

MALAYSIA¹

I. Overview of Country

Malaysia is a federal constitutional monarchy with a parliamentary system of government. The prime minister is elected through periodic multi-party elections. Barison National (also known as National Front) is the current ruling coalition and is dominated by the United Malays National Organization party. This coalition has ruled the country continuously since 1957 (formerly as the Alliance).

Malaysia has three parallel legal systems. The country's criminal, civil, constitutional and administrative laws are based on a common law legal system with the court system comprised of subordinate courts, two high courts, the Court of Appeal and the Federal Court (highest level). Islamic law applies to Muslims and is administered by Syariah Courts found in each state. Finally, there is a native law system applied only in the provinces of Sabah and Sarawak and applicable only to those defined in law as "natives".

Malaysia has also created an International Business and Finance Center in the Federal Territory of Labuan for international business and financial services catering to Islamic financial services, companies, trusts, partnerships, insurance companies, foundations, securities and funds (STEP).

Article 10 of the Malaysian Constitution guarantees all citizens the right to freedom of association, subject to government restrictions.²

II. Registration Procedures

A. For-Profit Organizations

a. Laws

The Companies Commission of Malaysia (also known as *Suruhanjaya Syarikat Malaysia* (SSM)) is a statutory body formed in 2002 pursuant to the Companies Commission of Malaysia Act 2001³ and functions as the Registrar of Companies and the Registry of Business. Its main function is to register businesses and administer and enforce the legislation applicable to business entities. The entities that can conduct business in Malaysia are: sole proprietorships, partnerships, limited liability partnerships, locally incorporated companies and branches of foreign companies.

Registration of sole proprietorships and partnerships is governed by the *Registration of Businesses Act*.⁴ Only Malaysian citizens or permanent residents over the age of 18 may register and operate a sole

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² See Article 10 of the Federal Constitution of Malaysia, 1957 found at: <http://www1.umn.edu/humanrts/research/malaysia-constitution.pdf>

³ Amended by the *Companies Commission of Malaysia (Amendment) Act*, 2015

⁴ *Registration of Businesses Act*, 1956. Found at: <http://www.ssm.com.my/acts/fscommand/a0197.htm> [*Registration of Businesses Act*].

proprietorship (business owned by a single person) or a partnership (business owned by at least two people but less than 20).⁵ Registration involves the submission online or at a SSM counter of:

- the appropriate form; and
- provision of supporting documents including: a copy of Malaysian identity card; a permit, license or supporting letter for the business; approval or supporting letter from the relevant agency.⁶

Fees vary between RM 5 and 60 (Malaysian Ringgit) (approx. 1.50 to 16.50 USD). Business registration certificates can be issued within one hour of fee payment and are valid for one year.⁷ The nature of the registered business should not contravene any laws or likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with the security of the Federation, public order or morality.⁸ Businesses can be removed from the register where the Registrar has reasonable cause to believe that business is not actually being carried on.⁹

Registration of limited liability partnerships is set out pursuant to the *Limited Liability Partnership Act*, which provides limited liability protection for partners and flexibility for internal business management.¹⁰ An application is made to the online with the SSM with the following information:

- Name of the proposed LLP;
- General nature of the proposed business of the LLP;
- Proposed registered office of the LLP;
- Name and details of every person who is to be a partner of the LLP;
- Name and details of compliance officer(s) of the LLP.

The registration fee for new or converted LLPs is RM 500 (approx. 160 USD). In addition, every LLP must appoint and register a Malaysian resident compliance officer who is responsible for submitting documents and registering updates to the LLP. Registration is immediate provided all registration requirements are satisfied.¹¹ The Registrar may refuse registration where he is satisfied that such registration would be contrary to national security or interest or the LLP is likely to be used for a charitable purpose, an unlawful purpose, or a purposes prejudicial to public peace, welfare or good order and morality.¹²

⁵ See the SSM document “Guidelines for Registration of New Businesses” found at http://www.ssm.com.my/sites/default/files/guidelines/GUIDELINES%20FOR%20REGISTRATION%20OF%20NEW%20BUSINESS_new.pdf [Guidelines for Registration of New Businesses].

⁶ *Registration of Businesses Act*, *supra* at s. 5.

⁷ See Guidelines for Registration of New Businesses, *supra*.

⁸ *Registration of Businesses Act*, *supra* at s.5(c).

⁹ *Ibid.*, at s. 5E.

¹⁰ *Limited Liability Partnership Act*, 2012. Found at: http://www.ssm.com.my/sites/default/files/acts/LLP%20ACT%202012%20-%20For%20Portal_new.pdf [*Limited Liability Partnership Act*].

