



## **Introduction**

In recent years, Malaysia's construction industry has been on the rise with a whole host of newly-announced large-scale projects which is seen as ongoing momentum to the industry growth. Given the expansion scale of the market, it is unsurprising that overseas market players, particularly foreign contractors have targeted at the opportunities offered by Malaysia's construction industry. This article aims to provide an overview on the compliance of foreign contractors with the registration requirements of the Malaysia statutory authority.

## **Regulatory Body**

The Construction Industry Development Board ("**CIDB**") is a body corporate established under the Construction Industry Development Board Act 1994 ("**Act**") and is an agency under the Ministry of Works, Malaysia (Kementerian Kerja Raya Malaysia). The main functions encompass advisory, regulatory and to oversee the development and promote quality assurance in the construction industry. The mission of the CIDB is achieved largely through the accreditation and registration of contractors who engage in construction projects in Malaysia and the levy which it imposes on the substantive construction projects.

## **Registration Requirement under CIDB Act**

Under Section 25 of the Act, no person shall undertake any construction works unless he is registered and holds a valid certificate of registration issued by the CIDB. "Construction works" are defined in Section 2 of the Act to cover "the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of:

a) any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;

b) any road, harbour works, railway, cableway, canal or aerodrome;

c) any drainage, irrigation or river control works;

d) any electrical, mechanical, water, gas, petrochemical or telecommunication works; or

e) any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works

and includes -

(A) any works which form an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping.

(B) procurement of construction materials, equipment or workers, necessarily required for any work described in paragraphs (a) to (e);

Section 29 of the Act states that a person who does not comply with the registration requirement could be liable to a fine not less than RM10,000 but not exceeding RM100,000 and Section 30 confers the power to the CIDB to serve on the contractor by notice in the prescribed form requiring him to abstain from commencing or proceeding with the construction works. Contractors who failed to comply with the notice shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM5000, and in the case of a continuing offence, to a fine not exceeding RM1000 for every day or part of a day during which the offence continues after conviction.

### **Definition of Foreign Contractor**

According to the CIDB Contractor Registration Guideline, foreign contractors include construction companies that are incorporated in Malaysia as a joint venture company with local shareholders and the joint venture company has a foreign equity holding of more than 30%. Alternatively, a foreign contractor can also be a construction company that has been incorporated overseas. The 30% threshold is a general threshold and varies depending on joint venture arrangements with foreign contractors from particular countries as stated below:

**Table 1: Foreign Equity Holding Thresholds**

Joint venture arrangement between construction companies in Malaysia and the respective countries	Foreign equity holding threshold (to be classified as foreign contractor)
Malaysia-Australia	More than 49%
Malaysia-New Zealand	More than 49%
Malaysia-Australia-New Zealand	More than 49%
Malaysia-India Comprehensive Economic Cooperation Agreement	More than 51% for joint venture with a local contractor holding the CIDB Certificate Grade G7
Malaysia-Korea	More than 30% (i.e. standard threshold)
Malaysia-China	More than 30%
Malaysia-Japan	More than 30%
Malaysia-Pakistan	More than 30%

Source: CIDB Requirements and Procedure on Contractor Registration, July 2018

## **Registration as Foreign Contractor**

Registration as foreign contractor will be required where a foreign construction company participates in a construction project on its own capacity or without any joint venture with local construction company.

Foreign contractor registration will generally involve two stages.

- 1) First, if a foreign contractor was never registered with the CIDB, the company is required to submit a **pre-registration application** to the CIDB.
- 2) Second, a foreign contractor will be required to apply for a **Provisional Registration Certificate (PRC)** for the permission to participate in a tender exercise as specified in the PRC using **Form R2** (Participation of Tender in Malaysia Registration Application Form);
- 3) After the foreign contractor is offered with the Letter of Award, application for **Registration Certificate (RC)** is required to be submitted using **Form R3** (Projects Awarded in Malaysia Registration Application Form).

The registration procedure and conditions for foreign contractor can be summarised in the table as follows.

