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Luther Malaysia - Bulletin May 2026

Investor, Company & Market Entry Updates

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Introduction

Welcome to the May 2026 edition of the Luther Malaysia Bulletin.

As readers of our regular Newsflashes are aware, we publish standalone newsletters whenever there is a significant legal, tax, regulatory or immigration development we wish to bring to your attention quickly. In contrast, the Bulletin serves as a digest of the developments over a certain period—things-to-note, upcoming changes, ongoing developments, and so on. This issue is for developments up to April 2026.

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Content

■ FOCUS

Immigration: Revision of Employment Pass Policy Effective 1 June 2026

On 14 January 2026, the Ministry of Home Affairs ("**MOHA**") announced changes to the policy for the Employment Pass ("**EP**") applications. These changes will take effect from 1 June 2026 and apply to all new EP applications and renewals.

In summary, the main changes are as follows:

- The minimum salary for each category of EP will change;
- The requirement for a cooling-off period for a Category III EP will be abolished;
- Employers must have a succession plan for Categories II and III, i.e., a plan for an expatriate to be replaced by Malaysian nationals;
- EP Category III holders will be able to apply for Dependant Passes ("**DPs**");
- An application for renewal involving a category change (e.g. a person is switching from EP Category II to Category I) will be treated as a new application; and
- The introduction of duration "reset" rules for applications after 1 June 2026.

Overall, the changes are being implemented to align with the political objectives of reducing reliance on foreign labour and prioritising the employment of qualified Malaysian talent, as well as promoting knowledge transfer, skills, and expertise development. They are not intended to restrict the entry of expatriates, but to ensure that their employment genuinely complements the development of local capabilities.

At the moment, these changes have only been outlined in broad strokes, and there is little detailed guidance. Guidelines may be published closer to the implementation date.

I. Salary thresholds

There are three categories of EP, each with their own minimum salary thresholds. The comparison table below shows the current monthly salary range for each category and the new range that will apply from 1 June 2026:

EP Category	Current Monthly Salary Range (MYR)	Revised Monthly Salary Range
I	MYR 10,000 and above	MYR 20,000 and above
II	MYR 5,000 – MYR 9,999	MYR 10,000 – MYR 19,999
III	MYR 3,000 – MYR 4,999 if MOHA grants exception	MYR 5,000 – MYR 9,999 (MYR 7,000–MYR 9,999 for companies in the manufacturing-related services sector)

There are two key points: The first is that currently, companies are able to apply for a Category III EP for expatriates with a monthly salary between MYR 3,000 and MYR 4,999, provided that they obtain MOHA's approval to be exempted from the requirement for the salary to be at least MYR 5,000. After the

new rules take effect, a salary below MYR 5,000 will no longer be possible – the minimum for a Category III EP is MYR 5,000 with no possibility of an exception. It should also be noted that those in the manufacturing-related services sector are subject to a higher range of MYR 7,000 to MYR 9,999.

Secondly, the minimum salary thresholds for Categories I and II have been increased, to MYR 20,000 and MYR 10,000, respectively.

II. Removal of cooling-off periods

Under the current rules, Employment Pass Category III holders who had renewed their pass twice or for three years in a row had to leave the country and serve a three-month cooling-off period before they could apply for an Employment Pass Category III again, with limited exceptions.

Under the new EP policy, this cooling-off period requirement will be removed. EP Category III holders can apply again under the same category without having to wait, provided that they meet all the other requirements.

III. Succession plan

A "succession plan" will become relevant for EP Categories II and III. Also known as a replacement plan, it is essentially a structured and clearly defined plan to prepare local employees to replace expatriates within a specified employment period.

At the moment, there is no official guidance on the content and format of the plan, though further details may be published closer to the implementation date.

In general, companies should identify roles that can be transferred to local employees and set out this process in the replacement plan. This should include an explanation of how the expatriate's role will be transferred to a local employee, for example through training, mentoring and knowledge transfer activities, alongside an indicative timeline for the handover. The succession plan may need to be presented to the Immigration Department during the EP application process or during the company interview session with immigration officers. Failure to implement these succession plans may affect future applications.

