

LEGAL COMPASS FOR SOCIAL ENTERPRISES

Legal Compass for Social Enterprises Table of Contents



2	Introd	luction:	Journey	Overview
---	--------	----------	---------	----------

3 Chapter One Paving the Road

4 Chapter Two Modes of Transport: Choosing A Legal Structure

- 5 Private Company Limited by Shares
- 6 Company Limited by Guarantee
- 7 Society
- 8 Trust
- 9 Partnership
- 10 Limited Liability Partnerships
- 11 Cooperative Societies
- 12 Sole Proprietorship

13 Chapter Three

Fuelling Up: Employer Obligations

- 13 Employment Act 1955
- 14 Employees Provident Fund 1991
- 14 Employees Social Security Act 1969
- 15 Occupational Safety and Health Act 1994
- 15 Industrial Relations Act 1967
- 16 Pembangunan Sumber Manusia Berhad Act 2001
- 16 Minimum Wage Policy
- 17 Personal Data Protection Act 2010

18 Chapter Four

Co-Navigators: Handling Hiring

- 18 Malaysian Nationals
- 18 Foreign Nationals
- 18 Special Considerations

Disclaimer

This document and the information contained herein is provided on an "as is" basis and the Malaysian Global Innovation & Creativity Centre (MaGIC) disclaims all warranties, express or implied, including but not limited to any warranty that the use of the information herein will not infringe any rights or any implied warranties or is fit for a particular purpose. MaGIC and its representatives do not accept any responsibility for any errors or omissions in the information provided in this document and the authors, contributors and endorsers of this document each excludes liability for loss suffered by any entity resulting in any way from the use of, or reliance on this document. The information provided in this document is not legal advice and should not be treated as such. The information provided in this document is general and may not apply in a specific situation and legal advice should always be sought before taking any action based on the information provided. Such information is not intended to create, nor does receit of it constitute, a solicitor-client relationship

Copyright

© 2016 Malaysian Global Innovation & Creativity Centre.

No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder.





- 19 Chapter Five Fellow Passengers: Beneficiaries
- 19 Minors
- 20 Persons with Disability
- 21 Refugees
- 22 Chapter Six Operations Intellectual Property
- 22 Defining Intellectual Property
- 22 Importance of Intellectual Property
- 23 Main Forms of Intellectual Property
- **26 Commercial Contracts**
- 26 Defining Commercial Contracts
- 26 What to Look for in a Contract
- 28 Examples of Commercial Contracts

- 29 Chapter Seven
 Consult a Mechanic: Lawyers
- 29 Setting Objectives
- 30 Choosing the Right Lawyer
- 30 Billing
- 31 Chapter Eight
 The Hub: Becoming a Social Enterprise
- 31 The Journey Continues: Where To Go From Here

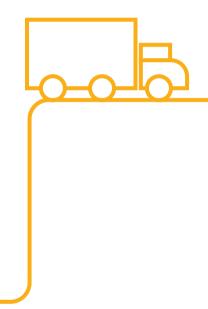


Introduction: Journey Overview

You have a dream: to impact your community, make your investors and shareholders happy, and alleviate society's pains - all at the same time. What better way than to hop onto the bandwagon of social entrepreneurship? Maybe you have an idea for a new social venture and want to know how to go about making it happen, or perhaps you've already started your journey and now find yourself stuck at a crossroads.

Whether it be filling a gap in the market, meeting a pressing societal need, or embarking on an environmental initiative, social enterprise is a definitive route for you to make meaningful, long-lasting change in a self-sustainable way. However, because it is still a relatively new idea in Malaysia, there is not yet a clearly marked path for you to journey on.

This is why *Legal Compass for Social Enterprises* has been produced: to guide you along some of the mandatory stops you'll have to make as you begin or continue your social entrepreneurial journey.







Paving the Road

At this juncture, there is no legislation specifically drafted for social enterprises in Malaysia. That present lack might leave navigating the terrain of social enterprise a little daunting and perhaps susceptible to preventable mistakes (unlawful dismissal, insufficient documentation for checks and balances) that might result in legal reprimands and undermine your well-meaning objectives.

The benevolent nature of social entrepreneurship demands that enterprises practise transparency and accountability in day-to-day business. It is our responsibility, when having direct social impact, to demonstrate integrity from the beginning.

Like an unpaved road, a lack of structure makes for a bumpy ride. We want to help you to avoid the bumps as you journey towards the future of social enterprises in Malaysia.

Our hope is that this guide will help you find some of the main stops you should make to cover your critical bases as you move and shape the earth with your socially impactful ventures.

So who should get on this track? We dare say:

- Existing Social Entrepreneurs
- Budding Social Entrepreneurs
- Potential investors
- Private sector/corporations

- Lawvers
- Policymakers
- Yo







Modes of Transport: Choosing a Legal Structure for Your Business

Choosing a legal structure for your business is like choosing a mode of transport. While they all get you from Point A to Point B, each vehicle has distinct characteristics to meet different needs. Consider carefully what you hope to achieve with your social enterprise, and choose your vehicle accordingly.

