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Setting up Business in Malaysia 말레이시아 주식회사 설립 가이드

개관

말레이시아 주식회사 설립 가이드/기업법 개정안(2015) 주요 변경사항

말레이시아에서 한국투자자로서 설립이 가능한 회사의 형태로는 지사(Branch Office), 유한주식회사("Sdn Bhd"), 연락사무소(Representative Office) 등이 있습니다. 그 중에서도 유한주식회사("Sdn Bhd")는 가장 일반적인 진출 형태입니다. 이번 7월호 뉴스레터에서는 말레이시아 회사법에 따른 유한주식회사의 설립요건, 관련 규제사항, 최소자본금요건, 지분구조 등에 대한 유익한 내용을 전해 드립니다.

더불어 2016 년 4월 28일 상원을 통과하여 2016년 말에 발효될 것으로 예정된 기업법 개정안(2015)에 따라 관련 개정안의 주요 변경사항을 요약, 제공함으로서 한국 투자자분들의 이해를 돕고자 합니다.

막레이시	아 유한주식회/	사 설립 가이드
	~	1 2 8 1 1 -

1	개인회사의 형태	주식자본을 토대로 하는 말레이시아 회사는 '개인주식회사' (Private Limited Companies; Sendirian Berhad: Sdn. Bhd.로 회사명에 포함) 혹은 '주식회사'(Berhad: Bhd. 로 회사명에 포함)의 형태로 회사를 설립할 수 있다.
2	공식 회사주소	말레이시아 회사는 반드시 회사가 받아야 할 통지서류를 송달받을 수 있는 주소를 가진 적절한 공식 회사주소를 가지고 있어야 한다. 전문 Company Secretary 사무소를 이용할 경우 해당 말레이시아 회사의 공식 주소는 Company Secretary 사무소의 주소로 대체될 수 있다.
3	등재이사	최소 2 인의 현지 거주자 자격을 갖춘 거주자 이사 등재가 요구되고 있으며, 현지 거주자 이사는 해당자가 주주인지 아닌지에 관계없이 등재될 수 있다.
4	Company Secretary	말레이시아 회사법(1965 년 제정)에 따라 말레이시아 회사는 최소 1 인의 자격을 갖춘 'Company Secretary'를 두도록 규정되어 있다.
5	납입자본금	회사 설립에는 각각 최소 보통주 MYR 1 이상씩 자본금에 기여한 2 인 이상의 출자자자의 존재가 요구된다.
6	자본등록수수료	법인 설립 건당 아래 요율에 따라 자본등록수수료가 부과되고 있다.

Authorised Share Capital (RM) 수권자본금 규모(RM)	Fees (RM) 수수료(RM)
Up to 400,000	1,000
400,001 - 500,000	3,000
500,001 - 1,000,000	5,000
1,000,001 - 5,000,000	8,000
5,000,001 - 10,000,000	10,000
10,000,001 - 25,000,000	20,000
25,000,001 - 50,000,000	40,000
50,000,001 - 100,000,000	50,000
100,000,001 and above	70,000

회사는 수권자본금을 초과하지 않는 규모 내에서 주식 발행이 가능하나, 실무적으로 주식은 보통주 액면가인 1RM 이하의 가격으로 발행될 수 있으며, 추후 잔액 청구가 가능하다.

