

### Frequently Asked Questions on Company Formation & Foreign Investment

1 Q	Can a foreigner set up a sole proprietorship or partnership?
A	Foreigners cannot set up sole proprietorships or partnerships unless in very specific professional industries like medical or engineering whereby there is also culpability for personal indemnities.
2 Q	What is the difference between a shelf company and a newly formed company?
A	<p>A shelf company is an existing company formed with a RM2/= paid up share capital, 2 local directors and shareholders, and a RM100,000 authorised share capital (stamp duty paid) Upon purchase of a shelf company, the existing directors resign &amp; blank transfer forms are delivered to transfer the share to the purchasers. Business can commence immediately upon purchase.</p> <p>In order to form a new company, first we have to get approval from the register of companies to use this proposed name. This process can sometimes take a long time depending on the name chose. Upon approval of use of name, the company secretary then prepares the necessary documents for incorporation for filling. This may take another 5-10 day from the date the entire relevant documents are signed.</p> <p>Business can only commence after the certificate of incorporation has been issued by the register of companies.</p>
3 Q	How long does a name search take for the Registrar of Companies to approve?
A	The result are out normally within 5 working days of submission according to the Client's Charter of the Companies Commission (though it is normal for a few days delay) and you will have a time period of 3 months from the date of the results to register your company.
4 Q	Is the shelf company free from liability?
A	Yes. There is a pre-signed indemnity letter from the previous shareholders admitting liability for transactions before the purchase date but also absolving for liabilities after the purchase date.
5 Q	What is included in the purchase or formation price quoted?
A	<p>Processing of relevant documents for shares transfers or subscriber's shares.          Filing or documents to ROC for relevant changes in directors' secretaries.</p> <p>RM2/= paid up share capital and stamp duty on RM100,000 authorised share capital. Any excess stamp duty to be borne by client.</p> <p>Secretarial books consisting of minute's book. Share register, member's register 10 copies of memorandum &amp; articles of association &amp; 1 no. common seal.</p>
6 Q	How long does it take to register a new company?
A	From the submission of all necessary paperwork to the ROC it normally takes 5 days for the result to be available but as the ROC's internal information technology systems do breakdown often, it may take up to 2 weeks for the Business Registration Certificate to be issued.

7 Q	Who is the company secretary & what responsibility does he/she have?
A	<p>According to Section 139 of the Companies Act 1965, all limited companies must have a licensed company secretary who is an officer of the company. Her/his duties are set out in the Act itself and are primarily to ensure the companies are adhering to the procedures set out in the Companies Act.</p> <p>Which is why the company secretary charges a retainer fee for her expertise in this field?</p>
8 Q	From the list of shelf companies, what is the difference between the names listed under B9 and the rest?
A	<p>B9 refers to the names of companies that have been approved but isn't incorporated yet. It will take about 5 days to incorporate the company. The memorandums &amp; articles and incorporation documents can then be filed with the names of the shareholders &amp; directors (the persons buying the company in this case) and these names will be the ones appearing in the M &amp; A unlike the ready made ones which carries the name of someone else who incorporated the company first.</p>
9 Q	What do you consider as a dormant company, a semi-active company and an active company?
A	<p>A dormant company is one that has ceased operation.</p> <p>A semi-active company is one that is in operation but does not require frequent resolutions to be alone e.g. a trading company.</p> <p>An active company is one take frequently requires resolutions to be done for purpose of obtaining licenses, bank facilities, transactions involving large sums of monies e.g. Developer company.</p>
10 Q	Can the secretarial books be kept at the company's office or anywhere else other than the company secretary's address?
A	<p>Yes, the company secretarial books can be kept at another location but this location must be made public by filing a form with the Registrar of Companies.</p>
11 Q	Can any other company personnel draw up their own resolutions without having to go through the company secretary?
A	<p>Yes, the company can have anyone draw up the resolution document itself but these documents have to be verified by the company secretary since the company secretary shall be held responsible for the preparation of the documents. In most cases, to minimise risks, resolutions are done by the company secretary.</p>
12 Q	What are the qualifications required to become a director of a private limited company?
A	<ul style="list-style-type: none"> <li>▪ He/she must be of age 18 years and above.</li> <li>▪ He/she person must not be an un-discharged bankrupt.</li> <li>▪ He/she must not have been convicted of an appointment.</li> <li>▪ He/she must be a resident of Malaysia or having a permanent residential address in Malaysia. " Having a permanent residential address" is interpreted as "having the right of abode in the country on a long term basis". A person with a valid work permit will qualify for a permanent residential address status.</li> </ul>

