



**COUNTRY  
COMPARATIVE  
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# **The Legal 500 Country Comparative Guides**

## **Malaysia**

### **DOING BUSINESS IN**

#### **Contributor**

Adnan Sundra & Low



#### **Putri Norlisa Najib**

Joint Managing Partner | [putri.najib@asl.com.my](mailto:putri.najib@asl.com.my)

#### **Chioh Jia Chiam**

Partner | [jiachiam.chioh@asl.com.my](mailto:jiachiam.chioh@asl.com.my)

#### **Cheong Li Sheng**

Legal Associate | [lisheng.cheong@asl.com.my](mailto:lisheng.cheong@asl.com.my)

This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Malaysia.

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# MALAYSIA

## DOING BUSINESS IN



### 1. Is the system of law in your jurisdiction based on civil law, common law or something else?

Malaysia is a common law jurisdiction with separate Islamic laws applicable to Muslims citizens in personal and family matters as well as the practice of their religion.

### 2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

The types of legal business entities available in Malaysia are as follows:

- a. a private limited company – this is the most common business vehicle set up for business in Malaysia limited up to 50 members.
- b. a public company – this business vehicle invites the public to subscribe for shares or debentures in the company and may have unlimited number of members.
- c. a foreign company's branch – this business vehicle would require a local agent who is a resident in Malaysia.
- d. a Labuan incorporated company (i.e. an offshore vehicle) – this business vehicle is set up under Labuan Companies Act typically for tax benefits.
- e. a limited liability partnership (**LLP**) – this business vehicle is regulated under Malaysian Limited Liability Partnerships Act which has the characteristics of a company and a conventional partnership. Unlike conventional partnership, an LLP is a body corporate and has separate legal personality from its partners and perpetual succession.
- f. partnership or sole proprietorship – this business vehicle is unincorporated but would be required to register with the Companies Commission of Malaysia ("**CCM**"). The partnership and sole proprietorship have

unlimited liability and are liable personally for all debts and obligations.

- g. trust entities such as real estate investment trust company (**REIT**) – a REIT is a fund or a trust that manages commercial real estates such as hospitals, plantations, industrial and shopping malls, hotels and offices.

### 3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

Yes, provided that such non-domestic entity is registered as a branch office of a foreign company with CCM prior to carrying business activities in Malaysia.

### 4. Are there are any capital requirements to consider when establishing different entity types?

Generally, there are no minimum capital requirements when establishing different entities in Malaysia. However, for local incorporated companies, specific sectors may impose minimum capital requirement, for example, in telecommunication sector, the Network Facilities Provider Individual licence holder would require a minimum paid-up capital of MYR2,000,000. Also, if the company hires expatriates, the Malaysian immigration department will impose minimum capital requirement ranging from MYR250,000 to MYR1,000,000 depending on the percentage of the foreign shareholding in that particular company.

### 5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

These various types of vehicles are required to register with CCM.

The most common entity for investors to utilise is a private company. Generally, to incorporate such entity, the information that are required to be submitted to CCM are, among others, as follows:

- a. name and the nature of business of the proposed company;
- b. particulars of the member(s), director(s) and company secretary; and
- c. details of class and number of shares to be taken by the member(s).

Provided that all required documents and payments have been made to CCM, the incorporation of a private limited company would typically take around 1-2 weeks.

## **6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?**

A company shall be managed by the board of directors (with the support of the senior management team) in accordance with the Constitution of the company and Companies Act 2016 ("CA 2016"). All board decisions are usually passed board meetings or via board written resolutions. It is to note that certain matters are reserved for the shareholders of the company as set out in the Constitution and CA 2016, for example, amendment to the Constitution and removal of directors of which will be passed at general meetings or via written resolutions.

## **7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?**

A company shall have a minimum number of 1 director (private company) or 2 directors (public company).

A director shall be an individual and at least 18 years old and that such minimum number of the directors shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.

As for shareholders, generally, there are no restrictions on the local residency or nationality, however, regulators of certain sectors such as oil and gas sector, would typically impose local native (Bumiputera) participation requirement which ranges from 30% to 51% depending on the types of activities.

## **8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

If a foreign entity wishes not to create an entity or establishment in Malaysia, generally there are no restrictions to work with trade/commercial agents or resellers. However such arrangements may have tax implications.