7	주주	회사 설립에는 각각 최소 MYR1 이상씩 자본금에 기여한 2 인 이상의 출자자자의 존재가 요구되나, 만일 법인이 주주로 참여할 경우 해당 법인 1 인으로도 설립이 가능하다. 모회사 자본 100% 자회사 설립이 목적일 경우 해당 주식은 회사 설립이후 송금될 수 있다. 또 말레이시아 회사법에 따라 일반적으로 현지거주자 주주에 대한 요건은 없으나, 다음 행에 설명된 규제부문에서는 특정 라이센스 및 허가가 요구되고 있다.
8	외국자본규제 및 현지자본구조 요건	 2003 년 6월 17일부터 100% 외국자본으로 설립된 회사 또한 제조업 투자가 가능하도록 허용하고 있다. 2009 년부터 교육, 의료, 여행업, 통신, IT 등의 특정 서비스업 자유화를 통해 100% 외국자본 회사의 투자를 허용하고 있다. 이슬람금융, 투자은행, 보험업 및 이슬람 보험(타카풀;Takaful)부문에는 최대외국자본에 대한 규제가 있는데, 2009 년 발의에 따라 2014 년 6월 9일부터는 70%까지의 외국자본 투자가 허용되고 있다. 다만 투자신탁운용업에는 100% 외국자본소유구조의 투자가 허용되고 있다. 에너지자원, 수도, 통신업 및 항만 등의 국가전략사업부문에는 부미푸트라(Bumiputra; 말레이시아 원주민)자본이 요구될 수 있다. 도/소매 및 무역업은 관련 외국자본 규제 가이드라인(Foreign Participation in the Distributive Trade Services)에 따라 최소자본금을 RM10 만- RM25 만까지 다양하게 규정하고 있으며, 30% - 70% 에 이르는 최저현지자본에 대한 요건이 존재한다. 석유 및 천연가스 부문의 서비스 공급자들에게는 Petronas 라이센스 취득이 요구되고 있으며, 기본적으로 100,000RM 의 최저자본 요건, 세부 서비스 부문에 따라 30%, 51% 혹은 100%에 이르는 최저현지자본 요건을 만족시켜야 한다.
9	취업비자 신청 및 발급을 위한 최저자본금요건	외국인 고용 및 취업비자 발급을 위한 최저요구자본금 규모는 다음과 같다. 100% 현지소유기업 - RM250,000 이상 현지+외국자본 합작기업 - RM350,000 이상 100% 외국인 소유기업 - RM 500,000 이상

10	말레이시아 회사 설립 단계 및 소요기간	말레이시아 회사 설립을 위해서는 일반적으로 다음 - 승인된 회사명 - 사업의 내용 - 등재이사 / 주주의 이름, 최신 거주지 주소 직급, 각 주주의 소유지분. Note. (다만 주주가 회사(법인)일 경우 공증처리된 법인설발급하는 회사소개서 및 위임장, 그리고 corporate notice 중 적용 가능한 서류를 제출해야 한다.) (현재 말레이시아 법인의 설립은 모든 서류가 적절 영업일 이내로 그 절차를 완료할 수 있다.)	e, 공증처리된 여권사본, 국적 및 설립증서, ROC 또는 에서 e representative certificate 와
11	현지 계좌 개설	말레이시아 회사는 말레이시아 중앙은행에서 정한 있고 계좌 개설에 소요되는 시간은 이용하는 은형 2개월으로 다양하다.	
12	연차주주총회 ("AGM")	말레이시아 회사는 연간감사보고서 개시를 위해 연차주주총회(AGM)를 개최해야 한다. 주주총회일 초과할 수 없으며, 연간감사보고서는 연차주주총회 이내에 ROC 로 제출되어야 하며, 주주의 승인이 요임시주주총회(EGM)를 개최할 수 있다.	자는 회계연도말 이후 6 개월을 회를 개최한 날로부터 1 개월
13	법인세율	말레이시아 회사는 회계연도 마감 이후 7 개월 이내에 말레이시아 국세청(IRB)에 법인세 신고 및 납부를 할 의무가 있다. 말레이시아 회사에 적용되는 법인세율은 24% (2016 회계연도 기준)로, 납입자본금 규모가 2.5mil RM 을 초과하지 않는 중소기업에는 아래의 법인세율이 적용되고 있다.	
		최초 RM500,000 RM500,000 이상	19% 24%
14	투자수익 / 이익의 송금	투자에 대한 수익배분 형태로서의 배당은 회사의 있으며, 배당지급액은 주주의 국적에 상관 없이 주 세액면제대상으로 취급되고 있다.	

2015 기업법 개정안(2015)의 주요 변경사항

기업법 개정안(2015)이 말레이시아 하원(4월 4일)과 상원(4월 28일)을 통과하였으며, 2016년 말에 발효될 것으로 예상됩니다. 본 개정안은 말레이시아 內 사업의 진행을 용이하게 함과 동시에 기업지배구조를 강화하는 목적을 가지고 있습니다.,

다만 해당 내용은 말레이시아 內 이미 법인을 설립하였거나 설립을 진행중인 한국 투자자분들의 이해를 돕기위해 제공되며, 요약된 내용은 완전한 내용이 아님을 알려드립니다.