Start your journey right, and you'll be able to cover all your bases - without having to backtrack on foot.



Private Company Limited by Shares (Sdn. Bhd.)

Governed by Companies Act 1965 (CA)

The most common type of business entity in Malaysia.

A private limited company's shares are closed to participation from the public.

Cost	Registration fee: RM1,000 - RM700,000 Other fees: Application of each name search: RM30 for each name applied Stamp Duty at Inland Revenue Board Office for Original Memorandum and Articles of Association: RM100 each
No. of Shareholders	2 - 50
Liability	Limited Liability: Shareholders' liability is limited to the amount of capital held by the shareholder.
Tax	For paid-up capital less than RM2.5million: First RM 500,000 taxed 19%, Every ringgit exceeding RM500,000 taxed 24%. For paid-up capital more than RM2.5million 24% tax applies.
Key Features	 Separate Legal Entity: A Sdn. Bhd. is a legal personality separate from its shareholders. It has the capacity to sue, be sued, enter contracts, and hold assets in its own name. Perpetual Succession: A Sdn. Bhd. continues to exist even after the death of its shareholders and shares held by the deceased shareholders are automatically passed on to their respective estates.
Exit	Shareholders may "exit" from the Sdn. Bhd. by selling or transferring their shares to another person, or if there is initial public offering of the Sdn. Bhd.'s shares, or upon the winding up of the Sdn. Bhd., or if the Companies Commission of Malaysia (CCM) strikes off the name of Sdn. Bhd. from its register.
For more info	http://www.ssm.com.my/acts/fscommand/CompaniesAct.htm

Note

The information provided above is according to the Companies Act 1965. Please note that Companies Bill 2015 which has yet to be enforced states the following

- Companies can be incorporated and operated under a single individual.
- A company, other than a company limited by guarantee, may or may not have a constitution.



Company Limited by Guarantee (Bhd.)

Governed by the CA

A company limited by guarantee is formed on the principle of having the liability of its members limited by the memorandum of association **(MOA)** of the company. The limit is set at an amount that each member agrees to contribute to the company's assets in the event of the company being wound up. It is usually used by non-profit ventures such as research associations, charitable foundations and professional associations, and other trade associations working together to realise a common good.

Cost	Registration fee: • For Limited Company omitting "Bhd" or Berhad" from its name: RM300-450 • For Limited Company with "Bhd" or Berhad" to its name: RM1,000
No. of Guarantors/Members	Unlimited
Liability	Limited Liability: Guarantors' personal assets cannot be touched if company goes into debt.
Tax	For paid-up capital less than RM2.5million: First RM 500,000 taxed 19%,
	Every ringgit exceeding RM500,000 taxed 24%.
	For paid-up capital more than RM2.5million 24% tax applies.
	Tax exemption: Certification of tax exemption can be obtained from the Ministry of Finance. Applicable to Bhd. involved in charitable purposes.
Key Features	Change of Status: A Bhd. may change its status by applying for a license to the Ministry of Domestic Trade, Cooperatives and Consumerism of Malaysia (MDTCC).
	2. Equity Investment: Bhd. cannot issue shares in return for equity investment in the business.
	3. Liability of a member to contribute the assets of a Bhd. only arises in the event of it being wound up. A member of a Bhd. may not be required to contribute to the assets while the Bhd. is a going concern.
Exit	Subject to the Bhd.'s internal rules, members will be able to exit the Bhd. with relative ease. Members may terminate or deregister a Bhd. via voluntary winding up or striking off process in which the assets of the Bhd. may be transferred to a body or company that has a charity-based activity before the termination takes place.
For more info	http://www.ssm.com.my/sites/default/files/guidelines/GARISPANDUAN%20SBMJ_0.pdf

Note



The information provided above is pursuant to the Companies Act 1965. Please note that Companies Bill 2015 which has yet to be enforced states the following:

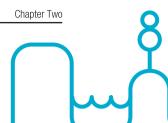
• Company limited by guarantee shall be a public company. • Company limited by guarantee shall prohibit the payment of any dividend to its members.



Governed by Societies Act 1966 (SA)

A society is inclusive of any club, company, partnership, or association of seven or more people for either a temporary or permanent object. It is a non-profit structure. Societies are accountable to the Registrar of Societies (ROS). Until a society is registered, no person shall organise or take part in any activity of or on behalf of the society without the permission of the ROS.