Should the company wish to extend an expatriate's employment beyond the period specified in the plan, the Immigration Department will review the request on a case-by-case basis.

IV. Dependants

EP Category III holders are presently unable to bring in their dependants under a DP. Moving forward, this will change, and DPs will be available for all three categories of EPs.

V. Change of EP category becomes new application

If an expatriate changes EP category (for example, from Category II to Category I), it will be treated as a new application, as opposed to a renewal. This will necessitate a new letter of approval from the Department of Labour (if it has expired), a MYFutureJobs advertisement (if the position is not exempt) and the shortening or cancellation of the existing EP before the new EP can be approved.

If the EP is renewed within the same category (for example, Category II to Category II), it will be treated as a renewal.

VI. EP duration and "reset" after 1 June 2026

Although the new policy provides for EP durations of up to 10 years (for Categories I and II) and up to 5 years (for Category III), in practice, approvals are highly unlikely to be granted for the full 10 or 5 years in a single approval. As is currently the case, EP approvals are typically issued for 12, 24, 36, 48 or 60 months, depending on the decision of the immigration officers.

For EPs that are renewed or applied for on or after 1 June 2026, the EP duration will "reset" upon approval. In other words, any previous years under an EP will not be taken into account when determining the EP duration for the first EP or renewal granted on or after 1 June 2026.

For subsequent applications after that first EP/renewal on or after 1 June 2026, the EP duration will then be calculated on an accumulative basis. For example:

- An expatriate applies for an EP under Category II on 2 June 2026. They renew again under Category II in June 2027 – at that point, they will have accumulated 1 year.
- If, at the June 2027 renewal, they change to Category I, this will be treated as a new EP application and the EP duration will reset to 0.

VII. What should employers do?

We recommend taking the following steps:

1. Companies should consider whether a succession plan is required, and if so, either prepare one or at least lay the groundwork by planning out their workforce over the next few years, and collecting documentation such as reports and assessments on the training, knowledge transfer and skills development of local employees.
2. Review all existing and proposed EP roles to ensure that the basic salary meets the minimum MYR 5,000 requirement (or MYR 7,000 for those in the Manufacturing Related Services sector);
3. Plan ahead for the “reset” of EP duration for EPs renewed or applied for after 1 June 2026, and understand how subsequent EPs will be counted on an accumulative basis;
4. Consider carefully whether a change of EP category (which will be treated as a new application) or a renewal within the same category is more appropriate for each expatriate, taking into the account the different requirements for a new application and a renewal;
5. Factor in the removal of the Category III cooling-off period, which may provide greater flexibility for workforce planning involving Category III expatriates, subject to compliance with the new salary and succession plan requirements.

If you have any questions or need clarification on any immigration matters, please feel free to contact us.

Immigration: Mandatory Pass Shortening and Exit Clearance Procedures for Expatriates in Malaysia

The Ministry of Home Affairs ("**MOHA**") and the Immigration Department of Malaysia have introduced stricter requirements for expatriates holding Employment Passes ("**EP**"), Professional Visit Passes ("**PVP**"), and Resident Pass – Talent ("**RPT**"). These changes make it compulsory for the pass to be shortened prior to permanent departure, and introduced an exit clearance process for expired pass holders. Depending on the type of the pass, this change took effect either on 18 or 20 November 2025 (see Part III below). All applications must be submitted via the company's designated online immigration accounts (ESD, eXpat ICT or XPATNOVA) or the individual's RP-T account, where applicable.

I. What This Means for Employers

Companies must ensure that an expatriate's EP or PVP is shortened before permanent departure from Malaysia. This requirement also applies to RP-T holders, who must submit the shortening request through their individual RP-T online accounts. Once the shortening request is approved through the relevant online immigration account, a Shorten Pass Slip will be generated; the expatriate should keep this slip and present it at departure if requested.

In cases where no renewal or pass shortening application was submitted before expiry, companies and RP-T holders are now required to complete an Exit Clearance within 30 days of the pass expiry date via the relevant online immigration account.

If these steps are not taken, authorities may restrict access to the online immigration account, block the submission or payment of new applications, or suspend the account until compliance is met.