기업법 개정에 따른 주요 변경사항			
		Private Company(개인회사)	Public Company(상장회사)
1	1 최소 등재이사 인원	현행법 최소 2 인의 현지 거주자 자격을 갖춘 거주자 이사 등재가 요구되고 있다.	상장회사는 최소 2 명의 이사를 등재 해야 한다.
		<u>개정법</u> 회사는 최소 1 인의 현지 거주자 자격을 갖춘자에 의해 설립 될 수 있으며, 해당인은 sole director(1 인 이사)로 등재될 수 있다.	
2	연차주주총회(AGM)	현행법 말레이시아 회사는 연간감사보고서의 개시를 위해 1 년에 1 회 연차주주총회(AGM)를 개최해야 한다. 주주총회일자는 회계연도말 이후 6 개월을 초과할 수	상장회사는 연차주주총회 개최가 요구된다.
	개정법 개인회사의 경우 더이상 연차주주총회가 요구되지 않는다.		
		✓ 연차주주총회 폐지에 따라, 주주들의 회계감사 진행 기간에 대한 가이드라인이 배포 될 예정이다.	

		 ✓ 주주의 특정 이의제기가 없을 시, 감사의 자동연임 제도가 적용된다. ✓ 개인회사의 경우 주로 결의문의 형태를 통해 기업 의사결정이 진행된다.
3	무액면 제도	현행법 회사 설립에는 각각 최소 보통주 MYR1 이상씩 자본금에 기여한 2 인 이상의 출자자의 존재가 요구된다.
		 개정법 주식 발행시 액면가 제한이 없다. 대가에 알맞은 가격에 주식이 발행 된다. 주식액면초과액계정, 자본상환적립, 수권자본개념은 더이상 적용되지 않는다. 주식액면초과액계정 개정법 준수를 위한 24 개월의 과도기간이 주어진다.
4	("M&A") 회사정관 및 부속정관	<u>현행법</u> 회사 정관 및 부속 정관은 IRB 의 공식 인지가 필요하며, RM100 이 부과되고 있다.
		<u>개정법</u> 회사에게는 더이상 정관이 요구되지 않는다. 하지만, 회사가 자사의 특정 조항의 변경을 원하는 경우, 헌법(회사법)에 따른 기존 정관을 따르지 않을 수 있으며, 기존의 회사들의 정관은 개정법에 따라 적용될 것이다.
5	상환능력 평가 제도 도입	<u>현행법</u> 해당 조항 없음
		개정법 다양한 상황에 적용될 수 있는 보다 세분화 된 상환능력 평가(Solvency test)가 마련된다. 또한, 이사들은 회사가 아래 해당되는 내용에 착수할 때, 상환능력이 있는지 확인하기 위해 공식 문서(statutory declaration)에 서명을 해야 한다.
		 자본금의 감자 우선주의 환매 재정지원의 제공

		• 주식 환매 상환능력 평가(Solvency test)에 위반되는 경우, 해당 이사들의 개인적 책임 및 형사상 제재가 가해질 수 있다.
6	배당 제도	현행법 투자에 대한 수익배분 형태로서의 배당은 회사의 유보이익으로부터 지급될 수 있다.
		 개정법 이윤에 한하여 분배가 이루어 질 수 있다. 배당은 회사가 지불능력이 있을 경우에만 가능하다. 즉, 배당이 이루어진 직 후 12 개월 이내에 회사가 채무 이행이 가능한 상태에서 진행될 수 있다. 승인이 이루어 졌으나 배당이 진행되기 전, 회사가 지불할 능력을 잃게 되면, 이사들은 배당 중단을 위한 필수 절차를 진행해야 한다. 회사는 주주로 부터 배당금을 되찾을 수 있다.

면책조항

※ 해당 한국어 버전은 한국인 담당자의 이해를 돕기위해 대략적인 번역을 한 정보이므로 오류나 누락된 부분에 대하여 책임을 지지 않습니다. 명확한 내용과 조건 등은 반드시 영어원문을 확인하시길 바랍니다.

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Setting up Business in Malaysia

There are types of business organization which include the branch of a foreign company, limited company, representative office, etc available for Korean investors. Among, the private limited company is the most popular form of organisation. Herewith, we list down the requirements and restrictions for setting up a private limited company in Malaysia, the minimum share capital requirement, equity condition, etc.

