

Client Alert

June 2015

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Malaysia intensifies enforcement of rules governing foreign participation in its service sectors

Background

In 2010, the Malaysian Ministry of Domestic Trade, Cooperatives and Consumerism (“**MDTCC**”) established the Services Industry Division (“**SID**”) to oversee foreign participation in certain service sectors which were previously unregulated (“**Unregulated Services**”). The main objectives of the SID are to formulate policies governing Unregulated Services and to develop the Unregulated Services industry. The rules on Unregulated Services only apply to foreign-owned Malaysian companies (i.e. Malaysian companies which are majority or wholly foreign-owned) undertaking Unregulated Services in Malaysia, and not their Malaysian-owned counterparts. In particular, we understand the MDTCC wishes to increase the stability of the Unregulated Services sector by ensuring that foreign-owned companies undertaking such services are of sufficient financial standing.

It is pertinent to note that the rules governing Unregulated Services have not been legislated by the Malaysian Parliament and have no force of law. Accordingly, breaches of the rules technically do not carry any legal sanctions or penalties. The rules are however, enforced administratively through other Malaysian regulatory bodies such as the Malaysian Immigration Department (“**MID**”), and therefore non-compliance could impede or hinder the pursuit of business activities in the Unregulated Services sector.

Recent developments and increased enforcement of the rules

Notwithstanding that the SID was established in 2010, enforcement of the rules governing Unregulated Services has in the past been relatively low. This is because the SID was in the initial stages of formulating the rules.

In recent times however, the MDTCC has intensified the administrative enforcement of these rules through the MID. Now, foreign-owned companies undertaking Unregulated Services in Malaysia seeking to obtain work permits for their expatriate employees must first obtain the approval of the MDTCC.

Types of Unregulated Services

Further, in May 2015, the MDTCC published an expanded list of the types of services falling within the Unregulated Services sector which include:

- transport, storage and communication services such as freight and passenger transportation services and parking services
- leasing or rental services such as leasing or rental of equipment and goods transport vehicles without an operator and leasing or rental of personal and household goods

- research and experimental development services on social sciences and humanity such as cultural sciences, sociology and linguistics and languages
- market research and public opinion polling services
- management consulting services such as general management consulting services, production management consulting services and public relations services
- business services such as building cleaning services, photographic services, packaging services and telephone answering services
- repair services incidental to metal products, machinery and equipment such as repairs of radio, television and motor vehicles
- special advocacy group services such as ethnic and minority groups support services

Notably, the MDTCC has also stipulated “other management services” as a subset of management consulting services, which is broadly defined as any other management service which does not fall within the specified categories. This definition of “other management services” is in practice, applied very broadly and could potentially extend to govern any foreign-owned company providing advisory and/or consultancy-type services in Malaysia.

Requirements which must be complied with

While the MDTCC has not published a fixed set of guidelines regulating the Unregulated Services sector, as a matter of policy, the MDTCC requires foreign-owned companies undertaking Unregulated Services to be capitalized at RM1 million or more as a pre-condition to the grant of the MDTCC’s approval. Documents such as the company’s profile and business plans, resumes and academic qualification certificates of the top management and directors, as well as bank account statements and audited financial statements must also be provided to the MDTCC in support of the application. This further reinforces the policy of the MDTCC, which seeks to preserve the stability and integrity of the Unregulated Services sector.

Practical implications

As highlighted, there are no legal sanctions or penalties attached to non-compliance with the requirement to obtain the MDTCC’s approval to undertake Unregulated Services. Nevertheless, given:

- the new extensive list of the types of Unregulated Services;
- the increased scrutiny and enforcement over foreign-owned companies undertaking these services in Malaysia through the oversight and involvement of the immigration authorities,

foreign-owned companies involved in the Unregulated Services industry which need to hire expatriate employees will now face additional conditions to doing business in Malaysia.

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