an employment in an industrial undertaking suitable to their capacity.\textsuperscript{161}

4.4 Working hours

\textit{Section 60a, paragraph 1 E.A. 1955} defines that an employee shall not work longer than eight hours a day and not more than forty-eight hours in one week. Furthermore, section 60a, paragraph 1, letter d) subsection i), states that an employee shall not work more than five hours without a period of leisure of not less than thirty minutes duration.

\textsuperscript{158} cp. D’Cruz, M.N. 2003, p. 163
\textsuperscript{159} cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 1974
\textsuperscript{160} see URL: www.state.gov/g/drl/rls/hrrpt/2004/41649.htm [23.04.2005]
\textsuperscript{161} cp. D’Cruz, M.N., p.178
4.5 Holidays

4.5.1 Public holidays

Section 60d of the Employment Act 1955 regulates public holidays. Malaysia normally celebrates a total of 14 public holidays, like the National Day, or the Workers` Day. Malaysia, conscious that this number of public holidays is exorbitant compared with other states, decided to reduce this number. This reduction is implemented in section 60d, paragraph 1, subparagraph (1) and regulates that an employee shall be entitled to receive paid holiday for a minimum of ten days. Subsections, i, ii, iii and iv of section 60D defines certain days, which certainly have to be celebrated and which definitely have to be paid (e.g. birthday of Yang di-Pertuan Agong or Territory Day). Nevertheless, is it up to the employer to allow his employees to celebrate more than the named number in section 60d of Employment Act 1955.

It has to be noted that if one of the public holidays mentioned in sub-paragraph i, ii, iii and iv falls on a rest day, the following working day becomes the public holiday.

4.5.2 Annual holiday

In addition to public holidays, every employee is entitled to annual leave. This regulation is provided in section 60e of the Employment Act 1955. Depending on the length of service every employer has to grant annual leave. More precisely, the Employment Act defines, that for two years of service eight days of annual leave have to been given. For an employee who has served more than two years but less than 5 years, 12 days leave have to been given.

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162 cp. MIDA 2005, (Getting Started – Manpower for Industry, 2005), p. 76
163 cp. D'Cruz, M.N., 2003, p. 133
164 cp. MIDA 2005, (Getting Started – Manpower for Industry), p. 76
4.5.3 Sick leave

If an employee becomes ill, he will be protected by a regulation called “sick leave”. This section 60f, Employment Act 1955 entitles him to receive his wages for a certain number of days as fixed in the above named section. If an employee has less than two years of service he is entitled to have 14 days sick leave. If he has worked less then five, but more than two years, he is allowed to take 18 days and if he has served more than five years he is entitled to take 22 days sick leave. In the case of an employee needing to extend his sick leave, he has to bear the costs himself and the employer is not obliged to pay, because the law does not allow for this. Malaysia does not have a social system, which supports employees in such situations and most employees also do not have insurance in the case of illness. For this reason, a lot of companies offer to pay such insurance for their managers as a part of their salary, or as an incentive.

4.6 SOCSO

The Social Security Organisation (SOCSO) in Malaysia administers the Employment Injury Insurance Scheme and the Invalidity Pension Scheme. The organisation was set up in 1971 to implement, administer and enforce the Employees’ Social Security Act, 1969, and the Employees’ Social Security (General) Regulations, 1971. The obligation to contribute to SOCSO does not depend on the amount of money the employee earns.

SOCSO provides employees with insurance coverage by way of cash benefits and medical care in the event of any disablement or death due to employment injury. The employer pays a contribution of about 1.25% for each employee, while the employee

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165 cp. D’Cruz, M.N., 2003, p. 144
166 Malay term for Social Security Organisation is Pertubuhan Keselamatan Sosial
167 see PERKESO, 1987, p. 4
himself contributes 0.5% of his monthly wages.\textsuperscript{168} The term monthly wages also covers overtime payment, commission and service charges as well as payments for leave such as annual leave or sick leave. The outcome of both proportions of the costs is the sum which has to be paid into the public insurance system.\textsuperscript{169}

Concerning the contribution to SOCSO the \textit{Social Security Act 1969} defines that for every worker under a contract of service who is an employee under the Act and earns a monthly wage of RM 3000 or less, a compulsory contribution must be made to the SOCSO. For employees who earn more than RM 3000 per month there are two different possibilities:

a) Employees, who are previously registered and are already members in the SOCSO system, have to contribute even if their wage exceeds RM 3000.

b) Employees who have not previously registered and receive more than RM 3000 monthly, have an option. They can either contribute to the SOCSO or take out private insurance.\textsuperscript{170}

The application has to be completed and sent to the nearest of the 32 SOCSO offices situated in Malaysia. Every registered employee will then receive a registration number.\textsuperscript{171} Furthermore, the Act states, that as a rule all employees have to be registered, irrespective of their age. Contributions discontinue when the employee reaches the end of his 55\textsuperscript{th} year of life.\textsuperscript{172}

\section*{4.7 Occupational Safety and Health Act 1994 (OSHA)}

In 1994, Malaysia's parliament enacted the "Occupational Safety and Health Act". The aim of this Act is to secure the safety, health and welfare of persons at work, and to protect others against risks to safety and health in connection with their working activities, \textit{Part I, section 1,OSHA}. It has to be noted as the major legal framework of

\footnotesize
\textsuperscript{168} cp. MIDA,(Getting Started – Manpower for Industry), 2005, p. 77
\textsuperscript{169} see PERKESO, 1987, p. 6
\textsuperscript{170} see PERKESO, 1987, p. 4
\textsuperscript{171} see URL: http://www.asean-ssa.org/Socso.pdf [15.05.2005]
\textsuperscript{172} cp. MIDA (Getting Started – Manpower for Industry, 2005), p. 77

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employment protection in Malaysia. Its aim has to be seen as a long term goal and is valid for all “persons at work” regardless of whether they are employers, employees, self-employed, designers, manufacturers, importers and suppliers of plant or substances.\footnote{173}

An employer, employing more than 40 employees is legally obligated to establish a safety and health committee at the workplace. The employer has to ensure, that the statutory rules concerning employment protection are met and that the employer as well as the employees fulfil their obligations as defined in the Act, \textit{part VII, sections 30, 31 of the OSHA}. The Department of Occupational Safety and Health, (DSOH), has offices all over Malaysia. The employer has to notify the nearest office when accidents or diseases occur at the workplace.\footnote{174}

In line with the OSHA there are six more regulations which have to be taken into account:

a) Employers’ Safety and Health General Policy Statements (Exception) Regulations, 1995
b) Control of Industrial Major Accident Hazards Regulations, 1996
c) Classification, Packaging and Labelling of Hazardous Chemicals Regulations, 1997
d) Safety and Health Committee Regulations, 1996
e) Safety and Health Officer Regulations, 1997
f) Use and Standards of Exposure of Chemicals Hazardous to Health Regulations, 2000

\footnote{173}{cp. MIDA (Getting Started – Manpower for Industry, 2005 ), p. 78}
\footnote{174}{see PERKESO, 1987, p. 5}
\footnote{175}{cp. MIDA (Getting Started – Manpower for Industry, 2005), p. 79}
It is considered a serious offence if these rules are not met and can lead to a considerable fine - up to RM 50,000, or imprisonment for a term not exceeding 5 years.\textsuperscript{175}

4.8 Termination of a contract of service

A contract of service is like any other contract and can therefore be terminated by mutual consent. According to the \textit{E.A. 1955, section 12, paragraph 1}, notice of termination of contract has to be kept. The period depends on the time the employer has worked for the company:

\begin{itemize}
  \item[a.] One week’s notice if he has been employed for less than 2 years
  \item[b.] One week’s notice for each year of employment when the period is more than 2 years, but less than 12.\textsuperscript{176}
  \item[c.] 12 week’s notice if the period of employment is 12 years or more
\end{itemize}

The most common reason for terminating a contract is frustration, for example when the employee is sick for long periods and hence unable to perform well in his job, or if is imprisoned.\textsuperscript{177} The following shows further reasons for the termination of a contract:

1.) Retirement

Normally there is a clause in the letter of appointment, which states at what age the employee can retire. Men and women in Malaysia, normally retire at the age of at 55.

