

## Malaysia

### Executive Summary

As the domestic economy continues to enjoy foreign direct investments notwithstanding the current economic climate and with the continued requirement for foreign expertise in Malaysia, Malaysian immigration laws provide a range of visas and passes to non-Malaysians in entering and remaining in Malaysia for business purposes.

### Key Government Agencies

While certain government bodies have the authority to approve the employment of non-Malaysians, the Malaysian Immigration Department (“Jabatan Imigresen”) processes all applications for and is the issuing body of all immigration passes and visas. It also enforces immigration laws and policies in Malaysia together with the Royal Malaysian Police Force. Visas are issued by the Malaysian Immigration Department at all points of entry into Malaysia.

Depending on the nationality, it may be necessary to obtain a pre-entry visa. Applications from abroad for visas which permit a longer duration of stay in Malaysia may be sent to a Malaysian embassy/consulate.

### Current Trends

Malaysia has always welcomed skilled foreign nationals. The government recognises foreign expertise as instrumental in achieving the goal of the population becoming a high-income one. The government has also continued to implement steps to reduce Malaysia’s dependency on blue collar foreign employees.. While this will largely affect less skilled workers, employers may need stronger justification for bringing in to Malaysia foreign nationals, as a whole,

in the nearer term. It is expected that this may affect certain industries more than others.

Generally, the Malaysian Immigration Department has not unreasonably withheld approvals for skilled foreign employees who will assume managerial, technical or executive posts in Malaysia. A higher success rate in obtaining immigration passes may be seen in certain industries or fields, such as oil and gas, science and medicine, information technology and aerospace.

The Malaysian Immigration Department has continued to improve on its delivery systems. The relative lack of transparency and processing timeframes have been officially acknowledged as impediments to foreign investment..

Having said that and in light of the current economic conditions, the Malaysian Immigration Department is becoming more stringent in respect of approving immigration passes for foreign nationals for employment in the country. This has the indirect purpose of reserving more job opportunities for Malaysians. The government is also looking into various means to encourage skilled Malaysians who are currently working abroad to return. The Malaysian Immigration Department continues to be somewhat unpredictable in requiring applicants to obtain a letter of support or a letter of no objection from government agencies, which may or may not be relevant to the foreign national's industry.

Extensive reform of Malaysia's immigration laws in the near future appears to be unlikely.

## Business Travel

### *Social Visit Pass*

For a short stay in Malaysia for social or business purposes, other than for employment, a Social Visit Pass may be obtained at the point of entry into Malaysia. The validity period of the Social Visit Pass varies, depending on the nationality of the traveler. Depending on the nationality, a visa issued from the Malaysian embassy may be required.

The Social Visit Pass is solely for the purpose of a social, tourist or business visits. For business purposes, a person who has been issued with the Social Visit Pass is permitted to carry out the following activities while in Malaysia:

- Attending meetings;
- Attending business discussions;
- Inspection of factory;
- Auditing company's accounts;
- Signing agreements;
- Conducting survey on investment opportunities or setting up a factory; or
- Attending seminars.

The Social Visit Pass does not permit its holder to exercise employment in Malaysia nor to undertake any activity which are outside the scope of the above permitted activities.

As the Social Visit Pass permits its holder to remain in Malaysia for a limited period, Social Visit Pass holders should be mindful of not overstaying the stipulated duration. Generally, extensions will not be granted unless there are special personal circumstances.

## Training

### *Visit Pass (Professional)*

Employers who wish to second their non-Malaysian employee to Malaysia on a temporary basis, should arrange for the employee to be issued with the Visit Pass (Professional).

For background, a Visit Pass (Professional) is for engaging in a professional occupation or work in Malaysia. A Visit Pass (Professional) may be used only for secondments; there must be no employee-employer relationship with the local sponsor (the Malaysian entity at which the employee is seconded). Normally, a Visit Pass (Professional) is granted only for a period of 3 to 6 months, but may be extended to a maximum period of eleven months.

The intended holder of a Visit Pass (Professional) must register with the Malaysian Inland Revenue Board before submitting the application.

In the application for a Visit Pass (Professional) submitted by the local sponsor, the local sponsor must disclose the activities that the applicant intends to conduct in Malaysia. The local sponsor must also agree to be responsible for the maintenance and repatriation, should it become necessary. A Visit Pass (Professional) holder may only conduct the activities for which the pass has been approved. It is a condition of the Visit Pass (Professional) that any change in the business or professional purposes for which the Visit Pass (Professional) is issued must be made with the written consent of the Director-General of Immigration.

## Employment Assignments

### *Employment Pass*

An Employment Pass is issued to a director, manager or professional-level foreign national who is to be appointed/employed by a Malaysian entity (*i.e.*, Malaysian incorporated subsidiary, Malaysian registered branch of a foreign corporation or a Malaysian representative office). The Employment Pass is valid for two to three years.