¹¹ See the Limited Liability Partnership Brochure issued by the Government of Malaysia, found at: http://www.ssm.com.my/sites/default/files/booklet/LLP_bkengLS.pdf

¹² See SSM website FAQs for LLPs found at: http://www.ssm.com.my/en/faq-view?field_cat_faq_value=Limited_Liability_Partnership

The Registrar may strike an LLP from the registry for a number of reasons including where: the LLP is not actually in business; the LLP has contravened the governing legislation; and the Registrar has reason to believe that it is prejudicial to national interests to allow the LLP to remain on the register.¹³

The *Companies Act* provides for the registration and governance of companies.¹⁴ They can take the form of a company limited by shares, a company limited by guarantee, a company limited by both shares and guarantee, or an unlimited company.¹⁵ Companies need a minimum of two founding directors and a secretary (must be either member of a professional body or licensed by the SSM) who are between 18 and 70 years of age and who have Malaysia as their principal place of residence.¹⁶

Registration procedures involve three main steps:¹⁷

- (1) filing of an application with the SSM to conduct an online name search to confirm the availability of the company name. Can be done in less than one day and costs RM 30 (approx. 8USD). Companies cannot be registered with a name that is considered by the Registrar to be undesirable.¹⁸
- (2) Company secretary prepares the necessary incorporation documents. These include:
 - memorandum and articles of association which names the first directors and secretaries and signatures of at least two subscribers holding a minimum of one share of RM 1 each (approx. 0.30 USD);
 - statutory declaration by a director that he/she is not bankrupt and has not been convicted or imprisoned;
 - statutory declaration of compliance with the *Companies Act* signed by the company secretary.Takes 3 days on average and costs RM100 (approx 28 USD).
- (3) File documents noted in step (2) with the SSM, as well as copy of letter from SSM approving name of company and the address or location of the registered office and obtain certificate of company incorporation, tax registration, registration with the Employment Provident Fund, Social Security Organization and Inland Revenue Board, as well as the post-incorporation package (company seal, share certificates and statutory books) and the registration fee which varies between RM 1000-70,000 (approx. 275 – 19,000USD) depending on the authorized share capital of the company. Takes 2 days on average and other costs include RM 200 (stamp) (approx. 55USD) and RM 75 (post-incorporation package) (approx. 20USD).

The Registrar maintains the discretion to refuse to Register a company if he is satisfied that: the proposed company is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with

¹³ *Limited Liability Partnership Act*, *supra* at s.51.

¹⁴ *Companies Act*, 1965. Found at: <http://www.ssm.com.my/acts/fscommand/CompaniesAct.htm> [*Companies Act*].

¹⁵ *Ibid.*, at s. 16(4).

¹⁶ *Ibid.*, at s. 122 and ss. 139 and 139A.

¹⁷ See SSM's Guidelines for Incorporation of a Local Company at: <http://www.ssm.com.my/sites/default/files/guidelines/GUIDELINES%20FOR%20INCORPORATION%20OF%20%20A%20LOCAL%20COMPANY.pdf>. List of fees found at Second Schedule of *Companies Act*, *supra*.

¹⁸ *Companies Act*, *supra* at s. 22. For a detailed list of unacceptable names and guidelines see the SSM Guidelines for Naming a Company found at: <https://www.ssm.com.my/sites/default/files/guidelines/Guidelines%20For%20Naming%20a%20Company.pdf>

peace, welfare, security, public order, good order or morality in Malaysia; or it would be prejudicial to national security or public interest for the proposed company to be registered.¹⁹ Anyone dissatisfied with the decision of the SSM may appeal to a court within 30 days.

A company can be voluntarily wound up or involuntarily wound up through court order by the petition of any creditor, liquidator, Minister or Registrar.²⁰ The court may order the winding up where:

- The company, by special resolution, resolved that it be wound up;
- Default is made by the company in lodging the statutory report or in holding the statutory meeting;
- The company does not commence business within a year from its incorporation or suspends its business for a whole year;
- The number of members is reduced below two;
- The company is unable to pay its debts;
- The directors have acted in their own interests rather than in the interests of the members as a whole;
- An inspector has reported that he is of the opinion that the company cannot pay its debts or that it is in the interests of the public or the shareholders or the creditors that the company be wound up;
- The court is of the opinion that it is just and equitable that the company be wound up;
- A license operating a banking or insurance business has been revoked;
- The company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia;
- The company is being used for any purpose prejudicial to national security or public interest.

b. Case Law

Not researched.

B. Not-For Profit Organizations

a. Laws

Not-for-profit organizations can exist in Malaysia through three main legal entity forms: societies; companies limited by guarantee (registration discussed above under for-profit organizations); and trusts.

¹⁹ *Companies Act, supra* at s. 16(8).

²⁰ *Ibid.*, see Part X.

Societies are regulated by the *Societies Act* of 1966 and are defined as any “club, company, partnership, or association” with a minimum of seven persons.²¹ An organization can formally register under the Act only if monetary gain/profit is not its primary purpose. At the inaugural meeting, a minimum of 7 founders must agree on formalities to be included in the constitution of the society including: name, registered place of business, insignia, aims and objects and appointed office-bearers. The founders must then submit an e-application with all documents to the Registrar of Societies (ROS) (fee of RM30, approx 8 USD).²² The ROS is the regulatory department in charge of registration, supervision and maintenance of records pertaining to societies and their branches.