2.) Misconduct

\begin{footnotesize}
\begin{itemize}
  \item[\textsuperscript{176}] cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 198
  \item[\textsuperscript{177}] cp. Lawson, R. 1998, p. 46
  \item[\textsuperscript{178}] cp. D’Cruz, M.N., 2003, p. 76
\end{itemize}
\end{footnotesize}
According to section 14, paragraph 1, E.A. 1955 an employees contract may be terminated by the employer without notice in the case of misconduct. But if the employer wishes to take this measure, he has to make an inquiry in due form and he must prove, that the employee has misused the contract. The burden of proof lies with the employer and he must prove him guilty. 178

3.) Wilful breach of contract

Another reason for terminating an employee’s contract without giving notice, is a wilful breach of contract. It is regulated in section 13, paragraph 2 E.A. 1955.

4.) Retrenchment

When a company gets into financial difficulties it often scales down its operations or closes its departments and branches. If this happens, contracts will be terminated.

5.) Criminal offence

In cases of theft, fraud, forgery, assault or breach of trust the employer is entitled to terminate the employees services, if he is found guilty by an inquiry panel. If the offence has been reported to the police and at the end of the criminal proceedings the dismissed employee is found not guilty, there is no obligation for the employer re-employ him.

6.) Repudiation of Contract

It shall be deemed as a breach of contract, if the employee does not fulfil his duties as stated in the contract –This is in terms of refusing to his work, or taking party in any form of illegal industrial action. Precondition for the repudiation of the
contract is, that the employer gives an adequate warning to his employee. If the employee continues the misconduct the contract may be repudiated (*Industrial Court Award 3/76)*.

7.) Contract of service for specific a period or performance of a specific piece of work.

If a contract is only for a specific period or performance of specific a piece of work, the *E.A. 1955 regulates in Section 11, paragraph 1*, that the contract automatically expires after the fixed period of time has ended, or when the piece of work specified in the contract has been completed.

8.) Termination simplicitor

The termination of contract without cause or excuse (called termination simplicitor) by the employer is not allowed according to the *Industrial Relations Act 1967, section 20, paragraph 1*. In the Industrial Court Award 149/88 it was decided, that this kind of termination is no longer allowed and that an employee cannot be dismissed without due cause or excuse.

9.) Termination for poor performance

One of the most common reasons for a lawsuit between employer and employee is the termination of employment due to poor performance. If an employee constantly performs poorly or is incompetent, the employer is allowed to dismiss him, after giving him the chance to improve his performance. Some possibilities to help the employee to improve, are counselling, training, re-training or on the job supervision. If all these measures are without effect, the employer may give his employee a last adequate warning before dismissing him, assuming that there has been no enhancement of his performance, *I.E. Projects Sdn. Bhd. v. Tan Lee Seng (I.C. Award 56/87) and Rooftech Sdn. Bhd .v. Ho Inn, Award No.166/86.*
10.) Termination for other reasons

Other than the reasons mentioned for the termination of a contract, there are special reasons known under as “other reasons” under Malaysian Law. These cases for terminating a contract occur when the employer ceases to carry on the business the employee was employed in, or the requirements of the business have ceased or been diminished. It often happens, that a change in the ownership of the company occurs and that the purposes or projects for which an employee was hired cease to exist. In the worst case these changes can lead to the dismissal of the employee.\textsuperscript{179}

4.9 Contract for service

Employing independent contractors\textsuperscript{180} can be an alternative to having ones own employees. Some companies engage so called sub-contractors for services, which are not directly connected with the production, e.g. security, cleaning, packing and transport. The mayor advantages of hiring sub-contractors are that the payment is based on the result achieved and the overhead costs can be deducted.\textsuperscript{181} Even if there are certain advantages when hiring an external company, most of the companies carry out these tasks internally, using their own employees – the reasons for this are the low labour costs and the fact that it is easier to control ones own employees than independent sub-contractors.

4.10 Employment of Expatriates

Malaysia pursues a strict policy relating to the employment of expatriates. The essential point of this policy is that employers are only allowed to bring in foreign workers, if the local labour market is not able to fulfil the needs of the demanding

\textsuperscript{179} cp. D'Cruz, M.N., 2003, p. 87
\textsuperscript{180} cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 189
\textsuperscript{181} cp. D'Cruz, M.N., 2003, p. 33
companies.\textsuperscript{182} Foreign companies in particular, are mainly interested in placing their “own” people in key positions to protect their own interests.\textsuperscript{183} These posts are usually filled with highly educated and highly paid personnel from abroad, whereas local companies, operating in the low level sectors, try to hire people from Bangladesh, Sri Lanka, Nepal or China. To suppress this situation, the Ministry of Foreign Affairs has developed a well thought out network of rules and regulations. \textit{Part XIIB, section 60K to 60O of the Employment Act}, as well as the immigration procedures of the Immigration Department (Immigration Act 1959) and Passport Act 1996, are to be understood as the corner stones of this policy.\textsuperscript{184} \textit{Part XIIB, Section 60k paragraph 1} states, that every employer, who employs foreign workers within Malaysia, has to forward the particulars of his workers to the nearest Immigration Office. The aim of this statutory rule is to gain a broad database of all foreigners who are working in Malaysia. Furthermore, this information enables the authority in charge, to control the previously described situation more easily. In addition, \textit{Section 60m, E.A. 1955} states that an employer, who considers hiring a foreign worker is not allowed to terminate the contract of a local employee to create a new vacancy. Moreover, this section is supported by section \textit{60n, Employment Act 1955}, which states that where an employer is required to reduce the workforce, he first has to terminate all contracts of foreign workers in a capacity similar to that of the local employees. To find a balance between the local employment market and the needs of foreign companies and investors, Malaysia provides a passport and visa system, which considers both interests.\textsuperscript{185}

4.10.1 Passes and visas

Generally, Malaysia provides five different types of passes and visas. Precondition for an application is a valid passport, or other internationally accepted travelling documents. The documents have to be valid for a minimum of six months, after the

\textsuperscript{182} cp. MIDA (Getting Started – Manpower for Industry, 2005), p. 68
\textsuperscript{183} cp. Chen Kah Leng, Kok Chee Khoeng, 1997, p. 4
\textsuperscript{184} MOHR, 2004, p. 5
\textsuperscript{185} see URL:www.imi.gov.my/eng/perkhidmatan/im_permit.asp [16.06.2005]
person has entered Malaysia. The kind of visa required depends on the country or state where the applicant lives.

A Social Pass is issued for social or business visits, e.g. for attending a business meeting or inspecting companies accounts and also for businessmen exploring the region for investment and business opportunities. The pass will be issued at the point of entry.

A Temporary Visit Pass entitles employees to work in Malaysia for less than 24 months. It is also intended for employees, who earn less then RM 2500.

An Employment Pass is issued for foreigners who stay in Malaysia for at least two years. The precondition is that they have entered a working contract. Furthermore, they have to earn a monthly income, which is not less than RM 2500.

A Professional Visit Pass is issued to foreigners who are working for an agency in Malaysia. This relationship has to be based on a short term contract (e.g. artists, actors, lecturers, religious purposes).

A Dependants Pass is issued to the wives and children of foreigners who have been issued with an employment pass. A combined application for an employment pass and a dependents pass can be forwarded to the authority.

A Students Pass is designed for foreigners who are studying in approved institutions.

### 4.10.2 Immigration and expatriates posts

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186 cp. MIDA (Getting Started – Immigration Procedure, 2005), p. 65
187 see URL: www.alloexpat.com/info_center/expatriate_handbook_malaysia.htm [16.06.05]
188 cp. MIDA (Getting Started – Immigration Procedure, 2005), p. 66
189 cp. MIDA (Getting Started – Immigration Procedure, 2005), p. 66
190 see URL: www.imi.gov.my/eng/perkhidmatan/im_PegawaiDagang.asp [16.06.05]
191 cp. MIDA (Getting Started – Immigration Procedure, 2005), p. 66
192 Cheng Ka Leng, Kok Che Keong, 1997, p. 4
193 cp. MIDA (Getting Started – Immigration Procedure, 2005), p. 66

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Since the 17 June 2003, Malaysia has liberalized the above-mentioned policy. The new guidelines, which were developed by the MIDA, entitle foreign manufacturing companies to bring in certain personnel for key posts. The precondition for applying is, that they fulfil the requirements concerning their paid up capital. The figure on the next page shows this connection:

<table>
<thead>
<tr>
<th>Paid up capital (US$)</th>
<th>Key Posts</th>
<th>Approval (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Executive</td>
<td>Non-executive</td>
</tr>
<tr>
<td>&lt; 2 million</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>200.000 &gt; 2 million</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>&gt; 200.000</td>
<td>(Has to be considered)</td>
<td>(Has to be considered)</td>
</tr>
</tbody>
</table>