Any Malaysian employer applying for an Employment Pass must show why the foreign national must be employed, rather than a Malaysian citizen or permanent resident. An acceptable reason is that there is no Malaysian citizen or permanent resident available who is suitable in terms of academic qualifications and relevant practical experience or technical skills. An Employment Pass will allow the holder to engage in a full range of employment activities.

Application for an Employment Pass should be made 3 months prior to the arrival of the foreign employee. It is common, although not always advisable, for a foreign national to enter on a Social Visit Pass obtained by oral application at the point of entry (or at the relevant Malaysian embassy prior to traveling) and for the employer thereafter to apply for an Employment Pass prior to taking up employment. The Social Visit Pass encompasses the permissible business activities mentioned above and employment is not permitted.

A limited number of Employment Passes may be granted to foreign nationals employed by a Malaysian subsidiary. Generally, the Malaysian Immigration Department is less willing to grant Employment Passes to foreign employees of a branch of a foreign company except with a letter of support from a Ministry or government body, such as where the branch is involved in a government project.

The application for an Employment Pass is a two-stage process:

First, the applicant is required to apply for an expatriate post (an application “for the services of an expatriate”) prior to the application for the Employment Pass, by submitting a completed Form DP 10. This form must be accompanied by a letter of justification in the Malaysian language from the intended employer justifying why the post must be held by a foreigner, whether there are any prerequisites, qualifications, and experience not available in Malaysia and whether steps have been taken to recruit a Malaysian. The letter of justification should indicate the benefits the company and the expatriate could bring to the Malaysian economy and the labour force.

Generally, the application is made to the Malaysian Immigration Department. However, for certain industries, separate government agencies have been authorized to approve the employment of expatriates and applications should be sent to these appointed agencies instead:

- Manufacturing and its related services sectors - Malaysian Industrial Development Authority
- Information technology sector, specifically companies that have been awarded MSC Malaysia (formerly known as the Multimedia Super Corridor) approval - Multimedia Development Corporation
- Financial, insurance and banking sectors - Central Bank of Malaysia
- Securities and the futures market - Securities Commission
- Health and education sectors – Public Service Department of Malaysia

Applications for the above industries may be more expedient. However, sector-specific guidelines and requirements are imposed by the relevant approving agencies.

Second, once approval of the expatriate posting is granted, the application for the issuance of the Employment Pass can be submitted. An application for renewal before its expiry may be submitted but there is no guarantee of approval.

After the Employment Pass is issued, the passport needs to be submitted to the Malaysian Immigration Department for the endorsement of the Employment Pass.

### *Reference Visa*

Nationalities of certain countries are required to obtain a Reference Visa for purposes of employment. The Reference Visa must be applied for and obtained prior to entry into Malaysia. The Reference Visa can be collected from a Malaysian mission in any country once the issuance of the Employment Pass is approved by the Malaysian Immigration Department.

Only holders of passports of Commonwealth countries do not require a Reference Visa for the purposes of employment. Holders of passports of all other countries not listed are required to obtain a Reference Visa prior to entering Malaysia for the endorsement of the employment passes onto the passport.

### *Visit Pass (Temporary Employment)*

A Visit Pass (Temporary Employment) may be obtained where the foreigner is to be employed by a Malaysian entity for twelve months or less. The procedure, timing and the supporting documents to apply for a Visit Pass (Temporary Employment) are generally similar to that for the Employment Pass.

## Other Comments

Many holders of the Employment Pass would like to bring their families to Malaysia. Dependant passes are available for the spouse and children below twenty one years of age. Dependant passes should be applied for simultaneously with the application for the issuance of the Employment Pass.

For foreign nationals who are not employed in Malaysia and yet would like to reside in Malaysia, the government of Malaysia has introduced the Malaysia My Second Home Programme (“MM2H”) to encourage non-Malaysians to reside in Malaysia. Non-Malaysians under the programme remain in Malaysia on a Social Visit Pass, together with multiple entry visa.

The Social Visit Pass is valid for ten years, subject to the validity of the passport, with the possibility of an extension for another ten years. Under this programme, qualified MM2H participants aged 50 and above with specialized skills and expertise that are required in the critical sectors of the economy are allowed to work not more than 20 hours per week. Additionally, the MM2H participants are allowed to invest and actively participate in business, subject to existing government policies, regulations and guidelines, which are in force for the relevant sectors. This programme does not guarantee permanent resident status.

There are financial requirements, but participants are also provided with various incentives during their stay in Malaysia under the programme. These include, amongst others, acquisition of residential units, car purchase, education and tax exemptions.

## Further Information

Our *Immigration to Malaysia Manual* provides further information relating to residing in Malaysia and citizenship.