

Foreign investment restriction in Malaysia

~Construction~

January 2022

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This paper outlines the issue of foreign investment restrictions for companies involved in the construction industry to establish a presence in Malaysia.

1 Foreign investment restrictions in Malaysia

Although not as liberal as Singapore, Malaysia is considered a more liberal country for foreign investors than other ASEAN countries such as the Mekong countries, Indonesia and the Philippines. For example, in the service sector, 100% foreign ownership is permitted.

In the construction industry, however, there are still restrictions on foreign investment.



2 Outline of restrictions on foreign investment in the construction industry

(1) Outline of regulations

The construction industry is regulated by the Construction Industry Development Board Malaysia ("CIDB") under the LEMBAGA PEMBANGUNAN INDUSTRI PEMBINAAN MALAYSIA ACT 1994 ("CIBD Act"). The CIBD Act imposes the following regulations on building-related activities

All legal entities carrying out construction work in Malaysia must be registered with the CIDB.

Local contractors (see definition below), once registered, may carry out construction work under the approved grade limits during the period of validity. In contrast, foreign contractors (see definition below) are required to apply for registration with the CIDB for each project.

For example, if a foreign contractor wishes to undertake 10 projects, it will need to apply for 10 separate registration certificates for all projects.

(2) What is regulated construction work?

The CIDB Act states that "No person shall carry out construction work without a valid certificate of registration under the CIDB Act. (Article 25(1) , CIDB Act).

Furthermore, construction work is defined as the act of constructing, extending, fitting, repairing, maintaining, renewing, removing, renovating, altering or demolishing (a) buildings, walls, (b) roads,

railways, (c) drains, rivers, (d) electricity, machinery, (e) bridges, elevated roads, dams, etc. (Article 2(1)).

Two points require attention.

Firstly, the above definition includes not only typical construction work such as erecting a building but also maintenance work on buildings, etc. The scope of application of this definition should be carefully observed.

In addition, as the above regulation is only for "persons who carry out construction work". Registration is not required if, for example, a company undertakes construction work from the client, instead of carrying out any actual construction work itself, subcontracts the entire construction project to a subcontractor (as confirmed by several enquiries to CIDB staff). (This was confirmed by several inquiries to CIDB officials.)

3 Foreign contractors

(1) Definition of foreign contractor

In the Handbook issued by the CIDB, a foreign contractor is defined as a company incorporated abroad or a company incorporated in Malaysia in which foreign capital holds more than 30% of the shares.

On the other hand, a local contractor is a company that is more than 70% owned by Malaysian capital.

(2) Outline of the registration system for foreign contractors

Stage 1 (PRE REGISTRATION)

Description: Foreign contractors are required to pre-register with the CIDB as foreign contractors. The application is made online and the approval is automatic.

Time required: 1 day

Requirement: Minimum capital requirement of RM750,000 ("Minimum Capital")

Note: Pre-registration as a foreign contractor is a one-time requirement, so once obtained, it is complete.

Stage 2 (TEMPORARY REGISTRATION): only if there is a tender

Description: If a foreign contractor wishes to participate in a tender for a project, it must obtain a certificate of temporary registration for the tender period from the CIDB before being allowed to bid. The application must be made online. The temporary registration certificate will be valid for the tender period plus a 3 month evaluation period.

Time required: 3-5 working days (CIDB evaluation period)

Cost: RM550

Requirements: Completion of pre-registration, invitation to tender, minimum capital, at least one engineer (see below), and other documents showing construction experience may be submitted as supporting documents.

Third stage (main registration - REGISTRATION OF FOREIGN CONTRACTORS)

Description: In the event of a successful tender or the case of a non-tendered project, the foreign contractor must apply for this registration before commencing construction work. The application shall be made online. The certificate is valid for the duration of the project plus a two-year liability period.

Time required: 3-5 working days (CIDB assessment period)

Cost: 0.125% levy of the contract value at the time of application (only applicable for project worth over RM500,000), RM5,000 at the time of application approval.

Requirements: Purchase order, minimum capital, two engineers (one of whom must have at least five years' experience in the construction industry).

※ Requirements for technicians

The engineers must have graduated from a faculty designated by CIDB in the Handbook or other documents as relevant to the construction industry.

Note: It is sufficient to register this once at the beginning of the project period (unless it is a contract for each work) and again when the period is renewed. For example, in the case of maintenance contracts with a duration of one to several years, it is sufficient to register once at the beginning of the contract.

4 Non-Contractor

In addition to the above, a foreign company can also register with the CIDB if it is involved in construction work but does not carry out the work itself on site.

As pointed out in 2(2) above, this category is called Non-Contractor and it can be registered if the company is the main contractor or subcontractor that does not carry out any construction work itself, or if the company is involved in construction work as a consultant.

However, such registration is not required under the CIDB Act and is only a voluntary option. As mentioned in section 3 above, foreign contractors are required to be assessed by the CIDB for each project, and this is done to facilitate future CIDB's assessments by demonstrating their previous construction performance.

The above is an overview of the CIDB's regulations for foreign contractors. It is important to conduct a survey based on the business model of the company at the time of entering the market or before entering the market, as the regulations are unavoidable when carrying out construction-related works in Malaysia.

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