Figure 8: Employing of Expatriate Personnel
Source: "Malaysia: "Getting Started – Immigration Procedure", Chapter 4 MIDA 2005, p. 68

4.10.3 Applying for posts

With effect from 21 October 2004, all applications for expatriate posts from new and existing companies (including those not involved in expansion or diversification) in the manufacturing and related service sectors must be submitted to the MIDA. The application has to be supported by documentation of the company’s approval. This
includes companies required to obtain a manufacturing licence as well as companies exempt from the manufacturing licence.\footnote{see URL: www.mida.gov.my/beta/view.php?cat=3&scat=28&pg=183 [20.06.05]}

\section*{4.11 Trade Unions}

To protect their rights, to substantiate their interests and to improve their economic situation, employees have the right to incorporate trade unions in Malaysia.\footnote{cp. Aminuddin, M., 1990, p. 15} The right of formation is based on the \textit{Trade Unions Regulations} and the \textit{Trade Unions Act 1959, section 2}, which says that any association or combination of workmen or employees in West Malaysia, Sabah and Sarawak within any particular establishment, trade, occupation or industry has to be seen as a trade unit, regardless if it is temporary or permanent.\footnote{cp. D’Cruz, M.N., 2003, p. 386} Furthermore, every Trade Union has to be registered, before it commences work.\footnote{cp. MIDA 2005, (Getting Started – Manpower for Industry, 2005), p. 80} The registration has to be forwarded to the Department of Trade Unions Affairs and it normally takes one month until the new association is registered.\footnote{cp. MIDA 2005, (Getting Started – Manpower for Industry, 2005), p. 80} Before the Director General registers the trade union, he verifies whether the union meets all legal rules and regulations. He has the power to refuse the union, if, for example, its objects are unlawful, or if any part of the union’s constitution is in conflict with the Trade Unions Act.\footnote{cp. Aminuddin, M., 1990, p. 16}

The main object of the unions is to ensure fair wages and benefits, job security, protection against unfair treatment and peer pressure. They have the power to initiate a strike if they think this is necessary - \textit{section 25a Trade Unions Act}. The strength of a trade union during a strike depends on the number of members who join the strike and whether the law supports this measure.\footnote{cp. Aminuddin, M., 1990, p. 16} Although Malaysia has a strong workforce - the influence of its trade unions is very small. Only 10\% of all employees are organized in a union and it must also be noted, that nearly all of the unionised employees work in local companies and not in foreign ones.

\begin{footnotesize}
\footnotetext[194]{see URL: www.mida.gov.my/beta/view.php?cat=3&scat=28&pg=183 [20.06.05]}
\footnotetext[195]{cp. Aminuddin, M., 1990, p. 15}
\footnotetext[196]{cp. D’Cruz, M.N., 2003, p. 386}
\footnotetext[197]{cp. MIDA 2005, (Getting Started – Manpower for Industry, 2005), p. 80}
\footnotetext[198]{cp. MIDA 2005, (Getting Started – Manpower for Industry, 2005), p. 80}
\footnotetext[199]{cp. Aminuddin, M., 1990, p. 16}
\footnotetext[200]{cp. Aminuddin, M., 1990, p. 16}
\end{footnotesize}
The requirements to commence a strike are laid down in section 25a of the Trade Unions Act. It states that the members of a union have to hold a secret ballot. All members have to vote, and the supporters of a strike need a two-third majority to call for a strike, section 25a, subsection 1, letter a. The result has to be submitted to the Director General of the MOHR and the strike cannot take place until seven days after submitting, section 25a, subsection 1, letter b. In addition there are restrictions on strikes in essential services, e.g. ambulance, police, or fire departments, in section 43 I.R. 1967, which say that no employees in any essential service shall go on strike without giving notice to the employer. Notice must be given within forty-two days before striking or within 21 days of giving such notice or before the expiry of the date

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201 cp. Triebel, Hodgson, Kellenter, Müller, 1995, p. 204
of strike specified in any such notice aforesaid. Workmen who commence or continue an illegal strike can be sent to prison for a term not exceeding one year or they can be fined an amount not exceeding one thousand Ringgit, section 45, subsection 1, alphabet a I.R. 1967. The outcome of this small number of unions and its influence on its members plus strict legal requirements, is that strikes are very rare. In the manufacturing sector only seven strikes occurred in the year 2000, while in the trade, restaurant and hotel sector no strikes took place.

5. Taxation and tax incentives for investment

Malaysia has a cleverly devised taxation and incentive system for managing its economy which has been adopted from the United Kingdom and Australia. It is based on laws imposed by federal legislation passed by Parliament. The main tax legislation is the Income Tax Act 1967 (ITA 1967), Real Property Gains Act 1967, Promotion of Investments Act 1986 and Petroleum Income Tax Act 1967. Companies carrying on an offshore business activity are subject to a preferential tax regime under the Labuan Offshore Business Activity Tax Act, 1990. Meeting these laws means that everyone considering carrying out a business in Malaysia must follow the above-mentioned rules and regulations and keep proper books and prepare regular accounts. To promote foreign investments and priority industries, Malaysia has introduced a number of tax incentives. These investments are mainly focused on capital-intensive projects, with high value added content and involving new and emerging technologies. They are available to investors under the Promotion of Investments Act 1986.

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202 cp. Aminuddin, M., 1990, p. 16
204 cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 8
205 cp. Broadstone, R.C., Heires, D., 124
207 cp. Cheng Ka Leng, Kok Che Keong, 1997, p.13

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5.1 Tax system

Malaysia has a unitary tax system, which is based on a territorial basis. Companies whether resident or non-resident, are taxed on income accruing in or derived from Malaysia. When the company is resident and carries on banking, insurance, or air or sea transport operations tax is levied on worldwide income.\textsuperscript{208} Taxation is also focused on resident individuals who are taxed on income derived from worldwide income received in Malaysia. Non-resident companies and non-resident individuals are exempted from tax.\textsuperscript{209}

5.1.1 Principal taxes

The principle taxes in Malaysia can be divided into three main category groups, which are shown below:

\begin{center}
\begin{tikzpicture}
  \node[text width=7cm] {Principal taxes} [level distance=2cm, sibling distance=4cm]
    child {node {Tax on income} edge from parent node[above] {Income tax}}
    child {node {Taxes on capital gains} edge from parent node[above] {Real property gains tax}}
    child {node {Taxes on transaction} edge from parent node[above] {Sales tax}}
      child {node {Service tax} edge from parent node[above] {Entertainment tax}}
      child {node {Film and hire duty} edge from parent node[above] {Stamp duty}}

\end{tikzpicture}
\end{center}

Figure 9: Principle Taxes in Malaysia, 2005
Source: own source

The three main categories of the Malaysian inland revenue are: a) taxes on income, such as income tax and petroleum income tax, b) taxes on capital gains, such as real

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{208} cp. Broadstone, R.C., Heires, D., p. 127
\item \textsuperscript{209} Malaysia: “Getting Started – Taxation”, Chapter 3 “Taxation in Malaysia” MIDA 2005, p. 57
\end{itemize}
\end{footnotesize}
Taxation and tax incentives for investment

property gain tax and c) taxes on transactions, such as sales tax, service tax, entertainment tax, film and hire duty and stamp duty.\textsuperscript{210}

As in most other countries, Malaysia has two ways of raising taxes. Income tax, real property gains tax and excise duty are direct taxes, which means that the taxpayer has to pay them directly, whereas sales tax and service tax accrue when a vendor sells his goods.\textsuperscript{211} In this case sales tax is included in the sales price. The buyer or taxpayer is normally not, or not exactly, specified.

5.1.2 Legislative framework
5.1.2.1 Statute law

Laws are enacted by Parliament. Parliament consists of the King, the House of Representatives and the Senate. A law will be enacted when full agreement has been reached by all of these bodies. The tax policy itself has to be formulated by the Ministry of Finance. The Minister then presents the bill to Parliament. When approved the bill is presented to the King for Royal Assent and becomes law. Other statutes are amended as and when the need arises. In addition, the Director General of Inland Revenue is empowered under the tax statute to formulate rules relating to certain specific areas of the statute. Legislation, which affects income tax, normally comes into effect in the following tax year.\textsuperscript{212}

5.1.2.1 Case law

Even if the written law is the main source of the law is, the decisions of the court are subject to a binding judicial precedent. The general rule is that the decisions of the higher courts bind the lower courts and that some courts are bound by their own

\textsuperscript{210} “Treasury Memorandum of the Federal Governments Revenue Estimates for the year 2003”, Ministry of Finance, p. 3
\textsuperscript{211} cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 9
\textsuperscript{212} cp. Broadstone, R.C., Heires, D., p. 126
decisions. In addition, some cases have a persuasive authority, as decided in the United Kingdom, since Malaysia follows the English and Australian legal system.  