## **9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

Public listed companies in Malaysia are required to comply with the Malaysian Code of Governance ("MCCG") issued by the Securities Commission Malaysia. The MCCG provides for the key principles and practices of good corporate governance which covers issues such as board matters (for example, directors' composition and remuneration), audit and risk management, stakeholders' engagement and right.

The application of MCCG to non-listed entities is only optional and not mandatory.

## **10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

The most common options to provide working capital to a company are as follows:

- a. funding from existing shareholders (either by shareholders' loan or subscribing for further shares);
- b. funding from external investors (by offering the subscription of shares);
- c. intercompany loans; or
- d. loan facilities from the bank.

## **11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.**

Companies are subject to doctrine of capital maintenance, with CA 2016 providing certain exceptions,

amongst others, as discussed below:

#### (a) Dividends

A company may distribute dividends strictly out of profits of the company subject to the profit test whereby the company needs to be solvent after the dividends are paid and it is regarded as solvent if the company is able to pay its debts as and when the debts become due within 12 months immediately after the dividends are paid.

#### (b) Share Buybacks

Share buybacks are generally prohibited for non-listed companies save for certain limited situations where they could purchase own shares such as fully paid-up redeemable preference shares and pursuant to a court order (as a remedy in cases of oppression of minority shareholders under section 346 of the CA 2016) :

Listed companies are allowed to purchase own shares in accordance with section 127 of the CA 2016. Among the requirements are:

- the Constitution of the company authorizes it;
- the company must be solvent at the date of purchase and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased;
- the purchase shall be made in good faith and in the interest of the company;

#### (c) Capital Reductions

Unless otherwise provided by the company's Constitution, a company may carry out capital reduction to return surplus capital to the shareholders vide shareholders' special resolution and confirmation by the court in accordance with section 116 of the CA 2016, or by a shareholders' special resolution supported by a solvency statement in accordance with section 117 of the CA 2016.

### 12. Are specific voting requirements / percentages required for specific decisions?

There are two types of shareholders' resolution, namely, the ordinary resolutions (more than 50%) and special resolutions (not less than 75%).

Subject to the Constitution of a company, typically for matters that require passing of the

(a) ordinary resolutions are, for example -

- appointment or removal of the directors and auditors;
- issuance of new shares and increase of share capital;

(b) special resolutions are, for example -

- amendment of company's constitution and name;
- reduction of capital; and
- voluntary winding up.

### 13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Given that the shareholders have the power to appoint or remove the directors of a company, to a certain extent, the shareholders would have control over the board and may remove its nominee directors if such directors are not acting in the best interest of the company or that such shareholders do not agree with the management of the company by the directors. Also, if there are shareholders' reserve matters as set out in the shareholders agreement, the shareholders would then be able to decide on matters that would bind the management of a company.

### 14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The Employment Act 1955 ("EA 1955"), which is the principal employment Act that sets out the statutory benefits and entitlement of employees. We would also add that EA 1955 applies only to employees located in Peninsular Malaysia and Federal Territory of Labuan. Employees working in each state of Sabah and Sarawak will be subject to the Sabah Labour Ordinance and Sarawak Labour Ordinance respectively. For the purposes of this Q&A, we have focused on EA 1955 and set out below the key provisions:

Right/ Protection	Details
National Minimum Wage	The minimum wage shall be RM1,500 per month except for domestic servant (e.g., house servant, driver).
Holiday	Every employee is entitled to 11 gazetted public holidays and any declared public holidays.
Working Hours	Generally, an employee shall not be required to work more than 8 hours per day and 45 hours per week. However, an employee may be required by his employer to work exceeding the limit of hours as stated above in certain circumstances such as work of which is essential to the life of the community.
Rest Periods	Every employee shall be allowed one rest day every week.
Pension rights	Malaysia has a mandatory retirement savings fund known as Employees Provident Fund ("EPF"). Employers are required to make a monthly contribution in respect of employees who are citizens and permanent residents of Malaysia.
Discrimination	Under the EA 1955, the director general of labour ("DGL") is empowered to inquire into and decide any dispute between the employer and his employee in respect of any matter relating to discrimination in employment. Employers are also prohibited from terminating the employment of a female employee who is pregnant or is suffering from an illness arising out of her pregnancy unless there is wilful breach, misconduct of the employee, or closure of the employer.
Maternity and Paternity Leave	Every female and married male employees are entitled to a paid maternity leave of not less than 98 consecutive days and paid paternity leave of 7 consecutive days respectively for up to 5 confinements.
Statutory sick pay	An employee is entitled to the following sick leave: No hospitalisation required • 14 days every year if the employee is employed for < 2 years; • 18 days every year if the employee is employed 2 year or more but < 5 years; • 22 days every year if the employee is employed 5 years or more. Hospitalisation required 60 days every year.
Statutory Notice Periods	The statutory notice period are as follows: • 4 weeks (employed < 2 years); • 6 weeks (employed for 2 year or more but < 5 years); • 8 weeks (employed for 5 years or more).
Unfair dismissal	An employee who considers that he has been dismissed without just cause and excuse may make a representation in writing to be reinstated, to the director general of industrial relations ("DGIR"). If there is no likelihood of the representations being settled, the DGIR may refer this to the court for an award (e.g., compensation in lieu of reinstatement, backwages). The burden of proving the dismissal of the employee was with just cause or excuse (poor performance), whether due to misconduct or redundancy, is on the employer.
Statutory Redundancy Payment	An employer who terminates his employees for redundancy will need to pay termination benefits payment to an employee who has been employed for a period of not less than 12 months. The statutory termination benefits payment to which an employee is entitled ranges from 10 days wages to 20 days wages depending on the employment period of the employee. It is important to note that termination benefits as set out above shall not apply to employees with wages above RM4,000.
Statement of Particulars	The employment contract for a period of more than 1 month is required to be made in writing.

**15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?**

**Dismissal without notice**

An employer may terminate the employment contract without notice:

- by paying the employee a sum equal to the amount of wages which would have accrued to the employee during the term of notice of termination or during the unexpired term of such notice.
- on the grounds of misconduct (for example, wilful breach) inconsistent with the fulfilment of the express or implied conditions of the employee's service, after due enquiry.

**Termination with notice**

The employer may terminate the employment contract by providing notice to the employee in accordance with the employment contract, provided that such notice shall not be less than the statutory notice.

**Collective Dismissals**

This effectively a redundancy whereby the employer is required to submit employment notification retrenchment form to the DGL.

**16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

Yes, trade unions registered under the Trade Unions Act 1959, having the functions of protecting the welfare and benefits of its members and representing members in enterprise disputes.

Please note that Members of the Royal Malaysian Police, members of any prison service, members of the armed forces, public officers serving in a secret or security capacity, and public officers are prohibited from joining the unions.

**17. Is there a system governing anti-**

**bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

The primary legislation governing anti-bribery or anti-corruption in Malaysia is the Malaysian Anti-Corruption Act 2009 ("**MACC Act**") and it has extraterritorial effect with respect to offences committed outside of Malaysia by citizens and permanent residents of Malaysia. The corporate liability provision under MACC Act applies to locally incorporated companies and partnerships carrying on business outside Malaysia as well as company or partnerships incorporated outside Malaysia where part of its business is in Malaysia.

**18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?**

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA 2001**"), deals with the economic crimes whereby reporting institution such as financial institution is required to report suspicious transactions such as transactions involving proceeds of an unlawful activity or transactions linked to any terrorist act.

Also, the MACC Act imposes a duty to report bribery transactions on any person to whom any gratification is given, promised or offered, or any person from whom any gratification has been solicited, obtained or attempt to obtain such gratification, to the relevant authority.

**19. How is money laundering and terrorist financing regulated in your jurisdiction?**

The primary legislation governing money laundering and terrorist financing is AMLA 2001 whereby it provides for measures to be taken for the prevention of money laundering and terrorism financing offences. The AMLA also provides wide investigation powers including freezing and seizing properties involved or suspected to be involved in money laundering and terrorism financing by law enforcement agencies.

**20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi**

**de vigilance)?**

Article 6 of the Federal Constitution of Malaysia provides that no person shall be held in slavery and all forms of forced labour are prohibited. EA 1955 prohibits forced labour and provides for protection of child labour whereby it is generally prohibited to have a child (below age of 15) to carry out hazardous work. The Penal Code of Malaysia criminalised the buying or disposing of any person as slaves and the habitual dealing in slaves. Further, it is also an offence for trafficking in persons and in children for the purposes of exploitation and profiting (which includes forced labour and slavery) under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.

**21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**

For companies, the directors shall prepare financial statements in compliance with the accounting standards as approved by the Malaysian Accounting Standards Board at the end of the financial year which reflects a true and fair view of the financial position and performance of the company. The financial statements shall be prepared within 18 months from the date of the company's incorporation and subsequently, within 6 months of its financial year. Such financial statements shall be duly audited before these are circulated to the shareholders of the company.