The ROS has the following broad powers pursuant to the *Societies Act* to impose conditions on the society upon registration²³ and to refuse to register a society:

- Where “in the opinion of the Minister is likely to affect the interests of the security of the Federation or any part thereof, public order or morality”;
- “where it appears to him that such local society is unlawful under the provisions of the Act or any other written law or is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, good order, or morality in Malaysia”;²⁴
- Where the name under which the society is to be registered— (i) appears to the Registrar to mislead or be calculated to mislead members of the public as to the true character or purpose of the society or so nearly resembles the name of such other society as is likely to deceive the members of the public or members of either society; (ii) is identical to that of any other existing local society; or (iii) is, in the opinion of the Registrar, undesirable;²⁵

The Registrar may also make regulations prescribing the manner of registration of societies.²⁶

The ROS sets no fixed time period to decide a registration application and, in practice, waiting periods may be very lengthy.²⁷ So far in 2015, the ROS rejected 326 applications (30.6% of all applications) for registration of societies.²⁸

Deregistration powers are broad. The *Societies Act* allows for the cancellation of registration can be made where “Minister in his absolute discretion by order to declare unlawful any society or branch or class or description of any societies which in his opinion, is or is being used for purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order or morality”.²⁹ In addition, registration can be cancelled if the Registrar is satisfied that:³⁰

²¹ *Societies Act*, 1966 found at: <http://www.agc.gov.my/Akta/Vol.%207/Act%20335.pdf> [*Societies Act*].

²² See the Registry of Societies Malaysia webpage at <http://www.ros.gov.my/index.php/en/soalan-lazim>

²³ *Societies Act*, *supra* at s.7(1).

²⁴ *Ibid.*, at s.7(3)(a).

²⁵ *Ibid.*, at s.7(3)(d).

²⁶ *Ibid.*, at s.67(2).

²⁷ See the International Not-For Profit Research Centre’s NGO Law Monitor: Malaysia at: <http://www.icnl.org/research/monitor/malaysia.html>

²⁸ See the Registry of Societies Malaysia website at <http://www.ros.gov.my/index.php/en/peta-laman2>

²⁹ S.5(1) of the *Societies Act*, *supra*.

³⁰ *Ibid.*, at s. 13.

- The registration was effected as a result of fraud, a mistake or misrepresentation;
- The society is likely to be used for unlawful purposes or purposes prejudicial to or incompatible with peace, welfare, good order or morality;
- The society is pursuing objects other than those for which it was registered;
- The society has willfully contravened any provision of the *Societies Act* or its regulations, or the *Sedition Act* 1948 by any acts or utterances;
- That the society has ceased to exist;
- That the society has failed to comply with an order issued pursuant to the Societies Act;
- That a society has failed to comply with section 2A of the Societies Act requiring fulfillment and compliance with Federal and State constitutions
- That the society has contravened s.52 of the Societies Act which declares unlawful the use of triad rituals;
- That the society failed to comply with notice served pursuant to s.16(1) of the Societies Act which requires the provision of evidence regarding the settlement of a dispute and the appointment of office bearers; and
- That the society has become unlawful pursuant to s.14(7) for failure to provide the Registrar with requested information including rules, list of office bearers and audited accounts.

The registrar also has absolute discretion to declare a society to be unlawful where, in his opinion, it is being used for purposes prejudicial to or incompatible with the interest of the security of Malaysia, public order or morality. Such a declaration shall be published in the Gazette and operates to immediately cancel the registration of the society.³¹

Where the Registrar proposes to cancel registration for one of the foregoing reasons, the Registrar is required to provide notice and also provide 30 days for the society to submit reasons why the registration should not be cancelled. During this period, the Registrar may suspend all activities of the society if it considered necessary to do so in the public interest, in the interest of the society, or in order to restrain the society from further infringements of the Societies Act.³²

Generally, a society, officer-bearer or society member has 30 days to appeal the Registrar's decision to the Minister charged with the registration of societies in a number of cases including decisions to cancel or refuse registration, refuse a name change or place of business, prohibit foreign affiliations or involvement of foreign persons in the society, order amendments to the rules or constitution of the society or order the dissolution of a society.³³ The decision of the Minister to confirm, reject or vary the decision of the Registrar is final. There is no provision in the legislation for appeal to a court.

Not-for-profit organizations can also exist as public companies limited by guarantee (the principle being that members' liability is limited to what they have agreed to contribute in the event the company is wound up). They can be registered under the *Companies Act* if their objects are found to be useful to the community, specifically, if they are formed for the purposes of providing "recreation or amusement" or "promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any

³¹ *Ibid.*, at s.5.