5.1.3 Taxation of companies

The general rule for company taxation is, that a company is assessable on income accrued in or derived from Malaysia, whether it is resident or not, Section 8, subsection 1, Income Tax Act 1967. In comparison income, which is derived from sources outside Malaysia and remitted by a resident company is exempted from tax. Under Act 53, Part I of the Income Tax Act 1967, a company is a resident for tax purposes, if the management and control of its businesses or one of its businesses are excised in Malaysia. The place of control and management is excised where the board of directors holds meetings to make important corporate decisions, i.e. where the real and effective control and management is carried out. Thus, a company which is incorporated in Malaysia and has all its trading activities in Malaysia can be non-resident if all its directors meetings are held outside Malaysia. Except for the issue of withholding taxes, the taxation of resident and non-resident companies is essentially the same.

The basis for the assessment of a company’s income tax is the audited accounting profit, as adjusted for tax purposes. The accounting year ends in the preceding calendar year. The principle adjustments to accounting profits in determining taxable income are in respect of expenses of a capital nature. Expenses that have not been incurred for tax purposes such as general provisions, specifically prohibited expenses, provident or pension schemes and excess contributions to approved

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213 cp. Broadstone, R.C., Heires, D., p. 126
214 cp. Goh Chen Chuan, (Managing your business taxation in Malaysia, 2005), p. 68
215 cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 10
218 see URL: http://www.us-asean.org/Malaysia/business_guide/Tax_System.asp [28.0605]
219 cp. Broadstone, R.C., Heires, D., p. 129
220 Typical unexpected provision in the sense of the ITA 1967 are expenditures for excepted future liabilities of the company
221 e.g. contributions to unapproved savings (ITA 1967)
schemes, and expenses not incurred wholly and exclusively in the production of income.

The tax rate applying to both resident and non-resident companies is 28%\footnote{cp. Goh Chen Chuan, (Managing your business taxation in Malaysia, 2005), p. 68}. Companies carrying on petroleum upstream operations are subject to a petroleum income tax of 38\%.\footnote{cp. MIDA 2005, (Getting Started – Taxation, 2005), p. 58} To avoid double taxation and to encourage foreign direct investments, Malaysia signed a double taxation treaty with Germany on the 08.04.1977.\footnote{see BStBl 1978 I S. 324, BGBl 1978 II p. 926}

### 5.2 Incentives for investment

The Malaysian Government provides a host of tax incentives to encourage direct foreign investments. They are mainly divided into direct and indirect incentives and are covered by the *Promotion of Investment Act 1986*, *Income Tax Act 1967*, *Customs Act 1967*, *Sales Act 1972*, *Excise Act 1976* and *Free Zones Act 1990*. The focus of both incentives is on manufacturing, agriculture, tourism and approved services sectors as well as research and development (R&D), training and environmental protection activities.\footnote{cp. MIDA 2005, (Getting Started – Taxation, 2005), p.13} Applications for tax incentives have to be submitted to the MIDA, a division of the MITI. The MITI controls all promotions and is responsible for the co-ordination of all industrial activities in Malaysia.\footnote{see URL: http://www.us-asean.org/Malaysia/business_guide/Tax_System.asp [16.06.05]}

#### 5.2.1 Incentives for the manufacturing sector

The major incentives for manufacturing companies are the Pioneer Status (PS) and the Investment Tax Allowance (ITA). It depends on certain priorities such as the use of technological and industrial linkages whether these are granted or not.\footnote{cp. MIDA 2005, (Getting Started – Taxation, 2005), p. 58} Furthermore, 100% exemptions from income tax are given to strategic projects of national importance. The ulterior motive is that strategic projects involve heavy capital
investment and high technology, which generate extensive linkages to Malaysian industries and transfer or develop technological processes to Malaysia.\textsuperscript{228}

5.2.1.1 Pioneer Status (PS)

Companies which are granted Pioneer Status, enjoy a 5-year partial exemption from income tax payments. They only pay tax on 30\% of their statutory income with the exemption period commencing from the day of production. It has to be noted the production day is defined as the day the production level reaches 30\% of its capacity.\textsuperscript{229}

Furthermore, the government offers a 100\% tax exemption for companies, which are operating or considering operating in the states of Sabah and Sarawak and the designated Eastern Corridor of the Malaysian Peninsular, from 13 September 2003. The reason for this is to encourage the development of these regions as industrial areas.\textsuperscript{230}

5.2.1.2 Investment Tax Allowance (ITA)

Apart from Pioneer Status the investment tax allowance is an alternative for companies.\textsuperscript{231} A company granted ITA gets an allowance of 60\% on its qualifying capital expenditure. Factories, plants, machinery or other equipment used for an approved project are good examples of this. Furthermore, the Investment Tax Allowance regulation allows the company to offset the above-mentioned allowance against 70\% of its statutory income for each year of assessment.\textsuperscript{232} If there is any unutilised allowance left and the end of the year, it can be forwarded to subsequent years until it has been fully utilised. The remaining 30\% of the statutory income will be taxed at the prevailing company tax rate. As far as Pioneer Status is concerned, the

\begin{footnotesize}
\begin{enumerate}
\item The US Department of State, 2004, p. 50
\item MIDA 2005, (Getting Started – Incentives for Investment, 2005), p. 15
\item Goh Chen Chuan, (Managing your business taxation in Malaysia, 2005), p. 14
\item See URL: http://www.usaean.org/Malaysia[...]ncentives, [16.06.05]
\item Cheng Ka Leng, Kok Che Keong, 1997, p. 13
\end{enumerate}
\end{footnotesize}
government tries to encourage investment in the States of Sabah, Sarawak and the Eastern Corridor of the Malaysian Peninsular. Companies which are considering operating in these regions have the opportunity receive an allowance of 100% on the qualifying capital expenditure incurred within a period of five years.  

5.2.1 Incentives for the information and communication technology

The second most important sector in Malaysia’s economy is encouraged by measures similar to those in the manufacturing sector. The focus is on companies which develop computer software, companies that develop original software or undertake major modifications of existing software.

5.2.1.1 Pioneer Status (PS), high-tech sector

Apart from companies from the manufacturing sector, companies from the high technical sector also have an opportunity to submit their application for pioneer status to the MIDA. If the status is approved, the companies are allowed to enjoy an exemption of 70% of their statutory income for five years. The MIDA will give its approval to those companies which fulfil certain pre-conditions such as:

- the software must be for general purpose usage and not for a specific customer.

- companies which undertake the modification of existing packages should observe that the cost of acquiring the existing packages must not exceed 25% of the expenditure (including software tools, labour and equipment costs).  

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232 cp. MIDA (Getting Started –Incentives for Investment, 2005) p. 13  
233 cp. MIDA (Getting Started –Incentives for Investment, 2005) p. 14  
234 cp. Brandt, T., Lew, J., 2005, p.6  
235 cp. MIDA (Getting Started –Incentives for Investment, 2005) p. 35
5.2.2.2 Accelerated capital allowance

Companies which buy new information technology (computers, software) will get an initial allowance of 20% and an annual allowance of 40% for expenditure incurred for such equipment. In addition, Malaysia supports the development of websites with an annual tax deduction of 20% for a period of five years.

5.2.2.3 Other ICT incentives

Another special incentive for the high technology sector is that certain expenditures, including payments to consultants, related to IT usage for improving management and production processes can be claimed at the inland revenue office as well as contributions for ICT acculturation projects at local community levels and computers supplied by employers to their employees, as long as these are not deemed as income.\cite{236} Companies operating as an export based entities can apply for tax exemption on their statutory income equivalent to 50% of the value of increased exports.\cite{237}

5.2.3 General incentives

In addition to the above-mentioned special incentives related to the manufacturing sector and the high technology sector, a general incentive is granted for companies, which have expenditures concerning the purchase or construction of a building. Companies, which meet these criteria, are eligible for an initial allowance of 10% and an annual allowance of 3%. The expenditure can be written off in 30 years. Companies considering operating in Sabah, Sarawak and the designated Eastern Corridor of the Malaysian Peninsular, which reconstruct, extend or improve any...
permanent structure including bridges, jetties, ports and roads, are also eligible for an infrastructure allowance of 100%.