The circulation of financial statements and reports -

- a. in the case of a private company, shall be within 6 months of its financial year end; and
- b. in the case of a public company, shall be at least 21 days before the date of its annual general meeting.

The company shall also lodge with CCM the financial statements and reports for each financial year -

- a. in the case of a private company, within 30 days from the financial statements and reports are circulated to its shareholders; and
- b. in the case of a public company, within 30 days from its annual general meeting.

**22. Please detail any corporate / company secretarial annual compliance requirements?**

In respect of annual filing, a company is required to



lodge an annual return to CCM within 30 days from the anniversary of its incorporation date. The particulars to be included in the annual return are the nature of its business, list of shareholders, the particulars of directors, managers, secretaries and auditors, total amount of indebtedness and summary of the shareholding structure.

**23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?**

Under the CA 2016, it is not mandatory for a private company to hold an annual general meeting unless it is as set out in the Constitution of the company.

For public company, it is required to hold an annual general meeting every calendar year of which shall be held within 6 months of the company's financial year end and not more than 15 months after the last preceding annual general meeting to transact the following business:

- a. the laying of audited financial statements and the reports of the directors and auditors;
- b. the election of directors in place of those retiring;
- c. the appointment and the fixing of the remuneration of auditors; and
- d. any resolution or other business of which notice is given in accordance with the CA 2016 or its Constitution.

**24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.**

For companies, the company may, by written notice, require any member to disclose its beneficial interest in its voting shares. With the disclosure, the company would be required to state the information received in relation to the beneficial interest against the name of that member.

The amended CA 2016 also imposes mandatory requirement for every company to keep a register of beneficial owners. The company is required to lodge a notice with CCM for any changes to the particulars in the register of beneficial owners within 14 days from the

date of change. The information of the person who has been recorded as a beneficial owner in the register of beneficial owners but subsequently ceases to be a beneficial owner shall be retained by the company for 7 years from the date the person ceases to be a beneficial owner.

CA 2016 also requires a person who has reason to believe that he is a beneficial owner to notify the company that he is a beneficial owner and provide the required information. The beneficial owner has a duty to notify the company of any changes in his beneficial interest.

**25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

The main taxes payable by business in Malaysia are corporate income tax and the sales and services tax.

The rate of corporate income tax is 24%. However, for resident companies which has a paid-up capital in respect of ordinary shares of RM2.5 million or less with a gross income not exceeding RM50 million, the tax rate for the first RM150,000 of the chargeable income will be 15%, the next RM450,000 is 17% and amounts exceeding RM600,00 will be subject to the 24% rate.

Sales tax is a single-stage tax (i.e., collected at the manufacturer level only) charged and levied on taxable goods manufactured in Malaysia by a taxable person as well as on taxable goods imported into Malaysia. Goods that are not exempted will subject to the sales tax. Examples of goods exempted from the sales tax are books, newspapers, cereals, coffee and tea and pharmaceutical products. The rate of sales tax is 10% except for certain specified goods which will be charged at the rate of 5% and certain petroleum products will subject to a specific rate.

Service tax is a consumption tax imposed on taxable services provided in Malaysia by a registered service provider carrying out their business or any imported taxable service. The rate of service tax ranges from 6% to 8%.

**26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)**

Yes, Malaysia has various incentives, in particular tax incentives, for example, 100% income tax exemption and investment tax allowance as well as import duty exemption on raw materials, components, machinery, and equipment for selected sectors (such as manufacturing, green economy, petrochemical) for the special economic region.

There are also green incentives for green technology projects such as renewable energy, green building, green data centre and integrated waste management, whereby company undertaking green technology project will be eligible for investment tax allowance of 100% of qualifying capital expenditure against 70% statutory income for qualifying capital expenditure incurred for the first 3 years subject to the terms and conditions. Similarly, companies providing green technology services will be eligible for income tax exemption of 70% of statutory income for first 3 years subject to the terms and conditions.

**27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?**

There is a foreign exchange policy notices issued by the Central Bank of Malaysia (“**CBM**”) regulating the inflow and outflow of capital to and from Malaysia. In general, transactions relating to, for example, the dealings of foreign currency; the borrowing or lending of ringgit between non-residents or between a resident and a non-resident; the making of payment in Ringgit by a resident to a non-resident; importing to, or exporting from Malaysia of any Ringgit, foreign currency, are prohibited unless with the written approval of the CBM or that the specific transaction is expressly allowed as set out in the foreign exchange policy notices.