II. Effects to Dependant Pass Holders

When a pass is shortened — particularly for EP and RP-T holders — any linked Dependant Passes ("**DPs**") or Long-Term - Social Visit Passes ("**LT-SVPs**") will also be shortened automatically.

Similarly, any Exit Clearance submission made for the relevant pass holder will also extend to their dependants.

III. Process and Timelines

The requirement for Exit Clearance came into effect on 18 November 2026 for passes approved for under the ESD and RP-T accounts, and on 20 November 2025 for passes approved for under the eXpat ICT or XPATNOVA accounts. This Exit Clearance is applicable where no prior renewal or shortening of the pass has been made and must be submitted within 30 days from the pass's expiry date.

Pass shortening must be initiated through the company's online immigration account (ESD, eXpat ICT or XPATNOVA) and the individual's RP-T account before the expatriate's permanent departure from Malaysia.

The processing typically takes around 1 – 3 working days if the application is submitted while the expatriate is still in Malaysia (shortening of pass with passport), and approximately 3 – 5 working days if the expatriate has already departed (shortening of pass without passport).

According to ESD officers, the Exit Clearance functions as a declaration rather than an application. Therefore, upon submitting the Exit Clearance declaration, no further action is required by the company.

IV. Practical Scenarios

If an expatriate's pass expired and they left Malaysia before 18/20 November 2025, no action should be required under the new enforcement framework. Despite that, as the exit clearance procedure is still new, its applicability is uncertain, and therefore, the system may still request that the company submit an Exit Clearance declaration for expatriates who left Malaysia without cancelling their passes and whose passes have expired, even if those passes were approved before 18/20 November 2025. If a notification is sent to the company's online account requiring the submission of the Exit Clearance for such individuals, the company will need to comply.

In the event that an expatriate has already left Malaysia and the pass is still valid, the company will need to submit a pass shortening application without the expatriate's passport. This will necessitate a Police Report and Letter of Affidavit from the company in support of the application. This application without the passport will take 3 – 5 working days to process as stated in Part III above.

V. Consequences of Inaction

Failure to shorten passes before permanent departure or to submit Exit Clearance within 30 days from expiry (where required) can lead to portal restrictions, inability to submit or pay for new applications, and suspension of the relevant online immigration account until the non-compliance is remedied.

VI. Reporting to the Department of Labour

Companies are required to report the details of their expatriates to the Department of Labour ("**DOL**") once the relevant pass has been issued. This report can be submitted via the ePPAx online portal.

New hires must be reported within 14 days of the expatriate pass being issued.

Similarly, once a company is notified of an expatriate's resignation or termination, it must report this via the ePPAx portal within 30 days.

In cases where an expatriate terminates their employment or absconds from their place of work, the company must notify the DOL within 14 days from the date of their absence.

VII. What HR and Mobility Teams Should Do Now

- Reporting to the DOL on the hire of expatriate employees via the ePPAx portal within 14 days from issuance of pass.
- Monitor upcoming permanent departures and initiate pass shortening ahead of travel.
- For those expatriates whose passes have been shortened, retain the Shorten Pass Slips for compliance purposes.
- Track pass expiry dates and calendar the 30-day Exit Clearance deadline for those whose pass has not been shortened or renewed.
- Reporting to the DOL on the resignation/ termination of expatriate employees via the ePPAx portal within 30 days.
- Prepare supporting documents (e.g. Police Report and Letter of Affidavit) for cases where the expatriate has left Malaysia permanently, but their pass remains valid. Then, proceed with submitting the pass shortening without a passport via the online immigration account.

VIII. How We Can Help

We assist with status reviews of expatriates and their dependants, as well as the preparation and filing of pass renewals, pass shortening and exit clearance submissions across ESD, eXpat ICT, XPATNOVA and RP-T platforms. We can also assist with reporting on the hirings and resignation of expatriate employees with the DOL via the ePPAx portal.

Please contact us for tailored support to ensure smooth departures and continuous compliance.