13 Q	I have come across foreign directors of companies who do not have a work permit nor a long term stay visa of any sort but have been installed as local directors in their companies. The Companies Commission has not rejected the installation. This would be contrary to what is stated above.
A	We have written in to the Commission once regarding this matter and their response is that it is not their duty to check on the immigration status of the director. The onus then would fall on the company secretary to define the clause "permanent residential address" status according to the Immigration law. In our opinion, we would prefer to define the clause according to Immigration & tax laws as we see and that is what has been stated in the answer in the previous question. Ultimately, the important question here is: "If anything should go wrong with the business, where does the company stand legally? Is it an illegal entity?" "Enemies" may use this point to get rid of unwanted partners.
14 Q	Can a non-director be a signatory to the company's bank account?
A	Yes, if he is named as a manager of the company in the Form 49. Some banks do allow third parties to sign cheques without any supporting documents like Form 49 but most do make a big fuss about it.
15 Q	Can foreigners own shares & what is the maximum shareholding allowed in a local private company & the minimum share capital in a foreign owned company?
A	There is no restriction on maximum shareholding i.e. foreigners can own 100% of a company. If they own more than 30% of any company, they will be required to apply for Foreign Investment Committee approval, the process of which takes more than 6 months but approval is normally given. Normally, small businesses will not apply for any FIC approval unless there is business with the government departments. If the company intends to transact with government departments which will require licensing, the minimum local "bumiputra" (ethnic Malay) participation must be 30% and above. The minimum share capital is the same as any other local company, which is RM2.
16 Q	Are the foreign shareholders allowed to work in Malaysia? Is there a way to circumvent this local director requirement?
A	Foreign investors are allowed to work if they hold a valid work permit. Shareholders can be locals or foreigners but for foreigners to become directors, they must have a valid work permit. A foreigner on a dependent's visa or with the Malaysia My Second Home visa will qualify as a passive director but not a working director. The alternative is to seek nominees or trustees. The cost of a nominee or trustee is between RM1,500 and RM2,500 per annum.
17 Q	I understand that the minimum share capital for any company to employ an expat under a work permit is RM250,000. What if I do not have the requisite amount to be banked into the company?
A	Cash or assets can be pumped in as share capital. If you do not have the cash, assets will also qualify. For every RM250,000 share capital, you can qualify for 1 expat work permit; RM1 million will give you 5 work permits.
18 Q	Can the RM250,000 capital that put in be used and taken out immediately?
A	Yes, the money can be used immediately for anything the company chooses to use it for. It cannot make loans to the shareholders if the ultimate result is that the shareholders owes the company money as this contravenes the Companies Act which states that the company cannot apply funds to purchase its own shares. Even though this is the case, frequently most company still practices making loans to its directors/shareholders and at year end during audit, re-invest the amount owing to comply with the Act.

19 Q	What if the foreigner is a Malaysian spouse? Will the minimum capital be RM250,000?
A	Any local company can sponsor the Malaysian spouse. No minimum share capital is required.
20 Q	Can the visa applicant go and apply to the Immigration Dept. instead of going through an agent? What is the advantage of using an agent?
A	It is absolutely possible for the applicant to go through the application process him/herself. Just be prepared to make numerous trips, long waiting period each time and dealing with unhelpful immigration officers at the counters. If your time cost is very high, then the agents will go through the same application procedures on your behalf. Over at Masson, we guarantee our quality service with refund if work permit is not approved. How? This sensitive information will be divulge on a more person to person basis – so contact us at <a href="mailto:info@massongroup.com">info@massongroup.com</a>
21 Q	Is there any way to get a work permit in a company without having to put up RM250,000 share capital?
A	Yes, by setting up a representative office of a foreign company. If you have an existing foreign company, you can set up a branch office in KL. There are no capital requirements here but there are restrictions i.e. the company cannot do trading but it can perform marketing and research functions. For more info. on representative office, please email <a href="mailto:info@massongroup.com">info@massongroup.com</a> .
22 Q	What if I do not want a representative office set up and do not have RM250,000 to put up ?
A	There are several proposals that are temporary measures for the increase of paid up capital which have worked out for some people. The details of these proposals are sensitive and should be discussed on a more personal basis. You can contact us for a preliminary discussion at +603-78044684 or +6016-2629339.
23 Q	How long is the Professional EP valid for (a) under a private limited company and (b) a representative office?
A	Standard 2 years for both. The EP under the private limited company shall be extendable for an unlimited time period provided it satisfies all the immigration criterias. The work permit for the representative office is normally extendable for another 3 year up to a maximum of 5 years without question but after the fifth year, you will have to justify why you have already set a local private company up after 5 long years of market research and development. Extensions of another 2 years are possible selectively.
24 Q	What are the charges for a EP?
A	The average service fee exclusive of government levies is between RM3,500 to RM5,000 depending on nationality, applicant's qualification and complexity of each individual case.
25 Q	What do you mean by depending on nationality, applicant's qualification and complexity of case?
A	A straight forward genuine case complying with all the immigration criterion with all relevant documents intact will be relatively easier than a conjured up post for an applicant not really qualified for the job but wants to get a long term work permit. There are about 10 nationalities that are blacklisted and these nationalities will have to pay the higher fee as there is double scrutiny from different government departments (not just immigration) and so double the work . So the scale for the straight forward genuine case starts at RM3,500 and the not so genuine and blacklisted cases RM5,000 upwards.

26 Q	What is the cost of setting up or buying a company?
A	A shelf company cost between RM2,200 and RM2,500 depending on how good the name sounds but is up to each individual company secretarial firm.
27 Q	What are the cost implications of setting up your own business?
A	Whether or not you have business or income, the annual statutory maintenance costs for accounts, audit, tax and filing with the Companies Commission would be at least RM1,500 a year depending on how active your company has been.
28 Q	What if at the end of the day we decide to close the company if there is no business? Can we do that and what is the cost?
A	Yes, you can de-register the company if the company does not have any debts to any third party. If there are debts, you will have to liquidate. The difference between liquidation and de-registering, other than having (or not having) debts to third party is the cost and time. The cost for de-registering is around RM1,200 but the cost for receivership and liquidation will start at RM4,000 onwards depending on how messy the company is.