Cost	Registration fee: RM30
No. of Members	Unlimited
Liability	Limited Liability: The members' personal assets and the societies' assets are mutually exclusive.
Tax	Only income from transactions with non-members are considered taxable income.
Key Features	1. A society may sue or be sued in the name of any one of its members who has been registered as the public officer of the society in the ROS. If no such person is registered, the society may be sued in the name of any office-bearer of the society.
	2. Grants: They have access to public or private grants made available for non-profit organisations.
Exit	A social enterprise that wishes to apply for the dissolution of a society can do so via the ROS portal at www.ros.gov.my.
	A registered society may terminate or be dissolved in any of the following ways:
	upon the happening of any event declared by the rules to amount to termination of the society;
	• by the consent of three-fourths of the members of the society testified by their signatures to an instrument of dissolution;
	by the ROS cancelling the registration of the society.
For more info	http://mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf
	http://www.ros.gov.my/index.php/en/soalan-lazim
	Page 269 – 271 on dissolution at http://www.eroses.gov.my/download/Panduan_pengguna_eroses.pdf



Trust

Governed by Trustees (Incorporation) Act 1952 (TIA)

A trust is another non-profit structure. It creates a relationship between one or more trustees and beneficiaries in which the trustee manages the trust funds for the beneficiaries. To create a trust, a trust deed or declaration is needed. Trustees must manage the trust fund in accordance with the trust deed and the rules under the TIA.

Cost	Registration document fees:			
	Revenue stamp (RM10 x 3 copies): RM 30			
	Certificate of Incorporation (RM30 x 3 copies): RM90			
	Stamped trust deed (RM10 x 3 copies): RM30			
No. of trustees	As per set out in the trust deed. The trust deed needs to be submitted before the certificate of registration is issued.			
Liability	After a certificate of incorporation has been granted under the TIA, all trustees of the body or association of persons, in spite of their incorporation, shall be chargeable for all property they are responsible for. Each person shall be held accountable for their own acts, receipts, neglects and defaults, and for the due administration of the body or association of persons and its property in the same way and to the same extent as if the incorporation had never happened.			
Tax	If the trust qualifies as a public charity under the Income Tax Act 1967, any income earned by a charitable trust may be tax exempt.			
Key Features	A trust is a legal arrangement where asset ownership is transferred from the person who set up the trust (settlor) to another person/corporation (trustee) for the benefit of one or more people (beneficiaries). The beneficiary holds an equitable interest in the asset even though the trustee has the legal ownership.			
	A certificate issued under the TIA shall have perpetual succession unless revoked.			
Exit	A trust may be voluntarily dissolved upon any event that happens as specified in the trust deed or by the decision of the trustee. It can also be dissolved, if there is more than one trustee, by a unanimous agreement through the signing of an instrument of dissolution to testify - with the consent of the body or association of persons by whom the trustees are appointed.			
For more info	http://www.commonlii.org/my/legis/consol_act/ta19491978197/			
	http://www.ssm.com.my/files/guidelines/Trust_Co_New.pdf			
)	http://www.bheuu.gov.my/portal/index.php/en/soalan-lazim/soalan-lazim-akta-258			



Partnership

Governed by Partnership Act 1961 (PA)

Partnerships should be registered under the Registration of Business Act 1956. You must be a Malaysian citizen or a permanent resident of Malaysia to register a partnership.

Cost	Registration fee: RM120 - RM150
No. of Partners	2 -20
Liability	Unlimited Liability: You are personally liable and responsible for the debts of your business.
Tax	Each partner is taxed individually based on their shares in the partnership. Income tax charged depends on the amount of income which ranges from 1% to 28%.
Key Features	Joint Responsibility: Acts by a partner within a partnership are the responsibility of all partners. If one partner's business decision causes a massive loss to the partnership, all partners are equally liable.
Exit	A partnership may be dissolved upon an agreement of dissolution by all partners, or where it has become unlawful for the business to be carried out in a partnership.
For more info	http://www.commonlii.org/my/legis/consol_act/pa19611974229/
	http://www.ssm.com.my/sites/default/files/guidelines/GUIDE LINES%20F0R%20REGISTRATION%200F%20NEW%20BUSINESS_new.pdf
	http://www.ssm.com.my/en/faq-view?field_cat_faq_value=Registration_of_Business

Limited Liability Partnerships (LLP)

Governed by Limited Liability Partnership Act 2012 (LLPA)

LLPs are an alternative business vehicle that combines the characteristics of a company and a conventional partnership. They are designed for lawful businesses with the purpose of making profit and the added benefit of less personal liability.

Cost	Registration fee: RM500
No. of Partners	Two or more people.
Liability	Limited Liability: Debts and obligations of the LLP will be borne by assets of the LLP and not that of the partners'.
Tax	Capital contribution less than RM2.5million: First RM500,000 taxed 20%
	Capital contribution more than RM2.5million taxed 25%
Key Features	Flexibility: LLPs have more flexibility in terms of formation, maintenance, and termination while still possessing the necessary dynamics and appeal to compete domestically and internationally.
Exit	Partners may choose to unregister their LLP with the ROS. LLP may also be wound up by the court under the same circumstances as a company.
For more info	http://www.ssm.com.my/sites/default/files/acts/LLP%20ACT%202012%20-%20For%20Portal_new.pdf http://www.ssm.com.my/sites/default/files/guidelines/General%20Guidelines%20on%20registration.pdf





Co-operative Societies

Governed by Co-operative Societies Act 1993 (CSA)

A co-operative society is an organisation whose objective is to increase the economic significance of its members in accordance with cooperative principles. Co-operatives are regulated by the Malaysia Co-operative Societies Commission (MCSC).