³² *Ibid.*, at ss. 13(2)(A) and (B)

³³ *Ibid.*, at s.18.

other object useful to the community” if it applies its income in promoting its objects. As with all companies, the SSM is responsible for registration and regulation and it carries out enforcement activities as set out in the *Companies Act*. Such companies do not have the same powers to acquire and dispose of property as other companies and must use all profits to support the objects of the company.³⁴ A company can be involuntarily wound up through court order by the petition of any creditor, liquidator, Minister or Registrar.³⁵

It should be noted that there are numerous other types of legal charitable trusts and funds that could be used for not-for profit purposes. Due to the complexity of this type of legislation, they have not been included for the purposes of this discussion.

b. Case Law

Not researched.

C. Analytical comparison of the legal process of registration

The process of registering businesses or any type of company in Malaysia is very streamlined, taking less than one week from start to finish, with service standards and fees clearly stated. With respect to registration of a not-for profit organization as a company limited by guarantee, the same streamlined procedure would apply. In contrast, not-for profits wishing to register as societies, there is no fixed time period to decide a registration application. For both types of organizations, registration may be refused if the Registrar is satisfied that the organization will be used for unlawful purposes, for any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia, or it would be prejudicial to national security or public interest. With respect to not-for profits, the Registrar may also refuse to register the name of the society where it is identical to an existing society or is somehow undesirable. With respect to deregistration, companies may be voluntarily wound up or involuntarily through court order or by petition of any creditor, liquidator, Minister or Registrar.

For-profit organizations can be wound up voluntarily or involuntarily by court order, including for reason of being used for unlawful purposes or purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality or national security. Not-for profits may be deregistered for the same reasons and additionally where: registration was a result of fraud or a mistake, it is pursuing objectives unrelated to those for which it was registered; it contravened any provision of the *Societies Act* or the *Sedition Act*; for failure to comply with an order under the *Societies Act*. While involuntary winding up for a for-profit organization takes place in a courtroom, for societies the discretion rests with the ROS and appeal can only be made to the Minister.

III. Tax Laws

A. For-Profit Organizations

a. Laws

³⁴ Restrictions on companies limited by guarantee can be found in SSM’s Guideline and Checklist for Companies Limited by Guarantee found at: http://www.ssm.com.my/sites/default/files/guidelines/GARISPANDUAN%20SBMJ_0.pdf [Guideline and Checklist for Companies Limited by Guarantee].

³⁵ See generally Part X of the *Companies Act, supra*.

The *Income Tax Act* generally governs taxation of for-profit organizations.³⁶ Pursuant to these laws, gains and profits from trade, profession and business, employment (salaries remunerations etc.), dividends, interests, rent, royalties and premiums are subject to tax. Corporate income tax amounts to 25% in 2014.³⁷ There are numerous tax incentives to attract both local and foreign investors (see financial transactions section below).³⁸

The Labuan International Business and Financial Centre is a special economic zone designed to encourage business investment.³⁹ Pursuant to the *Labuan Business Activity Tax Act* only 3% tax is charged against all business entities in Labuan and such business have less tax filing obligations.⁴⁰

b. Case Law

Not researched.

B. Not-For Profit Organizations

a. Laws

Some types of not-for profit organizations are exempt from tax pursuant to the *Income Tax Act*. These include: public or benevolent institutions; societies/institutions engaged in research for the cause, prevention or cure of diseases, socio-economic research, technical or vocational training; Malaysian religious institutions/organizations which are not-for-profit and established exclusively for the purposes of religious worship or the advancement of religion; an organization established exclusively to administer a public fund solely for the relief of distress among members of the public; an organization which maintains or assists in maintaining a zoo, museum, art gallery or is engaged in the promotion of culture or the arts; an organization engaged in or in connection with the conservation or protection of animals.⁴¹

Clubs, associations or similar institutions that are not formed for commercial purposes but for social, recreational, sports, arts, science literature or other purposes for the interest and benefit of their members are taxable on income from trading with non-members.⁴² This includes for example, income from fund-raisers, raffles, social functions organized by the club and income from investments like real estate.⁴³ Income derived from mutual dealings with members is not subject to tax.⁴⁴ Numerous deductions and capital cost allowances are permitted, including for gifts of money.⁴⁵

b. Case Law

³⁶ *Income Tax Act*, 1967 found at: <http://www.kpmg.com.my/kpmg/publications/tax/22/a0053.htm> [*Income Tax Act*].

³⁷ See KPMG Corporate Tax Rate Tables, found at: <http://www.kpmg.com/global/en/services/tax/tax-tools-and-resources/pages/corporate-tax-rates-table.aspx>

³⁸ *Promotion of Investment Act*, 1986 found at: <http://www.agc.gov.my/Akta/Vol.%207/Act%20327.pdf> [*Promotion of Investment Act*].