Tax: Cross-Border Remote Work - New OECD Rules and Your PE Risk

I. Why taxable presence risks matter now

Tax authorities worldwide are increasingly seeking to tax overseas businesses by asserting they have a local taxable presence, known as a permanent establishment ("**PE**"). Opening a branch, or having a fixed office in another country are obvious scenarios that would generally result in a foreign company having to pay taxes in that jurisdiction. Many employers now allow staff to work remotely, including in cross-border situations (e.g., Singapore employers with employees living in Johor, Malaysia, who would otherwise commute on a daily or weekly basis). Employers may also favour work-from-home arrangements to save office space or place client-facing staff nearer to customers.

II. The Malaysian tax position

Under Malaysia's domestic tax law, income that is derived from or received in Malaysia is taxable. For businesses, this includes income that is attributable to a 'place of business' in Malaysia, which can include, as examples, a place of management or an office, a situation where there is a person in Malaysia who (**i.**) habitually concludes contracts or (**ii.**) habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification. While the tax authorities have issued guidance, they have not specifically addressed home office situations.

III. OECD Guidance on PE – past position

The language of the domestic law is largely similar to the suggested wording under the Organisation for Economic Co-operation and Development ("**OECD**")'s Commentaries on the Model Tax Convention on Income and on Capital dated 21 November 2017 ("**OECD Commentaries**"). Where an avoidance of double taxation agreement ("**DTA**") exists between Malaysia and the home country of the employer, it often follows the OECD Model. Consequently, taxpayers often use guidance from the OECD Commentaries to determine whether a home office would potentially result in a Malaysian

place of business or PE for them. Under the OECD Commentaries, a company first tests for a **Fixed PE**, which can arise where a business has:

- a specific location at its disposal (location test);
- which has a degree of permanence; and
- conducts business activity from that location.

If a Fixed PE is not present, there may still be risk of other PE types, including an **Agency PE,** e.g., if an employee has and habitually exercises authority to conclude contracts from home. For example, a CEO of a Singapore company regularly using esignature from a Malaysian home office poses a high Agency PE risk.

IV. The OECD's 2025 Update

On 19 November 2025, the OECD released an update ("**2025 Update**") to its Model Tax Convention. A key component of this update is a substantial change in the approach when determining PEs caused by cross-border workers by inserting a time-spent based threshold:

- In a first step, the employer has to determine whether the home or other place (for example, a holiday home) is used on a continuous basis (or only incidentally or intermittently).
- If so, the physical presence of the employee becomes relevant: Where a person is working from home or 'other place' less than 50% of their total working time over the course of any twelve-month period commencing or ending in the fiscal year, then generally, no PE should crystallise.
- Where time spent is over 50%, further factors have to be analysed, including whether the employer has a commercial interest in having the employee in-country.

Interestingly, Malaysia has reserved a position towards the OECD that they may bilaterally agree on any other percentage (without specifying whether they think it should be more or less than 50%). Other countries have not made similar reservations.

The change is only applicable for Fixed PE scenarios and does not mitigate the risks relating to Agency PE, or other types of PEs.

V. Tax compliance obligations for a PE

If a PE crystallises, the overseas company must register for corporate income tax and pay tax on the profit attributable to the PE (determined under transfer pricing principles according to domestic rules).

VI. What should businesses be doing now?

- Employers with home office or hybrid cross-border arrangements should reassess their risk under the updated OECD approach.
- If employees frequently work from other jurisdictions, the employer should set up processes to monitor location and time spent in view of the 50% threshold.
- Companies should also review related risks, such as employer tax or social security obligations, and whether employee presence triggers business registration or licensing requirements in overseas.

Quick Action Checklist for Remote Work

- Map where your crossborder employees work and how often (track 12-month periods).
- Assess whether any overseas home office/other place meets the 50% threshold.
- Evaluate whether you have a commercial interest in the employee being in that country.
- Identify roles with authority to conclude contracts (Agency PE risk).
- Evaluate if other compliance obligations e.g. registrations are triggered.

Company law: Updates to audit exemption criteria

In 2017, the Companies Commission of Malaysia ("**CCM**") issued a practice directive outlining the qualifying criteria for a private company to be exempt from the need to be audited annually. However, only a limited number of companies were eligible, as the qualifying criteria were narrow and fairly restrictive.