Cost	Registration fee: RM100
	Specific cost can be obtained from online application through https://apponline.skm.gov.my/
No. of Members	At least 50 members but an application can be made for co-operatives that only have 20 members.
Liability	Limited liability: A member's liability is limited to the extent of the nominal value of shares they subscribe to.
Tax	Revenue more than RM300,000 is taxed 5% to 24%
	Tax exemption: For first five years of registration. If total members' funds are less than RM750,000.
Key Features	Perpetual succession: A co-operative society can continue operating despite bankruptcy, death or exit of original members, change of membership, or transfer of stock.
	2. Democratic: Each member's view is heard and their vote is counted during decision making.
Exit	A co-operative society can be dissolved by MCSC upon receipt of an application by three-fourths of the members of a co-operative society.
For more info	http://faolex.fao.org/docs/pdf/mal91388.pdf
	http://www.skm.gov.my/index.php/my/
	http://www.skm.gov.my/images/images/Garis-Panduan/GP12.pdf

Sole Proprietorship (SP)

Governed by the Registration of Business Act 1956 (RBA)

This is the simplest form of business organisation with minimal legal requirements. It is a business wholly owned by a single individual using personal name as per their identity card or trade name. An SP can be registered with the Companies Commission of Malaysia (**CCM**) under the Registration of Business Act 1956.

,	
Cost	Registration fee:
	RM30 for using personal name as stated in the identity card.
	RM60 for using trade name.
No. of Members	Single owner
Liability	Unlimited Liability: Like a partnership, sole proprietors are also bound by the laws of unlimited liability, meaning that they alone are personally responsible for their company's assets and debts.
Tax	Eligible for income tax. Rates are 1% to 28% depending on amount of income.
Key Features	1. Control: As a sole proprietor, you will have full control of all business decisions.
	Easier to organise: Smaller amounts of capital will help you more easily keep track of the ins and outs of your business.
Exit	When the business is terminated, the person responsible shall notify CCM in prescribed form within 30 days. Business may be terminated for reasons including cessation of business, bankruptcy, death of owner, or pursuant to a court order.
For more info	http://www.ssm.com.my/en/sole/starting-a-sole-proprietorship-partnership http://www.ssm.com.my/en/faq-view?field_cat_faq_value=Registration_of_Business

Fuelling Up: Employer Obligations

Before embarking on your journey, it's important to be sure that your vehicle has been serviced and that you have enough fuel in your tank to make your trip. If you are not prepared, you may incur unnecessary hassle along the way, slowing you down toward your destination. By understanding your obligations as an employer, you can ensure that your journey ahead will be a smooth one for you and your fellow passengers.

Employment Act 1955 (EA)

The EA governs employees (Peninsular Malaysia and Labuan) who earn a monthly salary of not more than RM2,000 or who perform or supervise manual labour regardless of the salary they earn. The EA decides on the minimum benefits offered to the employees falling within this range. Employees who earn less than RM2,500 a month in Sabah and Sarawak are governed by the Sabah Labour Ordinance and the Sarawak Labour Ordinance respectively.

Employers are required to prepare and keep one or more registers for each employee. Records should be kept and maintained for at least six years, as an employee might file a claim under S.69 of the EA for non-payment of wages or any other payments that is due to them.



Employees Provident Fund Act 1991 (EPFA)

The EPFA is a compulsory government-run retirement fund. The EPFA compels every employee and employer to make monthly contributions into the EPFA at the rates respectively set out in the Third Schedule of the EPFA.

Both employers and employees are free to contribute more than the EPFA required minimum rates. All employers must register their employees with the EPF immediately upon employment. Employed foreign nationals are exempted from compulsory contributions but can choose, and are allowed, to contribute tothe EPF.

Employees' Social Security Act 1969 (ESSA)

The ESSA applies only to Malaysian employees whose monthly salary do not exceed RM3,000 or employees already registered as contributors with the Social Security Fund (**SSF**) regardless of current salary. It is compulsory for employers of aforementioned employees to make monthly contributions to the SSF.

The Social Security Organisation (SOCSO):

- Administers the Employment Injury Insurance Scheme which provides employees with coverage through cash benefits and medical care in the event of any disablement or death due to employment injury.
- Administers the Invalidity Pension Scheme which provides 24-hour coverage to employees against invalidity and death due to any cause before they reach 60 years of age.





Occupational Safety and Health Act 1994 (OSHA)

An employer has general duties at common law to ensure the safety, health and welfare of all its employees during their employment. Such duty of care placed on an employer is implied in all contracts of employment. An employer is expected, among other things, to provide a safe system of work, proper and safe equipment, and adequate supervision.