³⁹ For more detailed information, visit the Labuan International Business and Financial Centre website at: <http://labuanibfc.com/about/1-1/the-midshore-jurisdiction.html> [Labuan IBFC website].

⁴⁰ *Labuan Business Activity Tax*, 1990, found at: <http://labuanibfc.com/legislation-main/1317/details.html>

⁴¹ See s.s 12, 44 and Schedule 6 of the *Income Tax Act*, *supra*.

⁴² See Inland Revenue Board of Malaysia, “Clubs, Associations or Similar Institutions” Public Ruling No. 5/2012, issued June 25, 2012. Found at: http://www.hasil.gov.my/pdf/pdfam/PR_5_2012.pdf

⁴³ *Ibid.*, ss. 7.2 and 7.3.

⁴⁴ *Ibid.*, s. 7.1.

⁴⁵ *Ibid.*, s.7.4.

Not researched.

C. Analytical comparison

For profit organizations are subject to a 25% tax and there are numerous tax incentives to attract investors. The Labuan International Business and Financial Centre is a special economic zone designed to encourage business investment where only 3% tax is charged and businesses have less tax filing obligations. In contrast, numerous not-for profit organizations are exempt from paying tax or are required to pay tax only on income generated from non-members. Income tax deductions are available for these amounts.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Malaysia highly encourages foreign investment into for-profit companies. Pursuant to the *Promotion of Investment Act* tax incentives are offered for investment in a wide range of industries including: high technology projects; small scale companies; production of halal food products; R&D activities; vocational training and higher education institutions.⁴⁶ In addition, foreign investment is courted through the Labuan International Business and Financial Centre, which provides for a comprehensive legal structure to encourage foreign investment into Malaysian services, including financial services, and manufacturing sector (see discussion under taxes).⁴⁷

ii. Political Contribution Laws

There are no laws regulating, limiting or pertaining to contributions from for-profit organizations to political parties or campaigns.

b. Case Law

Not researched.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

As part of its annual report, a society must provide the ROS with the name and address of any affiliated foreign associations.⁴⁸ The ROS may prohibit a society from having direct or indirect contact or any dealings or affiliation whatsoever with anybody outside of Malaysia if the ROS is satisfied that such an order is necessary in the interests of public order, safety or security.⁴⁹ The ROS may also require a registered society to redraft its governing rules to exclude persons who are not Malaysian citizens from

⁴⁶ See *Promotion of Investment Act, supra*.

⁴⁷ Labuan IBFC website, *supra*.

⁴⁸ *Societies Act, supra* at s.14(1)(dd).

⁴⁹ *Ibid.*, s.13A.

holding office within the society.⁵⁰ Societies are given an opportunity to provide representations to the ROS and any order must be made in writing.⁵¹

ii. Political Contribution Laws

There are no laws regulating, limiting or pertaining to contributions from societies to political parties or campaigns. Companies limited by guarantee shall not provide funds to any political organization.⁵²

b. Case Law

Not researched.

C. Analytical Comparison

Malaysia highly encourages foreign investment into a wide range of for-profit industries and services primarily through tax incentives. In addition, foreign investment is encouraged through the Labuan International Business and Financial Centre. In contrast, a society must provide the ROS with the name and address of any foreign association and the ROS may prohibit a society from having any contact with anybody outside of Malaysia if the ROS is satisfied that it is necessary in the interests of public order, safety or security. It may also order a society to exclude foreigners from holding office in the society.

There are no laws regulating, limiting or pertaining to contributions from for-profit or societies to political parties or campaigns. Companies limited by guarantee shall not provide funds to any political organization.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

The *Companies Act* requires the following:

- Appropriate maintenance and retention of accounting records⁵³
- Maintenance of register of members⁵⁴
- Maintenance of minutes relating to directors and shareholders meetings⁵⁵
- Submission of annual reports⁵⁶
- Publication to shareholders of accounts, balance sheets and a directors' report at least once a calendar year;⁵⁷
- Auditing of the accounts.⁵⁸

The Registrar may relieve a company from any requirement relating to the form and content of accounts or reports where he is of the opinion that compliance with the *Companies Act* would:

⁵⁰ *Ibid.*

⁵¹ *Societies Act, supra* at s.13A.

⁵² See SSM's Guideline and Checklist for Companies Limited by Guarantee, *supra*.

⁵³ *Companies Act, supra* at s.166A.

⁵⁴ *Ibid.*, at s. 158.

⁵⁵ *Ibid.*, at s.142.

⁵⁶ *Ibid.*, at ss.165 and 167.

⁵⁷ *Ibid.*, at s.169

⁵⁸ *Ibid.*, at s.174.

