

Client Alert

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New Open Approved Permit Policy

Background

On 23 December 2015, the government announced the continuation of the Open Approved permit ("AP") policy for used imported motor vehicles with a number of enhancements ("the new Open AP policy") that are expected to be rolled out from early 2017. The new Open AP policy will result in the opening up of the used imported motor vehicles market to allow entry of new market players. It is noteworthy that existing companies which have been granted Open APs will also have to reapply for new Open APs under the new regime. This was followed by a recent announcement by the Ministry of International Trade and Industry ("MITI") on the eligibility criteria for the application of Open APs for 2017.

Under the new Open AP policy, eligible companies seeking to apply for Open APs must do so between 23 May 2016 until 21 June 2016 ("stated period"). Applications received after the stated period will not be considered. Accredited independent auditors would be appointed to carry out audits on the businesses of applicants which fulfill the minimum eligibility criteria, to assist in the application evaluation process by MITI.

All Open AP quotas which have been granted must be utilised either within six months from when the AP is issued following the completion of the independent audit process, or by 31 December 2017, whichever is earlier.

Eligible companies

In line with the Bumiputera Economic Agenda, only private limited Bumiputera companies duly registered with the Companies Commission of Malaysia ("CCM") are eligible to apply for Open APs.

In this regard, Bumiputera companies refer to companies that fulfil all of the following criteria:

- The company is wholly owned by Bumiputera(s) in shares;
- all members of the Board of Directors are Bumiputeras;
- the key positions such as Chief Executive Office / Managing Director / General Manager, Branch Manager, Marketing / Sales Manager and other important positions are held by Bumiputera; and
- the company's management of finances, including the authority to sign cheques, are controlled by Bumiputera(s).

Other key requirements applicable to an applicant

Minimum paid up capital and employment of local employees

MITI imposes a minimum paid up capital requirement of RM 1 million. In addition, the company must also employ at least five (5) full time local employees at managerial, marketing and technical levels.

Relevant experience and ability

The company must possess a minimum of two (2) years experience in the sale and distribution of motor vehicles. It must also have sufficient resources and capabilities from the management and finance perspectives, in undertaking the business of importing, distributing and selling the vehicles through the Open AP.

Independence and conflict of interest

The shareholder(s) / director(s) / management of the company must not hold an interest in another company which has been granted an Open AP for the same category of motor vehicles, whether by virtue of shareholding in the other company or through participation in the managerial affairs of the other company.

Next step

Given that MITI has stipulated a short window of time for companies to submit applications for the 2017 Open AP, interested companies are strongly encouraged to prepare for the applications as soon as possible, including making sure that all qualifying conditions are met and all supporting documents are in order, to ensure prompt submission of the same to MITI by the stipulated deadline of 21 June 2016.

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