The OSHA applies to certain industries (e.g. manufacturing, mining, construction, agriculture, utilities, transport, wholesale, retail, hotels, restaurants, finance, public service industries) and imposes minimum statutory health and safety conditions to employees in the course of employment.

The OSHA also requires employers/companies that fall under its jurisdiction to ensure that other people, besides employees, (ie. visitors, independent contractors, third parties) are also not exposed to risks to their safety or health. This responsibility extends to third parties who are affected by employer's/company's activities.

Under the OSHA, there is a similar responsibility on employees to take reasonable care for the safety and health of themselves and other people who may be affected by their conduct or omissions at work.

Industrial Relations Act 1967 (IRA)

A large part of the IRA regulates trade union activities. However, there is an important provision in the IRA (S.20) which promotes security of tenure regardless of whether the employees are trade union members. Because of S.20, an employer can no longer rely solely on the notice provisions in an employment contract to justify termination but must be able to establish "just cause or excuse."

In addition to having a lawful reason to terminate an employee, employers must also follow proper procedure in enforcing said termination. For example, termination on grounds of misconduct must be preceded by a fair and reasonable inquiry into the alleged misconduct; an employee must be given notice on the allegation of misconduct and given an opportunity to explain themselves. Termination on grounds of poor performance should only happen after the employee has been sufficiently warned of their underperformance and given adequate time and guidance to improve.

Pembangunan Sumber Manusia Berhad Act 2001 (PSMB)

The PSMB Act provides for the imposition and collection of a mandatory levy, known as the Human Resources Development Fund **(HRDF)**. This levy promotes the training and development of employees, apprentices, and trainees. The establishment and the administration of the HRDF is managed by PSMB.

The HRDF applies to Malaysian employees in the manufacturing, service, and mining and quarrying sectors. Employers in those fields are required to register with HRDF. Upon registration, contributions must be made to the HRDF at a rate of 1% of each employee's monthly salary.

Employers who are registered with the HRDF and paying the HRDF levy are eligible to apply for training grants to defray training costs for their employees.

Minimum Wage Policy (MWP)

When deciding on your employees' salaries, employers should adhere to the MWP. Implemented by the government, the policy is meant to ensure workers can meet their basic needs and create the necessary environment for industries to move up their value chain.

Effective from 1st July 2016:

The minimum monthly wage for Peninsular Malaysia is RM1,000 and RM920 for Sabah, Sarawak, and Labuan.

The MWP also applies to employees whose pay are piece-rates, tonnage, trip-based or commission-based. Employers are required to supplement the wages of these employees if their income does not meet the minimum set above as of Budget 2016 announced by the Prime Minister. It is the employer's responsibility to comply with the minimum wages rate. Employers that fail to comply will be fined a total of RM10.000 for the first offence and RM1.000 for the second offence daily per employee under the MWP.



Personal Data Protection Act 2010 (PDPA)

Under the PDPA, a "data subject" is a person whose data has been collected and a "data user" is the person who collected said data for processing. Customers and employees are examples of data subjects.

Employees' personal details are collected and stored upon their employment. These details are considered "personal data" and are protected under the PDPA. Under the PDPA, personal data is information which is capable of identifying any person and which is recorded in for a commercial transaction (i.e. a person's name, NRIC number, passport number). The PDPA also distinguishes "sensitive personal data" as any personal data relating to a data subject's physical or mental health, their religious beliefs, their political opinions, or any commission by them of any offence.

The PDPA's purpose is to regulate the processing of personal data which includes collecting, storing, organising, erasing, and transferring data. If you collect personal data through forms or through a website; use personal data for marketing purposes; or disclose personal data to other parties, you are processing personal data.

The PDPA is enforced and regulated by the Department of Personal Data Protection (an agency under the Ministry of Communications and Multimedia) headed by the Personal Data Protection Commissioner (the Commissioner). Individuals who feel that their personal data has been processed in breach of the PDPA may lodge a complaint to the Commissioner who has the authority to investigate the complaint.

Non-compliance with the PDPA is a criminal offence and the PDPA prescribes various penalties such as imprisonment, fines, or both. It should be noted that where non-compliance is by a body corporate, any person - who at the time of the offence - was responsible for the management of any affairs of the corporation (or was assisting in such management), may be charged separately or jointly in the same proceedings with the body corporate. If the body corporate is found to have committed the offence, the aforesaid persons will also be held accountable.

Note: A "body corporate" is a legal entity (such as an association, company, person, government, government agency, or institution) identified by a particular name. Also called corporation, corporate body, or corporate entity.



Co-Navigators: Handling Hiring

As you proceed, you may stop to pick some people up along the way. Whoever they are, regardless of who they might be, they are your employees, working alongside you in your social enterprise. Therefore, it is your responsibility to make sure they are taken care of.