- Render the accounts or consolidated accounts or the report to be misleading or inappropriate to the circumstances of the company; or
- Impose unreasonable burdens on the company or any officer of the company.⁵⁹

Investigations may be ordered into the activities of companies in the public interest.⁶⁰ Such an investigation provides investigators with broad powers to order the production of books and documents and may take possession and retain them.⁶¹

LLPs are required to provide the Registrar with an annual declaration containing particulars determined by the Registrar, including an opinion by any two partners in the LLP as to whether they are able to pay their debts.⁶² Every LLP has to keep and retain accounts to sufficiently explain transactions and the financial position of the LLP, but such accounts do not need to be audited.⁶³

Pursuant to the *Limited Liability Partnerships Act*, the Registrar has broad powers to ensure compliance with the Act, including access to buildings and any documents and to issue a written notice to provide any documents in the officer's possession.⁶⁴ Where there is reasonable cause to believe that an offence under the Act is being committed the Magistrate may issue a warrant authorizing the Registrar to enter the premises, if necessary by force, to search (including persons) and seize any evidence or thing.⁶⁵

b. Case Law

Not researched.

B. Not-For Profit Organizations

a. Laws

Within 60 days of an annual general meeting (or within 60 days after the end of each calendar year) societies are required to provide the ROS with any new amendments to rules, office-bearers, number of members residing in Malaysia, place of business, accounts, name and address of any foreign associations and a description of any money or property received from foreign entities.⁶⁶ The *Societies Act* also sets out that the ROS may at any time, with a minimum seven days notice, request all or any variety of the documents listed.⁶⁷ The legislation does not require the ROS to provide reasons for this request. Where such information is not provided in the requested timeframe, the ROS may make a provisional order for dissolution of the society.⁶⁸ Such an order becomes final after 30 days if the required documentation is still not furnished.⁶⁹

⁵⁹ *Ibid.*, at s.169A.

⁶⁰ *Ibid.*, at s.195.

⁶¹ *Ibid.*, at s.200.

⁶² *Limited Liability Partnership Act, supra* at s.68.

⁶³ *Ibid.*, at s. 69.

⁶⁴ *Ibid.*, at s. 56.

⁶⁵ *Ibid.*, at s. 58.

⁶⁶ *Societies Act, supra* at s. 14(1).

⁶⁷ *Ibid.*, at s.14(2).

⁶⁸ *Ibid.*, at s.14(5).

⁶⁹ *Ibid.*, at s. 14(7).

The ROS may search and inspect all books, accounts, minutes or meetings and other documents on suspicion that a registered society is violating the provisions of the *Societies Act*.⁷⁰ Where there is reason to believe that a registered society is being used for purposes prejudicial to public peace, welfare, good order or morality, the ROS or police may enter and search the place of business of the society without notice.⁷¹ In such circumstances, the ROS has powers to search persons suspected of hiding evidence and may seize any relevant documents.⁷² There is no redress mechanism provided for in the *Societies Act*.

Companies limited by guarantee have the same reporting requirements as other companies (see discussion above).

b. Case Law

Not researched.

C. Analytical Comparison

For-profit organizations are required to keep and maintain accounting records, a register of members, and minutes of directors and shareholder meetings. Accounts, balance sheets and a directors' report must be published to shareholders once a year. Annual reports must be submitted and accounts are audited. The Registrar may relieve companies from these requirements in certain circumstances.

Similarly, societies are required to provide an annual update to the ROS with changes to rules, office bearers, members and accounts. However, they are also required to indicate the name and address of any foreign associations and a description of any money or property received from such an entity. Also, the ROS has the power of requiring the provision of all such material, and where not received, can order the dissolution of the society.

For-profit companies may be investigated for the public good, investigators may require the production and retention of books and documents. Similarly, the ROS may search and inspect books and documents where a society is suspected of violating a provision of the *Societies Act*. However, unlike companies, where there is a reason to suspect that a society is being used for purposes prejudicial to public peace, welfare, good order or morality, the ROS or police may enter the place of business without notice and has powers to search persons and seize documents.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

i. Civil

No civil sanctions were found in relation to the preceding regulatory scheme.

ii. Criminal

⁷⁰ *Ibid.*, at s. 63.

⁷¹ *Ibid.*, at ss. 64 and 65.

⁷² *Ibid.*

Businesses that operate without registration or continue to operate after expiration of registration commit an offence under the *Business Registration Act* and if found guilty, are subject to a fine not exceeding RM50,000 (approx. 14,000USD) or a term of imprisonment not exceeding two years or both.⁷³

Unless a company is duly incorporated with limited liability, use of the term “Berhad” or the word “limited” or any abbreviation as the last word of a name or title, may result in a three year prison term and/or a fine of RM50,000 (approx. 14,000USD).⁷⁴

Failure to comply with reporting requirements can lead to conviction for an offence against the *Companies Act* and penalties ranging from RM 100 to RM5000 (approx. 27.50 to 1400 USD). Failure to allow an auditor access to any accounting records, or otherwise hindering, obstructing or delaying the auditor’s performance can result in a term of conviction of not more than two years and/or RM30,000 (approx.8300 USD). Making false statements in any return, report, balance sheet or any document required by this act shall be guilty of an offence and subject to a prison sentence of 10 years and/or a fine of RM250,000 (approx. 69,000 USD).