Also, there are withholding taxes in Malaysia whereby it is a tax deducted from a source of payment for a non-resident. Such withholding tax is applied to specific payments such as royalties, interest payments, technical fees, contract payments, rent payments, etc. The tax rate ranges from 5% to 24% depending on the type of payments.

**28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?**

An ad valorem duty of 0.3% will be imposed on the transfer of shares. Similarly, the sale and transfer of a

property is subject to an ad valorem duty at the rate of 1% for the first RM100,000, 2% on the next RM400,000, 3% on the following RM500,000 and 4% for amount exceeding RM1 million. However, a flat rate of 4% stamp duty will be imposed on transfer of property to a foreign person or company.

Also, with recent amendments, stamp duties for both Ringgit and foreign loan is subject to a flat rate of 0.5%. A new capital gain tax has been introduced whereby generally a tax rate of 10% on net gain (chargeable income) will be imposed.

**29. Are there any public takeover rules?**

Yes, public companies are subject to the Malaysian Code on Take-Overs and Mergers 2016 and the Rules on Take-Overs and Compulsory Acquisition.

**30. Is there a merger control regime and is it mandatory / how does it broadly work?**

There is no merger control regime in Malaysia. However, it is currently expected that a new merger control law will be tabled in Parliament in 2024.

**31. Is there an obligation to negotiate in good faith?**

Generally, there is no express obligation imposed on the parties to negotiate any commercial contracts in good faith save for statutorily imposed (for example, agents) or if such express terms are included in the contract.

That said, it is worth to note that Malaysian court in one of the recent cases, has considered the element of implied duty of good faith in the creation of contracts and that this potentially lays the foundation to the implied duty to act in good faith in contracts moving forward.

**32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?**

In an acquisition of assets or share sales transaction,



there is no obligation to notify or obtain consent from the employees unless in a situation where the employees of the target company will be transferred to the buyer's company and therefore such transfer would result in the termination of employment with the target company and re-employment with the buyer's company. If these employees are retrenched or terminated by the target company, the target company will need to compensate the employees with contractual payments involved in such termination including the payment of termination benefits in accordance with the Employment (Termination and Lay-Off Benefits) Regulations 1980 ("1980 Regulations"). However, the 1980 Regulations are only applicable to employees with wages of RM4000 or below. For employees with wages above RM4,000, he or she will be governed under the employment contract with the company.

**33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**

Foreign direct investment restrictions, controls or requirements are sector specific which typically would require prior consent to be obtained. For example:

- a. Telecommunication sector – a limit of 49% foreign equity participation for Network Facilities Providers and Network Service Provider.
- b. Banking and financial services – a limit of 30% foreign equity participation for commercial

banks while a higher limit of 70% is allowed for investment banks, Islamic banks, insurance companies and takaful operators.

- c. Transportation and logistics sector – a limit of 49% foreign equity participation for companies providing transportation service to third parties using commercial vehicles.
- d. Customs Agent – a limit of 49% foreign equity participation for forwarding agent.

**34. Does your jurisdiction have any exchange control requirements?**

Yes, please refer to Question 27 above.

**35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

The most common way to liquidate a company in Malaysia is through the members' voluntary winding up ("MVWU") which requires a special resolution to be passed by the members for the company to be wound up voluntarily. This is to be accompanied by a declaration of solvency by the majority of the directors and such declaration to be lodged with the CCM before notice to hold a members' meeting is sent out. A liquidator will be appointed for the purpose of winding up the company's affairs and distributing its assets at the meeting of the members. Immediately upon passing of the resolution of winding up, MVWU is deemed to commence, and the company shall cease its operation unless it is required to continue in the opinion of the liquidator for the beneficial winding up.

## Contributors

**Putri Norlisa Najib**  
Joint Managing Partner

[putri.najib@asl.com.my](mailto:putri.najib@asl.com.my)



**Chioh Jia Chiam**  
Partner

[jiachiam.chioh@asl.com.my](mailto:jiachiam.chioh@asl.com.my)



**Cheong Li Sheng**  
Legal Associate

[lisheng.cheong@asl.com.my](mailto:lisheng.cheong@asl.com.my)