Hiring Malaysian Nationals

Besides employing children (below 15 years old) and young persons (below 18 years old), Malaysians may be hired without any restrictions. The employment of children and young persons are governed by the Children and Young Persons (Employment) Act 1966. It is advisable, although not mandatory, to enter into written employment contracts with Malaysian nationals. Under the Employment Act, a written contract of service is required when the service period or performance of a specified piece of work exceeds one month.

Hiring Foreign Nationals

Under the Immigration Act 1959/63, any person other than a Malaysian citizen, may only enter and remain in Malaysia if they hold a valid entry permit or a valid pass. Passes are issued under the Immigration Regulations 1963 and include:

- Employment Pass Dependent Pass
- Social Visit Pass

Definition of Employment for Foreigners:

Under section 55B (4) of the Immigration Act 1959/63 (Revised 1974), a person is presumed to be employed, if they perform any act normally performed by an employee in a place of employment, regardless of whether it is for payment or not unless the contrary is proved.

There are two types of acceptable employment passes for foreign nationals:

- 1. Employment Pass: Necessary for both foreign employees and foreign employers. The Employment (Restriction) Act 1968 (Revised 1988) deems any person found performing any act normally performed by an employee, in any place of employment, employed under a contract of service by the employer of that place of employment,
- 2. Visit Pass (Professional) (PVP): The PVP is generally issued to professionals and experts such as researchers, academics, consultants, or other experts deemed suitable by the Immigration Department.



Passengers with Special Requirements: Beneficiaries

On your journey, there may be passengers who will need you to make modifications to your vehicle in order to accommodate them. In fact, these "passengers" could be the very reason you set up your social enterprise in the first place: they are your beneficiaries. They may be minors, persons with disabilities, or refugees.

A social enterprise that exists to serve such groups should familiarise itself with their challenges and rights. This will not only preserve the positive reputation of social enterprises but serve to minimise potential liabilities that may arise from malpractice or any form of negligence.

Minors

Social enterprises that cater to children's causes and needs should make sure that their rights are protected. Such social enterprises should take note of their duties and obligations under the Child Act 2001, which is the main statute in Malaysia that governs the treatment of minors. Apart from that, social enterprises ought to have particular regard for the following general principles when conceptualising, implementing, and evaluating their plans:

- a) Non-discrimination: All children should enjoy their rights without discrimination of any kind, regardless of sex, race, language, religion, disability, nationality, ethnic, or social origin.
- b) Best interests of the child: The best interests of the individual child should be the primary consideration in all decisions and actions that affect the child.
- c) Right to life: The child is entitled to right to life, survival, and development. This includes the right to proper education, resources for development, and healthcare.
- d) View of the child: A child has the right to express their views and have them heard. This necessarily includes being consulted in decision making processes and activities insofar as their age and maturity level permits.





Persons with Disability (PWD)

The social enterprise may have a PWD as its customer or as an employee. PWD includes *persons with unsound mind* (PUM). In both scenarios, the social enterprise ought to consider the needs and rights of PWD from the start (i.e. at conceptual and planning stage). Malaysia enacted the Persons with Disabilities Act 2008 (PWDA) that makes provisions for the protection of the rights of PWD in the areas of education, employment, health, and accessibility.

Some basic considerations regarding the rights of PWD:

- a) No discrimination policy: PWD must be accorded the same rights and considerations as any other people especially in terms of remuneration, employment benefits, and career advancement opportunities.
- b) Accessibility: Social enterprises should make considerable efforts to ensure their establishments and services are PWD friendly (e.g. ramps where there are staircases, larger restrooms with support rails, and obstruction free pavements).
- c) Confidentiality: PUM mental health records are not for public consumption. All such information should be properly kept in a safe place where only authorised personnel are allowed access to it when needed.
- d) Consent: A PUM may or may not be able to give consent for certain matters (e.g. when considering a particular treatment or where a decision pertaining to their financial needs be made). A PUM's capacity to give consent would largely depend on the type and degree of mental disability that the PUM suffers. As far as possible, the consent of the PUM must be obtained where they are able to make their own decision. If this is not the case, getting the consent of a person authorised by law to make that decision on behalf of the PUM would suffice.

Refugees

Refugees in Malaysia are not recognised under Malaysian law as documented persons even if they carry a United Nations High Commission for Refugees (UNHCR) card. Therefore, they are at risk of being arrested by the authorities under the Immigration Act 1965.

If you are planning for your social enterprise to help refugees, make sure you have all your legal bases covered and proceed with caution. Those who harbour refugees, employ or provide accommodation to refugees are at risk of action being taken against them. It would be best to get legal advice if you are planning on working with refugees. Social enterprises must also take care not to take advantage of the refugees' legal vulnerabilities.





Operations: Intellectual Property (IP)

During your social enterprise journey, you would want to design a logo to give your business an identity; you might even come up with an app, invention, or product that is a unique part of your business operations. Just like how you would insure your vehicle, you will also want to protect your enterprise's assets through Intellectual Property.