This changed at the end of 2024: To reduce the financial burden for micro and small private companies and to promote the ease of doing business while ensuring financial accountability, the CCM issued the Practice Directive 10/2024 ("**PD 10/2024**"). PD 10/2024 sets out new qualifying criteria for the audit exemption for private companies, which apply to financial periods commencing on or after 1 January 2025. CCM has also published a set of frequently asked questions ("**FAQ**") to provide further guidance.

I. The new criteria

In summary, a private company will now be exempt from audits if it meets **at least two** of the three criteria below:

1. Annual revenue: The annual revenue of the company during the current financial year and immediate past two financial years do not exceed the threshold values (explained below).
2. Total assets: The total assets of the company in the current statement of financial position and in the immediate past two financial years do not exceed the threshold values.
3. Number of employees: The number of employees at the end of the current financial year and in the immediate past two financial years do not exceed the threshold values.

The new criteria are implemented in three phases from 2025 to 2027, with increasing threshold values as shown below:

Phases		1	2	3
Financial year commences:		Anytime from 1 January 2025 to 31 December 2025	Anytime from 1 January 2026 to 31 December 2026	From 1 January 2027 onwards
Affected financial statements filing year		From 1 January 2026	From 1 January 2027	From 1 January 2028
Applicable threshold value	**Annual revenue**	MYR 1,000,000	MYR 2,000,000	MYR 3,000,000
	Total assets	MYR 1,000,000	MYR 2,000,000	MYR 3,000,000
	Number of employees	10	20	30

II. Exceptions

The new criteria apply to private companies only, and not to:

1. Public companies, including listed companies;
2. private companies that are subsidiaries of public companies;
3. foreign companies (i.e., entities incorporated overseas); and
4. private companies that have opted to lodge a certificate of exempt status under Section 260 of the Companies Act 2016.

Importantly, in late 2025, the FAQs were updated to clarify certain points, and among other things, they confirm that **newly incorporated non-dormant companies do not qualify for the audit exemption**, as they do not have the requisite financial records for the immediate past two years.

III. How this may affect you

If your company is exempt under the new audit exemption criteria, you can dispense with audits without needing to apply to the CCM.

Please note the following, however:

1. An exempt company must still prepare and file unaudited financial statements every year;
2. An audit must be performed if any of the three parties below sends a notice to the company by no later than one month before the end of the relevant financial year to ask for an audit:

a. Any member(s) eligible to vote and holding in aggregate not less than 5% of the total number of the issued shares of the company or any class of those shares;

b. Not less than 5% of the total number of members eligible to vote in a general meeting of the company; or

c. The CCM.

Quick Action Checklist for Audit Exemption

- Gather the following **for the current and prior two** financial years:
  - **revenue;**
  - **total assets; and**
  - **year-end headcount;**

  to determine whether you are eligible for the exemption based on the threshold values above.
- **If your company is exempted, discuss the implications with your accounting service provider or your auditor.**

Regulatory and compliance: New AI governance framework expected by June 2026

Malaysia continues to position itself as a regional leader in artificial intelligence (AI) and is working towards its vision of "AI Nation status" by 2030. Following the presentation of the draft National AI Action Plan 2026–2030 ("**NAIAP 2030**") by the National AI Office ("**NAIO**") late last year, the government is now taking steps to codify ethical principles into statutory laws and drive education and investment in the sector.

I. AI Nation Status

The NAIO, established in December 2024 as Malaysia's central authority for AI governance and innovation, serves as the national counterpart to the European AI Office. As a continuation of Malaysia's Artificial Intelligence Roadmap 2021–2025, the NAIO published the draft NAIAP 2030 in 2025. The NAIAP 2030 outlines concrete measures the government aims to implement by the end of 2027 to achieve its goal of "AI Nation" status by 2030 as envisioned in the Thirteenth Malaysia Plan 2026-2030. These include initiatives to attract global AI talent, the identification and launch of "AI Growth Zones," and the integration of AI into Malaysia's healthcare and public service systems.

Malaysia's 2026 Budget aligns with this vision through substantial infrastructure investments and targeted fiscal measures. The government will invest MYR 2 billion to establish a sovereign AI cloud, a secure, government-controlled digital infrastructure that retains national data and computing power within Malaysia's borders. The NAIO will receive nearly MYR 20 million to further develop an efficient AI ecosystem. In parallel, major investments by Microsoft (USD 2.2 billion), Google (USD 2 billion), and AWS are accelerating the development of new data centres.