6. Commercial requirements
6.1 Framework of industry

Malaysia’s industry is highly developed and companies of all sizes and structures provide products and services in all variations. Based on the size of companies, Malaysia’s industry can be classified in three large categories. In the first group small businesses operate in wholesale and retail distribution and trading. The second group consists of large Malaysian corporations, many of which are listed on the Kuala Lumpur Stock Exchange and in the third group there are foreign owned companies, which operate in Malaysia.

6.1.1 Industrial zones

Malaysia with its designated Free Industrial Zones (FIZ’s) and Free Commercial Zones (FCZ’s) is an ideal place for export orientated companies to operate. See the Free Zones Act 1990. This Act provides a legal framework for companies to carry on manufacturing activities within the FIZ’s and commercial activities such as trading, bulk breaking, grading, re-packing, re-labelling and transit within the FCZ. Being situated in a FIZ signifies minimal customs formalities and the duty free import of raw materials, component parts, machinery and equipment directly in the manufacturing process as well as minimal formalities in exporting finished products for a company. Today there are 14 FIZ’s located at Bayan Lepas, Prai, Prai Wharf, Batu Berendam, Tanjung Kling, Sungai Way, Ampang Hulu Klang, Telok Panglima Garang, Johor Port, Jelapang, Kinta Phases, Tanjung Gelang and Sama Jaya.

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238 cp. MIDA (Getting Started –Incentives for Investment, 2005), p. 48
241 see URL:http://www.us-asean.org/Malaysia/business_guide/tax_system.asp#12%20free%20zones,
242 see URL:http://matrade.gov.my/importer/freezone.htm, [04.06.2005]
Companies whose entire products are wholly produced for export are considered to be located in the Free Zone area. In exceptional cases, the Ministry of International Trade and Industry may allow companies exporting not less than 80% of their products to be located in the Free Zone.\textsuperscript{243} Goods sold in the Malaysian economy by companies within the FIZ’s must pay import duties. Furthermore Malaysia permits the establishment of licensed manufacturing warehouses outside of the FIZ’s, which give companies greater freedom of location while allowing them to enjoy privileges similar to firms operating in a FIZ.\textsuperscript{244}

Malaysia’s ports and ships play an important role in its economy. Over 90% of its international trade is sea-borne. As a result, the government promotes Port Tanjung Pelepas (Westport) and Port Klang (Northport) as regional load and transhipment centers – which are also treated as FIZ’s.\textsuperscript{245}

\textbf{6.1.2 Banking and finance}

The Malaysian banking system is made up of commercial banks, merchant banks and finance companies. It is the major institutional source of credit to the economic sectors in Malaysia.\textsuperscript{246} The main players in this system are 37 commercial banks which provide their services with their 1340 branches to business entities and privateers in Malaysia.\textsuperscript{247} In addition there are 29 foreign banks represented by their offices in Kuala Lumpur. They provide liaison services and facility information between business interests in Malaysia, in their home countries and in other countries where they are represented. Malaysia has a central bank (Bank Negara Malaysia), similar to the EZB in Europe, which is responsible for supervising the banking system.\textsuperscript{248} It was established in January 1959 and is basically responsible for issuing Malaysian currency. It also acts as a banker and financial adviser to the

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{243} cp. Broadstone, R.C., Heires, D., p. 17
\item \textsuperscript{244} cp. U.S. Department of State, Page 58
\item \textsuperscript{245} cp. U.S. Department of State, Page 58
\item \textsuperscript{246} see URL: http://www.mida.go.my/beta/print.php?cat=307pg=157, [08.04.2005]
\item \textsuperscript{247} see URL: http://www.bisnetwork.net/bisnet/countries/malaysia20.htm, [12.04.05]
\item \textsuperscript{248} cp. Cheng Ka Leng, Kok Che Keong, 1997, p. 7
\end{enumerate}
\end{footnotesize}
government. In this capacity the central bank administers the foreign exchange control regulations, and is lender to the banking system as a last resort.\(^\text{249}\)

Comprehensive regulations govern the management and ownership of banks and finance institutions. The principal ones are the Bank Negara Guidelines and the Banking und Financial Institutions Act 1989, which cover licensing; financial requirements (e.g., liquidity ratio, statutory reserve); duties and management of banks and finance institutions; and business activities and ownership.

Malaysia’s aim is to become the strongest economical country, in South-East Asia. It is developing its industrial sectors by means of financial institutions like the Malaysian Industrial Development Finance Berhad (MIDF), Malaysian Industrial Estates Sendirian Berhad (MIEL) and the Bank Pembangunan Malaysia Berhad. These Development Finance Institutions (DFI’s)\(^\text{250}\) have specifically been set up to promote certain strategic sectors of the economy.\(^\text{251}\) Their main tasks are to provide long term loans, equity capital and guarantees for loans, as well as consulting or providing advisory services in the identification and development of institutions. Also financial provision to strategic sectors such as agriculture, infrastructure, shipping, manufacturing and export sectors, and SMEs.\(^\text{252}\)

In addition, the Export-Import Bank of Malaysia Berhad (Exim Bank) finances and facilitates Malaysia’s foreign trade and investments, concentrating on medium long-term credits for Malaysian exporters and investors as well as buyers of Malaysian goods. The Malaysian Export Credit Insurance Berhad (MECIB), offers export insurance cover guarantees.\(^\text{253}\)

\(^\text{249}\) see URL: www.bisnetworld.net/bisnet/countries/malaysia20.tm, [25.04.05]
\(^\text{250}\) cp. MIDA (Getting Started –Banking and Finance, 2005), p. 4
6.2 Aims of government policy

During the last 40 years, the Malaysian Government has been very imaginative concerning the ways in which it can make its country attractive for foreign investors. In order to become an equal competitor to the other so called „Tiger States“ and China, the Malaysian Government has brought a number of Acts into force such as the *Income Tax Act 1967*, *Customs Act 1967*, *Sales Tax Act 1972*, *Industrial Co-ordination Act 1975*, *Excise Act 1976*, *Investment Act 1986* and the *Free Zones Act 1990*. The aims are to secure the growth and development of the country’s economical sectors specifically and to cover all questions relating to investments in the manufacturing, agricultural and tourism sector within Malaysia.254

7. Overseas and trade relations

Malaysia’s central position at the crossroads of South-East Asia makes it particularly attractive as a transships centre. Although Malaysia has good air cargo facilities, highways and railway services, most of the goods reach their destination by ship. As in previous years the major export markets the Association of South-East Asian Nations (ASEAN), the USA, the EU and Japan. Trade with these countries accounts to not less then 66.3 % per cent of Malaysia’s total exports.255 The complete sum of all exports can be valued at 98 billion US $ and places Malaysia as seventeenth in the world export ranking. The USA (782 billion US $) holds the first position followed by Germany (522 billion US $) in the second position.256 The members of the Association of the South-East Asian Nations have special preferential trading arrangements within the group, and regular dialogues with the EU, Japan and the United States with a view to further enhancing economic and trade links. Malaysia is also a member of the WTO and has a general policy in favour of reducing or eliminating trade barriers wherever possible.257

255 cp. MITI, 2005, p. 8
256 cp. MGCC, 2005, p. 7
7.1 Exports

Malaysia’s economy has changed increasingly during the last 35 years. In 1970, for example, the only exports were gum, oil, gas, wood and tin, whereas today industrial goods dominate the export market. The principle exports are electronical products, machinery, chemicals and chemical products, clothes, shoes as well as furniture, gas, gum and wood.\textsuperscript{258} In the fourth quarter of 2004, major exports of manufactured products, such as electrical goods, chemicals, and machinery, declined to 97.7 Ringgit compared with RM 100.72 billion in the third quarter 2004.\textsuperscript{259} Malaysia’s principle export destinations were the USA 18.7%, Singapore 15.1% and Japan 10.1%. Below 10% were China with 6.7%, Hong Kong 5.9% and Australia 3.3%.\textsuperscript{260}

7.2 Trade barriers

Trade barriers are a very effective way to protect home markets and businesses from being flooded by foreign goods and investments. Malaysia uses a system of tariff lines to block foreign imports in the manufacturing sector, also a problem, is the lack of transparency. A lot of companies complain that The Royal Customs & Excise Department has no clear structures and procedures and there are double standard regulations and discriminative treatment between local and foreign products.\textsuperscript{261}

7.2.1 Restrictions on Import

Tariffs are used in the domestic markets, e.g. the automobile sector, to protect Malaysia’s domestic automobile manufacturers Proton and Perodua. Both companies receive a 50 percent rebate on excise taxes, which is not available to other car manufacturers.\textsuperscript{262} In addition, Malaysian customs raise import duties and excise taxes for the import of assembled and unassembled cars. Any company considering

\textsuperscript{257} cp. Broadstone, R.C., Heires, D., p. 18
\textsuperscript{258} cp. MGCC, 2005, p 6
\textsuperscript{259} cp. MITI, 2005, p 12
\textsuperscript{260} cp. Australian Department of Foreign Affairs, “Malaysia – Fact sheet”, 2004
\textsuperscript{261} cp. European Union, 2003, Page 1-2
importing automobiles to Malaysia, has to take into account that 70-200% tariffs have to be paid for each car, as well as 60-100% excise tax.\(^{263}\) Even if these taxes were amended under the agreement of the ASEAN Free Trade Area (AFTA), other barriers still exist.