Setting Up of a Mala	ysian Company Limited by Shares		
Name of a Malaysian Company	A Malaysian Company having a share cap private limited company (identified through Berhad" or "Sdn. Bhd." appearing together public limited company (identified through appearing together with the company's new through the company through th	gh the words "Sendirian er with the company's name) o h the word "Berhad" or "Bhd"	
2 Registered Office	The Malaysian Company must have a Recommunications and notices may be address (If the Company Secretary is a profession Company Secretary is usually the address Malaysian Company.)	ressed to. nal firm, the address of the	
3 Directors	his principal or only place of residence wi	A minimum of two directors who must be natural persons and each has his principal or only place of residence within Malaysia. The directors of a Malaysian Company may be the same or different persons from the shareholders.	
4 Resident Secretary	The Malaysian Company must have at least one qualified Secretary (as defined under the Malaysian Companies Act, 1965) who must be a natural person.		
Paid Up Share Capital	The minimum paid-up and issued capital for a Malaysian Company is RM2.00 comprising at least two ordinary shares of RM1.00 each.		
6 Share Capital Duty		Each application for the incorporation of a company shall be accompanied with share capital duty payment as per the following schedule:	
	Authorised Share Capital (RM)	Fees (RM)	
	Up to 400,000	1,000	
	400,001 - 500,000	3,000	
	500,001 - 1,000,000	5,000	
	1,000,001 - 5,000,000	8,000	
	5,000,001 - 10,000,000	10,000	
	10,000,001 - 25,000,000 25,000,001 - 50,000,000	20,000	
	50,000,001 - 100,000,000	50,000	
	100,000,001 and above	70,000	
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	The issued share capital can be at any an	nount not exceeding the	
	authorised share capital.	and the same same same same same	

The practice, though, the share can be issued at full nominal value of RM1 or a part of it with the balance to be called upon at later stages. A minimum of two individual subscribers is required. If the shareholder is a corporation, the company may have only one shareholder. If the intention is to have a wholly owned subsidiary, these shares may be transferred to a corporate entity at a later date. There is no requirement for a Malaysian Company to have resident shareholders unless specified in certain permits or licenses as further elaborated below. With effect from 17 June 2003, 100% foreign participation is allowed for manufacturing sector. There were liberalisation initiatives in several services sub-sectors (e.g. education, healthcare, tourism, telecommunication, IT related etc), allowing for up to 100% foreign participation in these sectors since 2009. The limit on foreign equity ownership of Islamic banks, investment banks, insurance companies and takaful operators is 70% from 2009 onward. With effect from 9 June 2014, 100% foreign equity ownership is allowed for unit trust management companies. Bumiputra equity conditions may be imposed in the strategic sectors such as energy, water, telecommunications, and ports. In relation to the wholesale, retail and trade business, based on the guidelines on foreign participation in the distributive trade services Malaysia is used. The minimum share capital requirement is ranging from RM1 million to RM25 million and there is a need for bumiputra participation from 30% to 70%. For service providers operating in the oil and gas industry that require a Petronas license, they are required to have paid up share capital of not less than RM 100,000 and minimum bumiputera shareholding participation of either 30%, 51% or 100% depending on the type of services. The minimum share capital for a company to employ an expatriate under a work permit is as follows: 100% local company owned – RM250,000 Local + foreign owned – RM350,000 100% foreign owned – RM500,000 and			
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	10	and Time Required for Incorporating a Malaysian	 The name of the proposed company. Type of business activity. The names, latest residential address, certified passport copy, nationality and business occupation of the directors and shareholders of the proposed company and for shareholders, the
(If the shareholder is a corporation, certified copies of the			(If the shareholder is a corporation, certified copies of the