Beyond infrastructure investments, the Malaysian government is also focusing on workforce development and civil service training in the field of AI through programmes with Microsoft and Google. A MYR 5.9 billion crossministerial fund has been allocated to support AI research, development, commercialisation, and innovation. To further build expertise, Malaysia's 2026 Budget proposes that AI training certified by NAIO shall qualify for an additional tax deduction of 50 percent for SMEs on expenditure related to AI and cyber security training.

II. New AI Governance Framework

The key development to watch in 2026 is the expected presentation of an AI governance framework, including a dedicated AI Act, by June 2026. Currently, AI regulation is based on the voluntary AI Governance and Ethics ("**AIGE**") launched in 2024 and non-AI-specific laws such as data privacy and cyber security laws. Most recently, the Malaysian Communications and Multimedia Commission ("**MCMC**")

reaffirmed, in relation to X (formerly Twitter), that misuse of AI tools to generate indecent, offensive or otherwise harmful content is already an offence under existing laws, including the Communications and Multimedia Act 1998 and the Online Safety Act 2025 (which came into effect on 1 January 2026), underscoring that AI-related harms are being addressed within the current legal framework pending a dedicated AI law.

In 2025, first steps were taken to put a more AI-specific code of laws into place. The Personal Data Protection Commissioner issued a public consultation paper (No. 3/2025) on automated decision-making and profiling to develop a respective guideline. It was further announced that the MCMC is drafting subsidiary instruments under the Online Safety Act 2025 to address the labelling of AI-generated content.

The envisioned AI governance framework will include a dedicated AI Act. We expect that the AI Act will be influenced by the EU Artificial Intelligence Act (Regulation (EU) 2024/1689, entered into force on 1 August 2024) as was seen with the amendment of the Malaysian Personal Data Protection Act in 2024. The Digital Minister has already announced that the AI Act will adopt a risk-based regulatory model. It will cover areas such as AI-related harm, incident reporting and ethical principles to guide safe deployment across all sectors.

The AI Act will be complemented with an enhanced Cyber Security Act 2024, Personal Data Protection (Amendment) Act 2024, and Online Safety Act 2025, as well as a new Cybercrime Bill.

For international companies operating in Malaysia, these reforms will align Malaysia's regulatory framework with global standards and are expected to reduce compliance friction for cross border data flows and provide greater legal certainty for AI and data driven operations. In addition, these reforms are likely to create attractive opportunities for international businesses in areas such as digital and cloud infrastructure (including data centres), AI compliance and assurance services, and partnerships for AI related skills development, training, and R&D.

We will publish an in-depth analysis of the AI governance framework once it has been presented to the public.

Insolvency: The Cross-Border Insolvency Act 2026 on parallel proceedings

Cross-border insolvency frequently arises where a debtor's affairs extend across multiple jurisdictions. Parallel proceedings against the same debtor in different fora present substantial legal and procedural complexities. The Cross-Border Insolvency Act 2026 of Malaysia (the **"Act**") addresses these challenges by: (**i.**) facilitating direct access to Malaysian courts by foreign representatives and foreign creditors; (**ii.**) enabling recognition of foreign insolvency proceedings and granting relief ancillary thereto; (**iii.**) empowering cooperation with foreign courts and foreign representatives; and (**iv.**) coordinating concurrent proceedings and related matters. The Act has been passed by the Malaysian Parliament and received Royal Assent and has been published on 30 January 2026. However, it has not yet come into force. Modelled on the United Nations Commission on International Trade Law ("**UNCITRAL**") Model Law on Cross-Border Insolvency, it establishes a framework that aligns Malaysian practice with international standards. In this article, we are outlining key features.

I. Scope of Application

The Act applies exclusively to corporate debtors, whether incorporated or formed in or outside Malaysia. It does not extend to the insolvency of individuals; persons carrying on a registered business or licensed business under specific statutes; limited liability partnerships; foreign limited liability partnerships; and entities specified in the Act (including financial institutions and other regulated entities).