Any one who attempts to defeat or delay an investigation by destroying, altering or sending out of Malaysia any book, document or record of the company is subject to a term of imprisonment of five years or a fine of RM 30,000 (approx. 8200 USD).

Proceedings for any offence may be brought within seven years after commission of the offence or, with the consent of the Minister at any later time and will be brought at appropriate levels of court pending the maximum prison sentence.⁷⁵

If a person who appears before a court for any proceedings for negligence, default, breach of duty or breach of trust, who has reason to believe that any claim might or will be brought against him, can demonstrate that he has acted honestly and reasonably and that, with regard to all the circumstances of the case, he ought to be excused for the offence, the court may relieve him either in whole or part from liability.⁷⁶

LLPs are subject to the following offences:

- Failure for a LLP to keep proper accounts may result in a fine not exceeding RM 50,000 (approx. 13,800 USD) and/or a term of imprisonment up to six months.⁷⁷ Failure to retain accounting documents and keep them at the registered office may result in a fine not exceeding RM 10,000 (approx. 2800USD) and a RM 500 (approx. 140USD) fine for every continuing day of the offence.⁷⁸
- Knowingly making a false or misleading statement in returns, declarations, balance sheets or other documents required by the *Limited Liability Partnerships Act* is subject to a term of

⁷³ *Registration of Businesses Act, supra* at s.12.

⁷⁴ *Companies Act, supra* at s.367.

⁷⁵ *Ibid.*, s. 371.

⁷⁶ *Ibid.*, s. 354.

⁷⁷ *Limited Liability Partnerships Act, supra* at s. 69(6).

⁷⁸ *Ibid.*, s.69(7).

imprisonment not exceeding five years or to a fine not less than RM 150,000 (approx. 41,000 USD) and not more than RM 500,000 (approx. 138,000 USD).⁷⁹

- Use of the name or title “Perkongsian Liabiliti Terhad” or the abbreviation “PLT”, unless the business is duly registered as a LLP, may be liable on conviction to a fine not exceeding RM 250,000 and/or a term of imprisonment of not more than three years.⁸⁰
- Destruction, concealment, mutilation, alteration or removal from Malaysia of any book, record, accounts, document, computerized data with the intent to defraud the Registrar constitutes an offence punishable by one year in prison and/or a fine of RM 50,000 (approx. 13,800 USD).
- Refusing the Registrar access to premises which he is entitled to have, assaulting, obstructing or hindering the Registrar in the execution of his duties or refusal to give the registrar information relating to an offence constitutes an offence and is punishable by one year in prison and/or a fine of RM 50,000 (approx. 13,800 USD).

B. Not-For Profit Organizations

a. Laws

i. Civil

No civil sanctions were found in relation to the preceding regulatory scheme.

ii. Criminal

Failure to comply with the *Societies Act* will subject registered societies to various penalties including:

- Organization of or taking part in any activity of or on behalf of a society prior to its registration constitutes an offence and upon conviction could result in a fine not exceeding RM 5000 (approx. 1400USD). Where it is a continuing breach a fine of RM500 (approx. 140 USD) shall apply for every additional day;⁸¹
- Failure to comply with a condition of registration shall result in a fine not exceeding RM 2000 (approx. 550 USD).⁸²
- Failure to comply with an order of the ROS to remove foreign officers and/or have no contact whatsoever with foreign entities can result in a prison term not exceeding five years and/or a fine not exceeding RM15,000 (approx. 4100 USD).⁸³
- Failure to comply with an order to produce information required by s.14 of the *Societies Act* (see financial reporting section above) can result in a fine not exceeding RM5000 unless it can be shown that due diligence was exercised and compliance beyond the society’s control.⁸⁴ Similarly, where the information provided pursuant to a request under s.14 is false, incorrect or incomplete, the person who supplied such information is liable to a fine not exceeding RM2000 (approx. 550 USD).

⁷⁹ *Ibid.*, s.80.

⁸⁰ *Ibid.*, 81.

⁸¹ *Societies Act, supra* at s.6.

⁸² *Ibid.*, at s. 7(5).

⁸³ *Ibid.*, at s. 13A(7).

⁸⁴ *Ibid.*, at s.15(2).

- A fine not exceeding RM3,000 or a term of imprisonment not exceeding three months shall be incurred for using a sign or emblem without the approval of the Registrar.⁸⁵
- Use of a certificate of registration that has been cancelled can result, upon conviction, in a fine not exceeding RM 2000 (approx 550 USD).⁸⁶
- Providing to the Registrar with any false information, knowingly or where one has reason to believe is false, may result in a conviction and a fine not exceeding RM 2000 (approx. 550 USD).⁸⁷

C. Analytical comparison

For-profit and not-for profit organizations appear to be, with some exceptions, subject to similar types of offences for breach of the regime discussed above. While the for-profit offence may carry a prison sentence and a heavier fine, the not-for profit equivalent offence carries no prison sentence and a lighter fine. The one exception being with respect to failure to comply with orders to remove foreign officers and/or have no contact with foreign entities where that not-for profit organizations are subject to a prison term of five years and a fine of up to RM 15,000 (approx. 4100USD).