### 7.2.2 Restrictions on investment and foreign ownership

To regulate foreign investments, Malaysia uses a system of licensing that prevents the entry of new competitors into markets perceived to be saturated. As previously mentioned in 2.3.2, every company, which is considering carrying out business in the manufacturing sector, has to apply for a license at MITI. This license can be seen as a restriction of foreign investment, because any person seeking to carry out a manufacturing business or a business involving manufacturing activities in Malaysia is required to obtain written approval from MITI, if its employees shareholders’ funds exceed RM 2.5 million and it engages 75 or more full-time paid employees. This requirement is not needed for smaller businesses. During the last few years, this practice has become more and more dispensable and the trend is toward allowing market forces to shape competition.\(^{264}\) In 1998, the Foreign Investment Committee (FIC) of the Prime Minister's Department set out new general foreign investment guidelines (FIC Guidelines). The guidelines provide that companies obtain 100% equity. Specifically supported businesses are companies, which are considering investing in new projects or considering expansion of old projects.\(^{265}\) The aim of the policy is, to regulate the acquisition of companies and businesses in Malaysia by foreign or Malaysian citizens, specifically in key export-orientated sectors.\(^{266}\)

To achieve both aims without losing control of foreign investments, the FIC Guidelines, define the following:

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\(^{262}\) cp. Office of the U.S. Trade Representative “Malaysia – Foreign Trade Barriers”, 2004, page 319  
\(^{263}\) cp. Office of the U.S. Trade Representative “Malaysia – Foreign Trade Barriers”, 2004, page 319  
\(^{264}\) cp. Broadstone, R.C., Heires, D., p. 18  
\(^{265}\) cp. MIDA (Getting Started, 2005), p.7  
\(^{266}\) cp. BMI, 2005, p. 5
“Any acquisition of property by foreign interest including permanent residents requires the approval of FIC” or

“Foreign interest is only allowed to acquire property valued at more than RM 150,000 per unit with no limit on the number of properties acquired;”

“The state authority has the discretion to consider the acquisition based on the area or location of the property, types of property and percentage of the total units in a project;” and

“Financing from internal and external sources is allowed for all acquisition of properties.”267

Furthermore the new policy gives export oriented companies an opportunity to obtain 100% equity. Precondition for this is, that the output is not produced locally or that the domestic supply of such products is inadequate or there has been an increase in imports from ASEAN for products with duties of 5% and below.268 The first results of the new policy have shown, that the Foreign Direct Investments (FDI) increased. While in 2001 the FDI has collapsed from US$ 3,8 bn to US$ 554 mn, the investments have now reached US$ 2,47 bn again.269

7.2.3 Corruption

The Transparency Internationals Corruption Index (CPI) is a summarized and evaluated report of 18 surveys, conducted by 12 independent institutions all over the world. Aim of the Index is to categorize and verify 148 countries concerning their level of corruption. Every single survey is based on opinions of business people and country analysts. In 2004 Malaysia was ranked by Transparency International on place 39 of 146, while Finland reached the first position, Germany was on 15 and

267 FIC Guidelines, 1998 p. 5
268 cp. MIDA (Getting Started, 2005), p.8
www.law-and-business.com
Policy trends

China on 71. In a point rationing scheme, Malaysia achieved 5.0 of 10 points, while 10 has to be seen as “highly clean” and 0 as “highly corrupt”.270 The index points out, that there is certain level of corruption within Malaysia, but compared to other countries in the South-East Asian region, like Thailand (rank 64), Vietnam (rank 102) and Bangladesh (rank 145), Malaysia with its score of 5.0 is better than the Asian average of 3.8. The Western Europe average is 7.93.271

8. Policy trends

In the last 30 years, Malaysia’s industrial competitive strength has been built upon low labour costs, sound physical and policy infrastructure, fairly educated workforce, availability of support services, and spearhead by direct foreign investment.272 But in line with the so called “Globalisation”, the world is changing rapidly, on this account Malaysia’s government remains committed to improve the South-East Asian region through security and trade agreements. It is an active participant in regional trade agreements and a leader of the Asian Pacific Economic Co-operation (APEC) and ASEAN.273 The aim is to forge the path for an East Asian Community (EAC), which one day should be equivalent to the EU. In this sense, Abdullah Badawi, Malaysia’s new Prime Minister, is interested in improving the ties to Malaysia’s neighbours Singapore and the Philippines.274

Within Malaysia, the government plays a strong role in the economy. As a result of the economic crisis in 2001, the government has the role of an investor, economic planner and approver of investments.275 In this respect, Malaysia grants fiscal incentives to foreign and domestic investors, especially in the high tech and manufacturing sector. In May 2003 the Economic Stimulus Package, with (Pioneer Status, Investment Tax Allowance), was brought into force by the Malaysian

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270 cp. Transparency International, 2004, p. 4
272 cp. Vijayakumari Kanpathy, 2005, p. 9
To maintain the new growth in all sectors, Malaysia has relaxed its regulations concerning foreign direct investment in March 2005. To maintain the new growth in all sectors, Malaysia has relaxed its regulations concerning foreign direct investment in March 2005.277

9. Future prospects and results

Malaysia is a country on the move and starting a business in Malaysia is an attractive undertaking. Specifically in the manufacturing sector and in the high tech sector, the government encourages foreign investors and promoters to establish a company by offering a wide range of tax incentives or by being resident in one of Malaysia’ FIZ’s. These offers are supported by a legal system, which because of its history, is based on English law and the formation of a company has compared to other Western countries, less formalities and is not cost intensive. Support from the CCM, MIDA and the chambers of foreign trade especially eases an incorporation. Furthermore, bears the opportunity to incorporate a company according to English standards less risks than the establishment of a company based on nearly unknown laws. The most expedient and chosen form of business in Malaysia is a private company limited by shares. The reason for this is that the company members are only liable for their paid up capital and that business partners have the security that in the case of bankruptcy a certain sum of money is available to cover outstanding debts. In the field of workforce it has to be noted, that Malaysia has fairly well educated workers from technical schools and universities at its disposal. They demand, compared to Western countries, low wages and are barely unionised in trade unions. It seems that Malaysia’s economic plans will be put into practice and that the formation of a company in South-East Asia, specifically Malaysia, offers good alternatives for other growing markets in Asia.

276 cp. WTO, 2004, p.7
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(*indicates in German)
(**indicates in English)

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### A1: Checklist – Incorporation of a Limited Company

<table>
<thead>
<tr>
<th>Title of Document</th>
<th>Form No.</th>
<th>Co. Act Section</th>
<th>Fees payable</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Application for Name search</td>
<td>13a</td>
<td>22 (6)</td>
<td>RM 30</td>
<td>Submit in duplicate</td>
</tr>
<tr>
<td>2. Memorandum &amp; Articles of Association along with the following documents:-</td>
<td>-</td>
<td>16 (1)</td>
<td>-</td>
<td>Submit in two sets, stamping fees for first set RM 200, second set RM 20</td>
</tr>
<tr>
<td>a) Statutory Declaration of Compliance</td>
<td>6</td>
<td>16 (2)</td>
<td>-</td>
<td>Submit in duplicate. To be signed by any one person named in the articles as director or secretary or solicitor engaged in the formation</td>
</tr>
<tr>
<td>b) Return of Allotment of shares</td>
<td>24</td>
<td>54 (1)</td>
<td>-</td>
<td>Submit within one month of incorporation or any changes in directors, secretaries or managers</td>
</tr>
<tr>
<td>c) Notice of Situation of registered office</td>
<td>44</td>
<td>120 (1) 332(1) (f)* 335(1) (d)*</td>
<td>-</td>
<td>Submit in duplicate within one month of incorporation *for foreign company only</td>
</tr>
<tr>
<td>d) Statutory Declaration by person before appointment as director, promoter before incorporation of corporation</td>
<td>48a</td>
<td>16(3a) 123(4)</td>
<td>-</td>
<td>Submit within one month of incorporation or any changes in directors, secretaries or managers</td>
</tr>
<tr>
<td>e) Return giving particulars in Register of directors, managers, secretaries and changes of particulars</td>
<td>49</td>
<td>141(6)</td>
<td>-</td>
<td>Minimum authorised share capital RM 100,000</td>
</tr>
<tr>
<td>f) Registration Fee for Nominal (Authorised) Share capital</td>
<td>-</td>
<td>See 3.4</td>
<td>-</td>
<td>Minimum authorised share capital RM 100,000</td>
</tr>
<tr>
<td>g) Certificate of Incorporation</td>
<td>9</td>
<td>16 (4)</td>
<td>-</td>
<td>Issued by CCM</td>
</tr>
</tbody>
</table>