II. Direct Access to Malaysian Courts

The Act grants foreign representatives a right of direct application to the Malaysian courts for recognition of the foreign insolvency proceedings in which they have been appointed. It further permits foreign representatives to apply to commence proceedings under Malaysian insolvency law, subject to applicable conditions, or, upon recognition of foreign proceedings, to participate in ongoing domestic insolvency proceedings against the debtor. Foreign creditors will, in general, enjoy parity of rights with domestic creditors with respect to the commencement of and participation in proceedings under Malaysian insolvency law. For example, a foreign creditor's claim will not rank lower than that of general unsecured creditors solely because the creditor is foreign. Where Malaysian insolvency law requires notification to domestic creditors, the same notification must be provided to all known foreign creditors without Malaysian addresses.

III. Recognition of Foreign Proceedings

A foreign representative may apply to the Malaysian courts for recognition of foreign proceedings, supported by the requisite documentation and evidence of the existence of the foreign proceeding and the authority of the applicant. The Act incorporates several facilitative mechanisms, including: (**i.**) certain presumptions such as the presumption of authenticity for submitted documents; and (**ii.**) a requirement that the court deals with recognition applications at the earliest possible time.

Upon recognition, a foreign representative may, subject to compliance with applicable laws, intervene in any proceedings involving the debtor. Pending determination of the recognition application, the court may grant interim relief to urgently protect the debtor's property or the interests of creditors. This may include: (**i.**) a stay of execution; (**ii.**) entrusting the administration of assets to the foreign representative or a Malaysian insolvency office holder; (**iii.**) suspension of rights to transfer, encumber, or dispose of the debtor's property; and (**iv.**) the taking of evidence or the delivery or production of information concerning the debtor's property, affairs, rights, obligations, or liabilities.

The foreign proceedings may be recognised as either foreign main proceedings (where the debtor has its centre of main interests in the foreign state) or a foreign non-main proceedings (where the debtor has an establishment in the foreign state). Recognition as a foreign main proceeding triggers automatic relief comprising: (**i.**) a stay of proceedings; (**ii.**) a stay of execution; and (**iii.**) the suspension of the transfer of the debtor's assets. These automatic effects are subject to carve-outs to avoid prejudicing rights of parties under certain Malaysian legal provisions, including, inter alia, the rights of secured creditors and rights of persons to repossess goods under a hire-purchase agreement. Where the foreign proceeding is recognised as a foreign non-main proceeding, there is no automatic moratorium; however, the foreign representative may apply for orders necessary to protect the debtor's property or the interests of creditors. In either case, the courts may also grant additional discretionary relief.

IV. Cooperation with Foreign Courts and Foreign Representatives

To avoid conflicting or inconsistent orders between Malaysian and foreign courts, the Act empowers Malaysian courts and Malaysian insolvency office holders (subject to court supervision) to cooperate with, and to communicate directly with or request information or assistance from, foreign courts or foreign representatives. The forms of cooperation are non-exhaustive and may include: (**i.**) the appointment of a person to act under the court's direction; (**ii.**) the communication of information by any means the court deems appropriate; and (**iii.**) the coordination of the administration and supervision of the debtor's property and affairs and other procedural measures across jurisdictions.

V. Concurrent proceedings

Where foreign proceedings and Malaysian insolvency proceedings take place concurrently in respect of the same debtor, the Act sets out provisions that promote cooperation and coordination. Similarly, where multiple foreign proceedings are recognised, coordination and consistency across jurisdictions with the recognised foreign main proceedings is mandated.

VI. No reciprocity requirement

Malaysia does not require reciprocal recognition of foreign proceedings, making it more accessible for foreign representatives.

VII. Public policy exception

The Act sets out a public policy exception, whereby the courts may refuse to take any action or grant any order or relief (including recognition of foreign proceedings) where such action or order or relief would be contrary to the public policy of Malaysia.

VIII. Conclusion

Once in force, the Act is expected to deliver enhanced clarity and certainty for parties seeking relief in cross-border insolvency scenarios involving debtors with assets in Malaysia. It would bring Malaysia's insolvency framework into closer alignment with international best practice and strengthen Malaysia's position as an attractive jurisdiction for investment and business, capable of addressing the complexities inherent in cross-border insolvency matters.