D. Statistics on actual penalties for each group (if, available)

Not available.

OVERVIEW CHART

Although not exhaustive of all the similarities and differences discussed in the above sections, this is to help highlight some of the biggest differences or similarities.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	<ul style="list-style-type: none"> - registration of sole proprietorships, partnerships, limited liability partnerships and companies can be done online or through a SSM counter. - registration involves three main steps: name search; creation of incorporation documents; filing of documents and payment 	<ul style="list-style-type: none"> - can register as a company limited by guarantee or as a society. - registration requires submission of an e-application to the Registrar of Societies and a fee. - the Registrar can refuse to register the society in the interests of society, where it is 	<ul style="list-style-type: none"> - Registration is the same for a not for profit registered as a company limited by guarantee and registration of for profit organizations. - registration requires submission of documents and payment of fees. - registration can be refused where the company or society is

⁸⁵ *Ibid.*, at s.50(3).

⁸⁶ *Ibid.*, at s.53A.

⁸⁷ *Ibid.*, at s.54A.

	<p>of fees. All steps should take no more than one week.</p> <ul style="list-style-type: none"> - with respect to companies, the Registrar can refuse registration where the company will likely be used for unlawful purposes or purposes incompatible with the public interest. 	<p>likely to be used for an unlawful purpose or a purpose prejudicial to peace, welfare, good order or morality or if the name is misleading, undesirable or similar to another society. There is no time frame set for ROS registration decision.</p>	<p>likely to be used for an unlawful purpose or one that is incompatible with the public interest.</p>
Tax Laws	<ul style="list-style-type: none"> - tax payable on all gains, profits, employment, dividends, interest, rent, royalties and premiums. -25% corporate tax -tax incentives to attract local and foreign investment. - Labuan International Business and Financial Centre is a special economic zone where only 3% tax is imposed. 	<ul style="list-style-type: none"> - some types of not-for profits exempt from income tax. - clubs, associations or similar institutions have to pay tax on income from dealings with non-members. - tax deductions available. 	<ul style="list-style-type: none"> - tax exemptions and deductions exist for both organizations.
Financial Transaction Laws	<ul style="list-style-type: none"> - numerous incentives to attract foreign investment including through the Labuan International Business and Financial Centre. - there are no laws limiting contributions from for-profit organizations to political parties or campaigns. 	<ul style="list-style-type: none"> - societies must provide the ROS with information about affiliations with foreign organizations - ROS may prohibit societies from having any contact with foreigners in the interest of public order, safety or security. - ROS may require a registered society to redraft its governing rules to exclude persons who are not Malaysian citizens. - there are no laws 	<ul style="list-style-type: none"> - there are no laws limiting contributions to political parties or campaigns by for-profit companies or by societies.

		limiting contributions from societies to political parties or campaigns. Companies limited by guarantee shall not donate money to any political organization.	
Auditing/Reporting Requirements	<ul style="list-style-type: none"> - all for-profits are required to keep accounting records - companies required to submit annual reports , publish annually accounts, balance sheets and a directors’ report to shareholders and audit accounts. - companies may be relieved of reporting obligations where it would be misleading or appropriate or impose an unreasonable burden. - for companies, investigations can be ordered into activities in the public interest. - for LLPs Registrar has broad powers to ensure compliance with Act and a warrant may be issued authorizing Registrar to enter any premises, even by force to search (people and places) and seize evidence. 	<ul style="list-style-type: none"> - societies must provide update to ROS of any amendment after annual general meeting. - ROS can request a broad range of documents upon a minimum of seven days notice. In case of non-compliance, the ROS can provisionally dissolve society. - ROS has broad powers to search and inspect documents. Where there is good reason to suspect that a society is being used for undesirable purposes, ROS or police may enter, search and seize documents and evidence at place of business without notice. 	<ul style="list-style-type: none"> - general requirement to keep records - SSM (for LLPs) and ROS have similar broad powers to search documents.
Penalties	<ul style="list-style-type: none"> - no civil offences. - criminal offences for operating without registration, inappropriate use of name, inappropriate 	<ul style="list-style-type: none"> - no civil offences. - criminal offences for operating without registration, failure to produce records and documents requested by 	<ul style="list-style-type: none"> - generally subject to similar types of offences with some exceptions.

	reporting, false statements, returns, reports, documents, delaying or defeating an investigation.	ROS, failure to remove foreign officers or breach of non-contact order.	
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