Table 2: Summary of Foreign Contractors Registration Procedures

	Provisional Registration Certificate (PRC) (Form R2 Application)	Registration Certificate (RC) (Form R3 Application)
<b>Purpose of Registration</b>	To participate in tender of construction project in Malaysia.	To execute and undertake construction projects in Malaysia.
<b>Registration Requirement</b>	<p>1) Submission of the following document / information to the CIDB:</p> <p>a) Tender advertisement or invitation letter from client;</p> <p>b) Company's construction experience; and</p> <p>c) Certificate of registration with the Company Commission Malaysia (CCM) or a copy of the company registration from the country of origin.</p> <p>2) Prior to this application, foreign contractors registering with the CIDB for the first time has to submit a pre-registration application to the CIDB.</p> <p><b>Note:</b> The approval of the pre-registration application does not allow the company to participate in any tender nor any construction work.</p> <p>3) Financial resource of minimum RM750,000 / equivalent to the value of the currency of the country of origin. (i.e. minimum paid-up capital of RM750,000); if the company is not registered with the Company Commission Malaysia (CCM) or is without any paid-up capital, a copy of the company's current account statement has to be submitted.</p> <p>4) Employment of at least one (1) Malaysian citizen with the academic qualification in a construction related field as technical personnel.</p>	<p>1) Submission of the following document / information to the CIDB:</p> <p>a) Certificate of registration with the Company Commission Malaysia (CCM);</p> <p>b) Letter of Award for the particular project and such a project will be specified in the Registration Certificate;</p> <p>c) A copy of at least two (2) Malaysian technical persons' bachelor degree certificate. The degree must be in a construction related field. At least one technical person must have at least five years of experience in construction. (Years of experience to be derived from the date of completion of the bachelor degree).</p> <p>2) Prior to this application, foreign contractors registering with the CIDB for the first time has to submit a pre-registration application to the CIDB.</p> <p><b>Note:</b> The approval of the pre-registration application does not allow the company to participate in any tender nor any construction work.</p> <p>3) Minimum paid-up capital of RM750,000; if the company is registered with the Company Commission Malaysia (CCM) as a Branch office without any paid-up capital, the company is required to declare the latest financial documents of the company registered in the country of origin.</p> <p>4) Employment of at least two (2) Malaysian citizens with bachelor's degree or above in the construction field; and one of them must possess more than five years relevant experience in construction industry.</p>
<b>Fees and Charges</b>	Processing fee: RM50 Registration fee: RM500	Processing fee: RM50 Registration fee: RM5,000
<b>Certificates upon Successful Application</b>	Provisional Registration Certificate ("PRC")	Registration Certificate ("RC")
<b>Conditions for Holder of Certificates</b>	<p>1) The Certificate cannot be transferred;</p> <p>2) The Provisional Certificate of Registration shall be valid only until the deadline or extended deadline for the tender in question;</p> <p>3) The certificate cannot be used for carrying out any other tender except the one being specified in the Certificate; and</p> <p>4) The applicant is required to submit an application for a Registration Certificate for Foreign Contractor upon successful in the bid as a foreign contractor before starting any work.</p>	<p>1) The Certificate cannot be transferred;</p> <p>2) The validity period for a Registration Certificate is as indicated in the Certificate itself in accordance with the letter of award submitted earlier and if for any reason the date of completion of the project is extended, the contractor has to apply to the CIDB for an extension of the validity of the Certificate; and</p> <p>3) The Registration Certificate allows the holder to execute only the project specified in the certificate.</p>

## **Joint Venture between Foreign Contractor and Local Contractor**

It is also common for foreign contractors to enter into joint venture arrangements with local construction companies in Malaysia to undertake construction activities. The procedure for registering the joint venture with the CIDB and whether the joint venture parties are required to incorporate an entity in Malaysia (a joint venture company) to jointly undertake the construction project work in Malaysia depend on:

- a) Whether the foreign contractor's interests exceed the applicable foreign participation threshold (see **Table 1** above); and
- b) Whether the local construction company (the local partner) of the joint venture is currently registered with the CIDB.

## **Conclusion**

The construction industry is one of the most crucial industries for a country's development and growth. Recognising the importance of the industry for the country's long term sustainable growth, the Malaysian government is always active in formulating rules and policies to monitor and regulate the construction industry. Foreign contractors are strongly advised to comply with the requirements of CIDB and other laws and regulations.

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