

INCORPORATION OF A COMPANY (LIMITED BY SHARES) IN MALAYSIA

COMPANY LIMITED BY SHARES

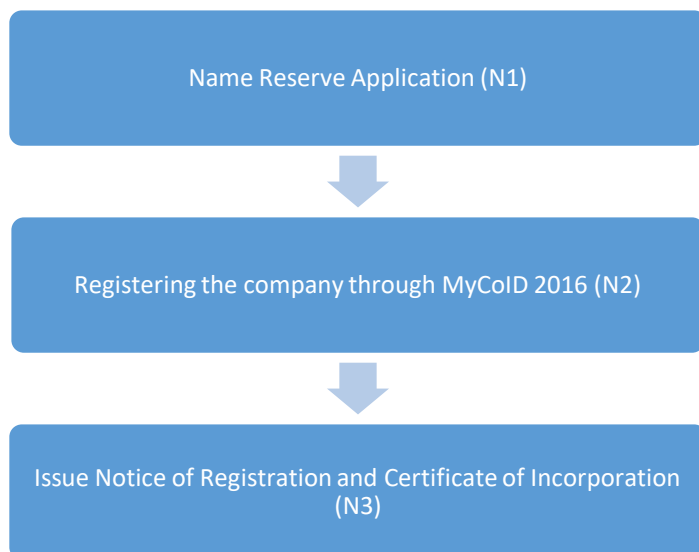
A company having a share capital may be incorporated as a private company (private limited company 'Sdn. Bhd.' or public company 'Berhad' or 'Bhd' which will appear after the company's name).

Under the Companies Act 2016, the requirements to incorporate a company are as follows:

- (i) a name
- (ii) a minimum of one (1) subscriber to the shares of the company;
- (iii) a minimum of two (2) directors* for public company; or a minimum of one (1) director* for private company;
- (iv) a company secretary* (Under the new Companies Act 2016, a company secretary can be appointed at the point of incorporation or within 30 days from the date of incorporation) who is a natural person that attains 18 years of age and above and can either be:
 - an individual who is a member of a professional body prescribed by the Ministry of Domestic Trade Co-operatives and Consumerism; or
 - an individual licensed by the Companies Commission of Malaysia ("CCM").

* Both the directors and company secretary shall have their principal or residence place within Malaysia.

A. INCORPORATION PROCEDURES



1. Name Reserve Registration

- Name Reserve Application need to be submitted to CCM for their approval of the new company's name.
- A company name is considered available if it is not undesirable or unacceptable or identical to an existing business entities or identical to a name reserved under CCM.
- The name will be reserved for 30 days from the date of lodgment of the application upon payment of prescribed fee.

2. Registering the Company

- Constitutions (which supersedes the former Memorandum and Article of Association) are optional upon approval from the shareholders. However, all Memorandum and Article of Association of companies which were incorporated prior to January 2017 remain valid unless otherwise resolved by the said company(ies).
- Electronic forms were introduced in relation to the new Companies Act 2016 for lodging incorporation documents.
- Information needed for registering a company are:
 - (i) Details of director(s)
 - (ii) Details of shareholder(s)
 - (iii) Business activities of the company
 - (iv) Types and number of shares
 - (v) Registered address for the company

3. Notice of Registration and Certificate of Incorporation

- Notice of Registration will be issued within 1-3 working days via email by CCM and such notice indicates that a new company has been successfully incorporated with CCM.
- Certificate of incorporation will be issued upon application by a company and on payment of the prescribed fee.

B. REGISTRATION FEES

Each application for the incorporation of a company shall be accompanied with a payment of RM1,000.00 or as the CCM thinks fit.

Prior to commencement of business of a company, the company is advised to obtain the relevant license/permit/approval from pertinent authorities.

POST INCORPORATION MATTERS

Once the company is incorporated, there are couple of matters that might draw immediate attention of the directors:

- (a) opening of business banking account;
- (b) registration with the relevant agencies in Malaysia with regards to taxes, employees' retirement fund, social security and human development and training;
- (c) fixing of financial year end and appointment of auditors;
- (d) convene of Annual General Meeting (AGM)
- (e) lodgment of Annual Return (AR);
- (f) filing of tax returns

(a) Opening of Business Banking Account

Typically banks in Malaysia require the following Certified True Copy (CTC) documents from the company to open an account:

- (i) Certificate of Incorporation or Notice of Incorporation;
- (ii) Other statutory forms (e.g constitution, if any); and
- (iii) Board Resolutions to open banking account and internet banking services.

Note: You are advised to enquire the bank that you intend to open the business account with to know exactly the details and requirements, as policies and requirements on the matter may vary among banks.

(b) Registration with Agencies in Malaysia

Director(s) of a company will have to register with the relevant agencies with regards to taxes, employees' retirement fund, social security as well as human resource training and development:

AGENCY	ELIGIBILITY
Royal Malaysian Customs (RMC)/Kastam Diraja Malaysia	Compulsory if annual taxable turnover exceeds RM500,000 threshold
Inland Revenue Board (IRB) / Lembaga Hasil Dalam Negeri (LHDN)	Compulsory for Form E (employer) regardless of whether company has employee or not

AGENCY	ELIGIBILITY
Employee Provident Fund (EPF)/ Kumpulan Wang Simpanan Pekerja (KWSP)	Compulsory when first employee is hired
Social Security Organisation (SOCSO)/ Kumpulan Wang Keselamatan Sosial(Perkeso)	Compulsory when first employee is hired
Human Resource Development Fund (HRDF) / Pembangunan Sumber Manusia Berhad (PMSB)	Compulsory if industry of the company falls within the criteria defined by HRDF

(c) Fixing of Financial Year End and Appointment of Auditors

- The company is required to prepare its financial statements and to be audited by approved auditors in Malaysia within eight (8) months from the date of its incorporation and subsequently, within (6) months of its financial year end.
- The Company is required to lodge the financial statements CCM for every financial year;
 - (i) In the case of private company, within 30 days from the financial statements and reports are circulated to its members
 - (ii) In the case of public company, within 30 days from its annual general meeting
- The audited financial statements must be tabled at the Annual General Meeting for adoption and approval by shareholders and lodge with CCM together with Annual Return.

(d) Annual General Meeting (AGM)

Only public company is required to hold an AGM within six (6) months of the company's financial year end and not more than fifteen (15) months after the last AGM. This requirement is not applicable to private company.

Agenda of AGM would comprise the matters as follows:

- the laying of audited financial statement and the reports of directors and auditors;
- election of directors in place of those retiring;
- remuneration and fee of directors, if any; and
- any other resolution or other business of which notice is given in accordance with this Act or the Constitution

(e) Filing of Company's Annual Return (AR)

A company is compulsory to lodge the AR not later than thirty (30) days from the anniversary of its incorporation date.

An AR will entail company information such as registered office address, nature of its business, particulars of indebtedness, company's directors and secretary, auditors and list of its members.

(f) Filing Company's tax return – Inland Revenue Board (IRB)

IRB has made compulsory for a company to register with IRB once the company has commenced its business activities. Submission of company's tax return must be done to IRB within SEVEN (7) months from the financial year end.

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Updated as of 1 August 2017

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