Defining Intellectual Property

Like how the title of your vehicle has your name on it to show that it belongs to you, IP marks your company's assets as your property protected by the law. IP protects these creations from being stolen or misused by others.

Importance of Intellectual Property

For value creation

IP is considered a part of the social enterprise's valuable assets that needs to be protected to optimise the business' value and to enhance its competitive advantage. Ultimately, this would also make it more attractive to investors.

• To avoid business disruption

The social enterprise would also need to be aware of IP that belongs to others, which it might use in the course of its business, in order to avoid being charged for infringement.

IP is often created at the social enterprise's earliest stages and if IP is not addressed properly from the start, the social enterprise may not be maximising the value of its assets or, worse, will find itself subjected to a costly legal suit for infringing the rights of another.

All IP in Malaysia is registered through the Intellectual Property Corporation of Malaysia (MyIPO), an agency under the Ministry of Domestic Trade, Co-operatives and Consumerism. IP in Malaysia is governed by legislations which include Copyright Act 1987, Patent Act 1983, Trade Marks Act 1976, and Industrial Designs Act 1996. The cost for registration varies depending on the type of IP the social enterprise wishes to register. All information on IP including the forms, related fees, and application procedures can be found at http://www.myipo.gov.my/home.

Main Forms of Intellectual Property

Type Copyright	Covers Literary Work Musical Work Artistic Work Film Sound Recording Broadcasts Derivative Work Published Edition Live Performance	Requirements to qualify Must exist in a tangible medium Originality: independently created Author must be a citizen or permanent resident of Malaysia. If the author is a body corporate, it must be established in Malaysia and constituted or vested with legal personality under the laws of Malaysia.	Securing protection Automatic upon the original work being reduced to any material form or registration with MyIPO under voluntary notification of copyright.	Duration of protection Literary, artistic and musical work - Life of author plus 50 years Other than literary, artistic and musical work - 50 years from the date of publication	Examples Artworks Slogan/Tagline Contents of website Books Films Songs Video Games
Trademark	Words Logos Names Images Signature Brand Heading	Shall consist of at least one of the following: Name of individual or company in a special or particular manner Signature of the applicant for registration or some predecessor in the business An invented word A word having no direct reference to the character of the goods, according to its ordinary meaning or a geographical name of surname Any other distinctive mark	Registration with MyIPO	10 years from the date of filing application and renewable every 10 years.	Trademarks such as: "Coca Cola" "Starbucks" "Nike" "Intel" logo "Because you're worth it" – Loreal Paris "Roaring Lion" for MGM Entertainment

Cha	ntar	Civ
Cha	nrei	SIX

Type	Covers	Requirements to qualify	Securing protection	Duration of protection	Examples
Industrial Design	Original feature of shape, pattern, or ornament applied to an article by any industrial process or means being features in the finished article and has a visual appeal.	New, it must not be revealed to public anywhere in Malaysia or elsewhere Not dictated solely by function Not dependent upon the appearance of another component article Not against the public morality	Registration with MyIPO	Five years from the date of filing and renewable for four consecutive terms of five years each.	Household utensils Electronic gadgets Furniture designs
Trade Secret	Any information which is confidential and not known to the public	Any trade formulae, processes, designs, data which are not generally known and which company can gain advantage over competitors.	Confidentiality Agreement between parties.	Protection is maintained so long as it remains a secret and does not become public knowledge.	Secret recipes Product Formulae Source Codes Customers List Business Plans Marketing strategy and techniques Employees training manuals
Patent	Original invention New process covering a new solution to a specific technological problem.	 It must be novel/new. An invention is new/novel when it has not been disclosed to the public anywhere in the world in any manner before filing the application. It must be invented. It must be industrially applicable. Capable of being made and used in any kind of industry. Therefore, 	Registration with MyIPO	20 years from the date of application	Biological inventions Business methods Pharmaceutical compositions Computer software which affects functional operability



Risks of not protecting IP:

- 1. A third party may register the same mark and will then have the right to sue and stop any other use of any identical or similar mark. So even if your social enterprise was the first to use the mark but failed to register it, it will lose the right to use it because it was not the "first to file".
- 2. Identical or similar mark will confuse the market and disrupt business.
- 3. When your business is disrupted, any goodwill you have established will wear out and affect your consumers' trust in your social enterprise.
- 4. Any dispute exercise on IP infringement will cost valuable time and resources.
- 5. When you don't observe the right processes to confidential data, it may lead to breaches of confidentiality and loss of corporate assets. Publishing or revealing the invention before filing a patent application will also destroy novelty and will severely affect any patent application.

Common mistakes to avoid:

- 1. Failing to do a thorough search
 - A thorough search ensures there is no infringement activity on anyone's IP rights. It is not as simple as doing a Google search. It is advisable to get advice from an IP lawyer to perform a clearance search for the desired trademark, patent, or industrial design.
- 2. Having problems with the name During the planning stage of starting a social enterprise and coming up with a name, a domain and business registration check should be done. If both are clear, a check for trademark can also be done. You should perform all three checks before registering or using a name.
- 3. Protect your inventions before showing people

 Do not start talking about the idea or product in public before registering it. Disclosing too
 much of the innovation in public could jeopardise the right to obtain the patent, industrial
 design, or trademark that will prohibit others from making or exploiting the idea.