		Certificate of Incorporation, company profile from the Registrar of Companies ("ROC") and Power of Attorney or a corporate representative certificate or notice (whichever is applicable) is required.)
		(The incorporation of a Malaysian Company would take 2-3 working days if all the documents for submission to the ROC are complete and in order.)
11	Opening of Bank Accounts	The Malaysian Company may open bank accounts with any banks licensed with the Central Bank of Malaysia. (The timeline for opening of a bank account depends on the bank concerned; may be as fast as two weeks or up to two months.)
12	Annual General Meeting ("AGM")	A Malaysian Company is required to convene its AGM once a year to table its audited accounts made up to a date not more than six months before the date of the AGM. The audited accounts is required to be lodged with the ROC within a month from the date of the AGM. Under certain circumstances, approval from shareholders can be obtained by convening an Extraordinary General Meeting ("EGM").
13	Tax Rate For a Malaysian Company	A Malaysian company required to submit its tax return to the Malaysian Inland Revenue Board within seven months after its financial year end. A Malaysian Company is subject to corporate tax rate of 24%. In the case of a SME company where the paid up share capital is not more than RM2.5m, the corporate tax rate is as follows: First RM500,000 19% In excess of RM500,000 24%
14	Return on Investment / Repatriation of Profits	Return of investment into a company is in the form of dividend. Dividend can be distributed out of the retained earnings of the company. Dividend payment is exempt from tax in the hand of the shareholders, both local and foreign shareholders.

Key Changes Under the Companies Bill 2015

The Companies Bill 2015 ("the Bill") was passed at Dewan Rakyat on 4 April 2016 and Dewan Negara on 28 April 2016. It is anticipated that it will come into force by end of 2016. The Bill aims at easing the undertaking of business in Malaysia and strengthening the corporate governance.

In this connection, we are pleased to provide you with the summary of the key changes under the Bill, the summary is non exhaustive. This update would certainly be helpful to the Korean Companies in better understanding the changes made as many Korean investors are already having companies or in the midst of setting up their companies in Malaysia.

Key Changes Under the Companies Bill 2015			
		Private Company	Public Company
1 Minimum Numbe of Directors	Minimum Number of Directors	Existing Acts A minimum of two directors who must be natural persons and each has his principal or only place of residence within Malaysia.	Public company must have a least two directors.
		Revised Acts A company can be incorporated by a single member and that single member can also be the sole director.	
Annual General Meeting ("AGM")		Existing Acts A private company is required to convene its AGM once a year to table its audited accounts made up to a date not more than six months before the date of the AGM.	Public companies are still required to hold AGM every calendar year.
		Revised Acts Private companies are no longer required to hold AGM.	
		✓ Following the abolishment of AGM, there will be a timeline to circulate the audited accounts among the shareholders.	
		✓ There is also a mechanism for the automatic reappointment of auditors, unless the shareholders decide otherwise.	

		✓ The main method for private companies to make decision will be by way of written resolutions.
3	No-Par Value Regime	Existing Acts The minimum paid-up and issued capital for a Malaysian Company is RM2.00 comprising at least two ordinary shares of RM1.00 each.
		 Revised Acts Shares to be issued are without par value. Shares will be issued at a price. Share premium account, capital redemption reserves ("CRR") and the concept of authorised capital will no longer be applicable. Transitional period of 24 months will be given to companies to utilise the amount standing in credit in the company's share premium account.
4	Memorandum and Articles of Association ("M&A")	Existing Acts An original of the Memorandum and Article of association shall each be stamped at RM100.00. Stamps are affixed at the Inland Revenue Board's stamp office.
		Revised Acts Companies will no longer be required to have a M&A. However, if a company wishes to tailor certain provisions for itself, it can then adopt a Constitution. Existing companies will have their respective M&A be deemed to be the new Constitution.
5	Introduction of Solvency Statements	Existing Acts No such provision.
		Revised Acts There will be different varieties of new 'solvency test' that will be applied for different situations. Directors must sign on the equivalent of a statutory declaration to verify that the company is solvent when the company undertakes the following:
		 Reduction of capital Redemption of preference shares Provision of financial assistance Share buyback
		Where there is a breach of this solvency test, the directors will be personally liable and may face criminal sanctions.
6	Distribution of Dividends	Existing Acts Return of investment into a company is in the form of dividend. Dividend can be distributed out of profits of the company.
		 Revised Acts Dividends may only be distributed out of profits. Distribution can only be made when the company is solvent i.e. the company is able to pay debts as and when they fall due within 12 months immediately after the distribution is made.

•	If after authorization but before distribution is made, the
	company ceases to be solvent, the directors must take
	necessary steps to prevent the distribution.

• Company may recover distribution paid from shareholder

Disclaime

st If there is any inconsistency or conflict between the Korean and English versions, the English version shall prevail for all purposes.

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