■ GENERAL INFORMATION

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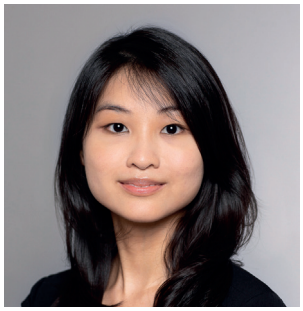

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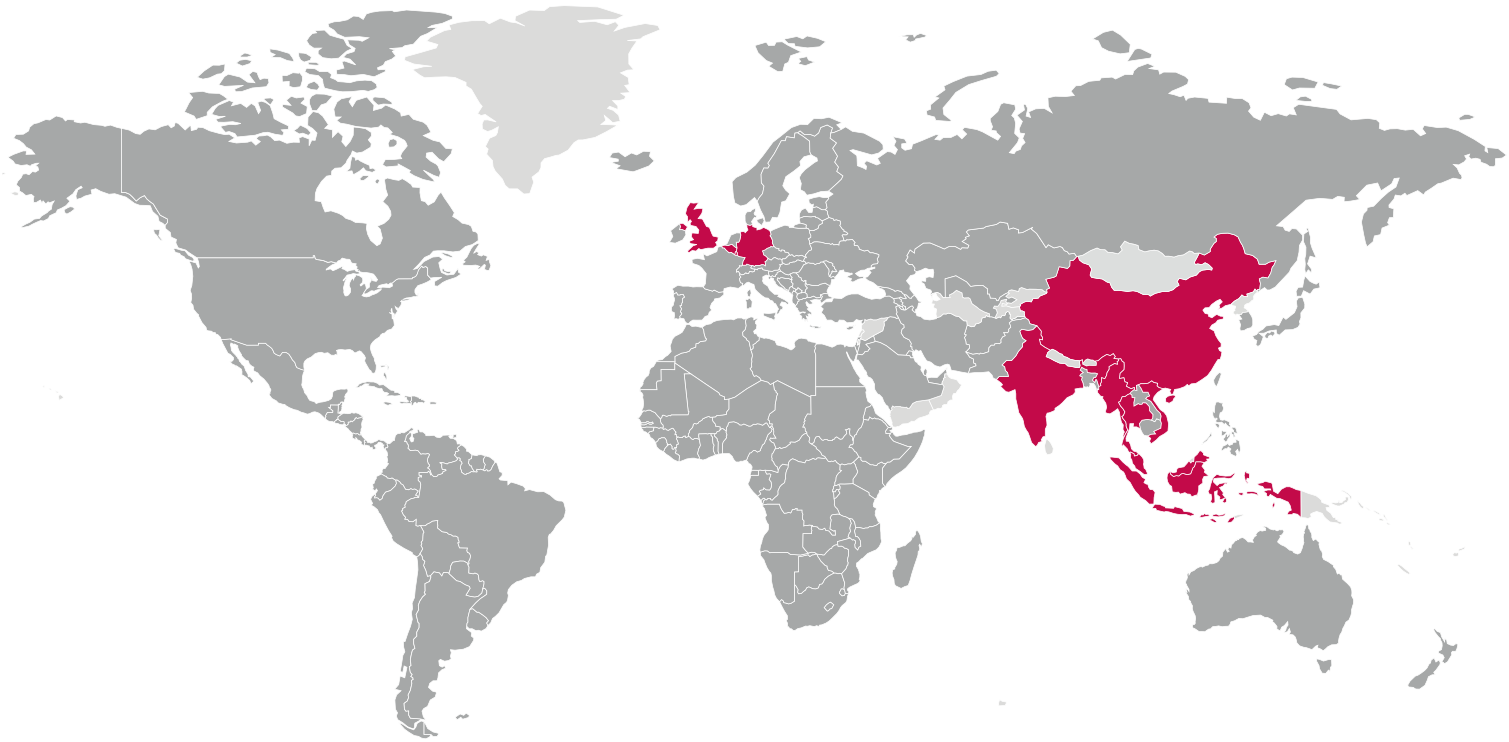

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