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278 see cp. Goh Chen Chuan, 2004, p. 3
A 2: Form 13a – Request for availability of name\textsuperscript{279}, Section A

\begin{center}
\begin{tabular}{|l|}
\hline
\textbf{FORM 13A} \\
\textit{Companies Act, 1965} \\
REQUEST FOR AVAILABILITY OF NAME \\
\hline
Our Ref. \hfill \textit{(Leave Blank)} \\
Reference No. \hfill \textit{(Leave Blank)} \\
\hline
\textbf{SECTION A: TO BE COMPLETED BY APPLICANT IN BLOCK LETTERS} \\
\hline
\textbf{PROPOSED NAME: \hfill (MAXIMUM 50 CHARACTERS)} \\
\hline
\textbf{PURPOSE:} \hfill \textbf{TYPE:} \\
N—NEW INCORPORATION \hfill S—LIMITED BY SHARES \\
F—REGISTRATION OF FOREIGN COMPANY \hfill G—LIMITED BY GUARANTEE \\
C—CHANGE OF NAME \hfill U—UNLIMITED COMPANY \\
\hline
\textbf{NAME OF APPLICANT:} \\
\textbf{ADDRESS OF APPLICANT:} \\
\textbf{TELEPHONE NO.:} \\
\hline
\textbf{REQUEST DATE:} \hfill \textit{Signature of Applicant} \\
\hline
\end{tabular}
\end{center}

\textsuperscript{279} C.A. 1967, first schedule, p. 405
A 3: Form 13a - Request for availability of name\(^{280}\), Section B and C

**SECTION B: FOR THE REGISTRY'S USE ONLY**

**SEARCH RESULT**

**AVAILABILITY:** ........../........../..........  **DATE PROCESSED:** ........../........../..........  
**A— AVAILABLE**  
**R— REJECTED**  
**S— SUBJECT TO QUERY**  
**PROCESSED BY:** ........................................  
**DATE ENTERED:** ........../........../..........  
**ENTERED BY:** ........................................  

**REMARKS:**

**SECTION C: TO BE COMPLETED BY APPLICANT**

**CLARIFICATION**

1. Single letters included in the name stand for:
2. If the proposed name is not in Bahasa Malaysia or English, please clarify:
3. If the proposed name contains a proper name, state whether it is the name of a director of the Company or the proposed company:
4. If proposed name is similar to that of a related or associated corporation\(^{1}\), state whether written consent has been obtained from the said corporation (please attach consent):
5. If the proposed name is a trade mark, state whether consent has been obtained from the owner (please attach consent):
6. If the proposed name is to be used for change of name of an existing corporation, state the following:
   - **Existing Name:** .................................................................
   - **Company:** .................................................................
7. The nature of the business carried on or to be carried on by the company ............
8. Other comments: .................................................................

**NOTE:**

\(^{1}\) For definition of "related corporation" and "associated corporation", please see Companies Act 1965, and International Accounting Standards respectively. Use additional sheets if necessary.
A 4: Form 6 - Declaration of Compliance

FORM 6
Companies Act, 1965
(Section 16(2))

Company No.  

DECLARATION OF COMPLIANCE

.................................................. (NAME OF COMPANY)

1. .................................................. *I/C No./Passport No. .................................................. of  .................................................. sincerely declare the following:

1. I am the person named in the articles as the first secretary of ..................................................
   (Name of Company).

2. All the requirements of the Companies Act 1965 and of the Companies Regulations in respect of matters precedent to the registration of the company and incidental to its registration have been complied with.

3. As from the date of its incorporation, the registered office of the company will be situated at .................................................. in the State of ..................................................
   Post Code ..................................................

4. The first directors named in the articles of the company are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>I/C No./Passport No.</th>
<th>Date of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. The principal objects for which the company is incorporated are as follows:

1. ..................................................

2. ..................................................

3. ..................................................

6. The authorised capital of the company is RM.................................................. divided into .................................................. shares of RM.................................................. each.

Declared at .................................. this ............... day of ............... 

..................................................

("Licence No./Prescribed Body Membership No.

* Strike out whichever is inapplicable.

† If the director is of the female gender, insert "(F)" against her name.
FORM 24
Companies Act, 1965

Company No.

RETURN OF ALLOTMENT OF SHARES
(NAME OF COMPANY)

The shares referred to in this return were allotted(1) on the __________ day of __________, 19________ and the __________ day of __________, 19________.

<table>
<thead>
<tr>
<th>Shares allotted</th>
<th>Details of Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Preference</td>
</tr>
</tbody>
</table>

1. For cash consideration:
   (a) Number of shares
   (b) Nominal amount of each share
   (c) Amount (if any) paid on each share
   (d) Amount (if any) due and payable on each share
   (e) Amount of premium paid or payable on each share

2. For consideration other than cash:
   (a) Number of shares
   (b) Nominal amount of each share
   (c) Amount to be treated as paid on each of the shares so allotted
   (d) Amount of premium treated as paid upon each share

(1) The consideration for which the shares have been so allotted is as follows:

3. Particulars of the allottees of the shares so allotted and the number and classes of shares allotted to them are as follows:

<table>
<thead>
<tr>
<th>Full Name and Address</th>
<th>(a) Nationality or Race</th>
<th>(b) NIC No. or Passport No.</th>
<th>Number of Shares Allotted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Preference</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cash</td>
</tr>
</tbody>
</table>

Dated this __________ day of __________, 19________.

______________________________    ______________________________
Director                        Secretary

---

(1) C.A. 1967, first schedule, p. 412
A 6: Form 24 - Return of allotment of shares\textsuperscript{283}, page 2

\textit{Certificate to be given by all Companies}

A certificate in the form set out hereunder shall be given by a director and a secretary of every company and annexed to this form.

\textbf{CERTIFICATE}

We hereby certify, in relation to \ldots \ldots (Name of company) that--

(a) the shares referred to in this return were allotted pursuant to a resolution of the \*directors/\*members made on \ldots \ldots ;

(b) the shares so allotted do not exceed the authorized capital of the company which is RM \ldots \ldots divided into (\ldots \ldots ) shares of RM \ldots \ldots each;

(c)* the allottees have agreed and have not withdrawn their agreement do take up the shares so allotted;

(c)* the shares were allotted to the allottees on applications received from them for shares in the company;

(c)* the shares were allotted as fully paid bonus shares to the existing shareholders;

(d) the total issued capital of the company now stands at \ldots \ldots shares of RM \ldots \ldots each and the paid-up capital is RM \ldots \ldots ; and

(e)* (*) by virtue of section 54(2), paragraph 3 of this form is not completed as:

(i) the company has more than five hundred members;

(ii) the company keeps its principal shares register at a place within twenty-five kilometres of the office of the Registrar of Companies (\ldots \ldots );

(iii) the company provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred;

(iv) the shares referred to in this return were allotted for cash;

(iv) the shares referred to in this return were allotted for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds five hundred; and

(v) (a) the number of shares allotted to citizens who are Malays and Natives

(b) the number of shares allotted to citizens who are non-Malays and non-Natives

(c) the number of shares allotted to non-citizens

(d) the number of shares allotted to bodies corporate controlled by citizens who are Malays and Natives

(e) the number of shares allotted to bodies corporate controlled by citizens who are non-Malays and non-Natives

(f) the number of shares allotted to bodies corporate controlled by non-citizens

TOTAL:

Dated this \ldots \ldots day of \ldots \ldots , 19\ldots \ldots

\begin{tabular}{l|l}
Secretary & Director \hline
\end{tabular}

\textsuperscript{*Strike out whichever is inapplicable.}

\textsuperscript{283} C.A. 1967, first schedule, p. 413
A 7: Form 24 - Return of allotment of shares[^284], page 3

(1) Shares subscribed for in the Memorandum shall be deemed to have been allotted as at the date of incorporation under section 54(6) and must be included in the first return.

(2) Where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs is to be stated. In the case of the first return, shares subscribed for in the Memorandum are to be included in this return and identified as such.

(3) If the allotment is made for shares fully paid or partly paid-up otherwise than in cash pursuant to a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a copy of any such contract certified in accordance with regulation 7(d).

(4) Where, by virtue of section 54(2), a company is not required to furnish the particulars under paragraph 3 of this form, the certificate to be given by all companies must include paragraph (a) set out thereunder.

(5) Where the capital of the company is divided into shares of different classes the division of the authorized capital into shares of various classes must be specifically stated.

(6) Paragraph (a) of the certificate need not be certified if paragraph 3 of this form is completed.

(7) Insert name of town/city where the office of the Registrar is located.

(8) If Malaysian, only indicate the race of the allottee. If a body corporate, state the country of origin.

(9) Please state in respect of a Malaysian the number of his identity card and its relevant type i.e. Blue I/C-(B), Red I/C-(R), Military ID-(Z), Police ID-(M), in respect of a company its company number, and in respect of any other type of body corporate its registration number.

DIRECTIONS

In making a return of allotment under section 54 of the Companies Act, 1965 it is to be noted that:

(a) where shares are allotted for consideration other than cash, the return should be accompanied by the contract [see section 54(3) and (6)] or if there is no contract in writing, by a statement made in accordance with Form 25;

(b) when a return includes several allotments made on different dates, the dates of only the first and the last of such allotments should be entered at the beginning of the form, and the lodgement of the return should be affected within one month of the first date;

(c) when a return relates to one allotment made on a particular date, that date should be inserted.

[^284]: C.A. 1967, first schedule, p. 414
FORM 44
Companies Act, 1965
Sections 12(1)(1),
333(1a) and 335(1)(d)

Company No.

NOTE OF SITUATION OF REGISTERED OFFICE AND OFFICE HOURS AND PARTICULARS OF CHANGES

(NAME OF COMPANY)

To the Registrar of Companies,

† ...................................................... hereby gives notice that—

* as from the date of incorporation the registered office of the company in Malaysia has been situated at ..................................................

* as from the .............................. day of ......................, 19...... the registered office of the company in Malaysia has been situated at ‡ ..................................................

* as from the .............................. day of ......................, 19...... the situation of the registered office of the company has been changed from ‡ ..................................................... to ‡ .....................................................

and as from the .............................. day of ......................, 19...... the days and hours during which that office is open and accessible to the public have been as follows:

Dated this .............................. day of ......................, 19......

..............................................................
*Director, *Secretary,
*Agent in Malaysia

*Strike out which is inapplicable.
† Insert name of company/corporation.
‡ Insert full address.

NOTES:
Notice of the days and hours during which the office is open and accessible to the public is not required if the office is open for at least five hours between ten o'clock in the forenoon and four o'clock in the afternoon of each day, Saturdays, weekly and public holidays excepted.

In the case of a company which is not the sole occupant of the building in which the registered office is situated, particulars of the address sufficient to enable the office to be readily located should be supplied e.g. “Room 101, First Floor” or the office of “A., B., & Co., Accountants”.

C.A. 1967, first schedule, p. 433
A 8: Form 48a – Statutory declaration by a person before appointment as a director, or by a promoter before incorporation a corporation

STATUTORY DECLARATION BY A PERSON BEFORE APPOINTMENT 
AS DIRECTOR, OR BY A PROMOTER BEFORE INCORPORATION 
OF CORPORATION

................................................................. (NAME OF COMPANY)

1. I, ...................................................... *I/C No./*Passport No. .............................................. of ............................................. do solemnly and sincerely declare that–

   1. I am not an undischarged bankrupt.
   2. I have not been convicted whether within or without Malaysia of any offence–
      (a) in connection with the promotion, formation or management of a corporation;
      (b) involving fraud or dishonesty punishable on conviction with imprisonment for three
          months or more; or
      (c) under section 132, 132A or under section 303, within a period of five years preceding
          the date of this declaration.
   3. I have not been imprisoned for any offence referred to in paragraph (2) hereof within the
      period of five years immediately preceding the date of this declaration.

   *4. I am an undischarged bankrupt but have been granted leave by the court under section 125
      to act as a director of.................................................. (name of corporation).

   *5. I have been granted leave by the court under section 130 to be director of..........................
      (name of corporation) or a promoter of a proposed corporation..........................................
      (name of proposed corporation) or both a director of..........................................................
      (name of corporation) and a promoter of...........................................................
      (name of proposed corporation). I attach herewith an office copy of the court order.

6. I hereby consent to act as director of........................................... (name of company).

And I make this solemn declaration conscientiously believing the same to be true, and by virtue 
of the provisions of the †Statutory Declarations Act 1960.

Subscribed and solemnly declared by the 
abovenamed at ................. in the State 
of...................... on this............. day 
of......................... in the year 19..........

Before me–

.................................................................

*This Statutory Declaration shall be lodged with the Registrar of Companies and the Official Receiver.
† If the declaration is made in another country, it must be made under the law relating to statutory declaration or oaths prevainting in that country.

C.A. 1967, first schedule, p. 436
Appendix 89

A 9: Form 49 – Return giving particulars in register of directors, managers and secretaries and changes of particulars\(^{287}\), page 1

FORM 49

Companies Act, 1965

RETURN GIVING PARTICULARS IN REGISTER OF DIRECTORS, MANAGERS AND SECRETARIES AND CHANGES OF PARTICULARS

(NAME OF COMPANY)

<table>
<thead>
<tr>
<th>DIRECTORS*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Name</td>
</tr>
<tr>
<td>------------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

A 9: Form 49 – Return giving particulars in register of directors, managers and secretaries and changes of particulars\(^{288}\), page 2

<table>
<thead>
<tr>
<th>MANAGERS AND SECRETARIES*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office in Company</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td>Managers</td>
</tr>
<tr>
<td>Secretaries</td>
</tr>
</tbody>
</table>

Dated this... day of... , 19....

Signature of (Director/Secretary)

Footnotes to Form 49:

* Where a director is also a manager or secretary, his particulars are to be given under each of the headings “Directors” and “Managers and Secretaries”.

† Insert full name and any former name of the officer concerned. If the director is of the female gender insert “Mrs” against her name. In the case of a person appointed as an alternate to another director insert “alternate to (name of director)” against his name.

‡ If Malaysian, state whether the officer is a Malay, Chinese, Indian or others.

§ Insert particulars of any other directorship of public companies or companies which are subsidiaries of public companies held by the director, but not particulars of directorships held by a director in a company that is a related corporation of that company, where a person is a director in one of more subsidiaries of the same holding company. It is sufficient to disclose that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word “Group”. If no other directorships, state so.

¶ Insert in relation to a new officer “Appointed w.e.f........ “of” in place of (name of former officer)”.... Insert in relation to a former officer “Died on........... “or” Resigned w.e.f. ........”, “Removed on........... “or” as the case may be “Retired on...........”. RELEVANT DATE SHOULD BE INSERTED. If there is a change in the other prescribed particulars, state nature of change and relevant date.

State also the relevant type code of the identity card/passport after the relevant numbers i.e. Blue IC (B), Red IC (R), Military ID, (Z) Police ID (M), Passport (P).

§ Strike out whichever is inapplicable.

Note - A complete list of directors or managers shown as existing in the last particulars delivered should always be given. A note of the changes since the last list should be made in column*.

\(^{287}\) C.A. 1967, first schedule, p. 442

\(^{288}\) C.A. 1967, first schedule, p. 443
A 10: Form 9: Certificate of incorporation of private company

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FORM 9  
Companies Act, 1965  
Section 16(4)  

Company No.  

CERTIFICATE OF INCORPORATION OF PRIVATE COMPANY

This is to certify that ................................ is, on and from the ...................... day...................... 19 .........., incorporated under the Companies Act 1965, and that the company is*  
........................................................................ and that the company is a private company.  

Given under my hand and seal, at......................... this......................... day of........................., 19......  

........................................................................  

Registrar of Companies  

* State whether company is-  
(a) a company limited by shares.  
(b) an unlimited company.  
```
Die Arbeit von André Schwalenberg lag dem Fachbereich Recht der FH Braunschweig/Wolfenbüttel in 2005 als Diplomarbeit vor.