Commercial Contracts

At some point, you may need to repair your vehicle. It might need a paint job or tinted windows to keep the heat out. Naturally, you would go to the appropriate service provider. There, you make a bargain in exchange for the service rendered. That is how a contract is formed.

Defining Commercial Contracts

A contract is an agreement between two or more parties. A commercial contract is a contract you use when dealing with suppliers, vendors, service providers, and customers. In order for a contract to be realised, there has to be the following components:

• an offer • acceptance of that offer • something of value that is exchanged (i.e. payment).

Commercial contracts should be in written form so that they are easy to refer to and can be used as evidence. Unless stated by law, contracts can be in verbal form but spoken words are hard to keep track of. Email exchanges may also be considered as a valid contract, where intended as such by the parties. If the parties prefer email communications solely for negotiations and discussions, then it is advisable for every email exchange to expressly provide a disclaimer at the end until a formal contract is given.

In its written form, a commercial contract may be known by other names such as letters, memorandums, deeds, agreements, contracts, heads of terms, term sheets, or standard forms.

What to Look for in a Contract

You should review the contracts you intend to enter. If there are terms which you are not agreeable to, do not hesitate to negotiate those terms. Sometimes, the party that provides you with the contract may claim that it is a "standard contract" or "boilerplate" and that it "cannot be amended." There is, however, no legal restriction that prohibits any contract from being negotiated and amended although some terms of a contract are required in order to comply with certain laws. When presented with a contract, you should read it carefully and only agree to the contract if you are comfortable with its terms. If the language in a contract is not clear to you, you should seek assistance from a lawyer and ask the other party to explain the language to you. If you are not agreeable to a particular term, ask the other party to amend or remove it.

These are some of the key sections you should pay particular attention to in any contract:

- 1. Parties: This outlines who is bound by the contract.
- 2. Definitions of key terms: Contracts often contain various words which have specific meanings within the contract. The meanings of these words should be clearly defined as they should be interpreted for the specific contract. This is to avoid misunderstandings.
- 3. Price: Contracts should spell out the price, which is often referred to as the "consideration." The price can also be in the form of goods, services, shares, or other forms of valuable consideration.
- 4. Representations and warranties: When entering a contract, a party may make various statements which the other party relies on as being true. Representations and warranties are important because they set out the assurances that convinced you to enter the contract. If these statements turn out to be untrue, you can claim for compensation.
- 5. Termination: This section sets out the situations in which the contract can be terminated. In many contracts, termination requires written notice and can occur where there has been a serious breach of contract. If you are providing goods or services under a contract, you should consider whether you would like the right to terminate the contract in the event you do not receive payment for your goods or services. Some contracts may also have terms allowing termination "for convenience" (i.e. for no reason at all).
- 6. Liability: Some contracts have terms which reduce the liability of one or all parties (i.e. "limitation of liability" clauses). These clauses specify what the parties are liable (and not liable) for and they can also state a monetary cap on the liability. If you are supplying products to a customer under a contract, and your customer suffers losses due to a fault of yours, if the customer claims such losses from you, the losses might far exceed any payment you have received from the customer. You should therefore consider including such clauses to limit your liability appropriate to your level of risk tolerance.
- 7. Indemnity: Some contracts contain an indemnity clause. An indemnity is essentially an assurance by one party to reimburse the other party for any losses in certain situations.
- 8. Schedules: These are the exhibits and annexures to a contract which often set out the commercial and operational details of the contract such as the specification of the goods or services, pricing, and payment timelines. Although these schedules are not found in the main body of the contract, the language in these schedules also amount to contractually binding terms that should be reviewed thoroughly.

Examples of Contracts

- 1. Contracts for the provision of services or goods Such contracts typically take the form of:
- a) contracts you enter with your customer relating to the provision of your goods and services to the customer.
- b) contracts you enter with your suppliers or vendors relating to their provision of supplies or services to you.

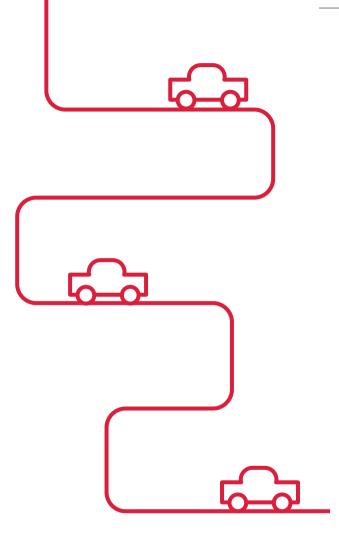
In the course of operating your social enterprise, you are likely to come across many contracts. It is important that these contracts be as accurate and as complete as possible. If you are providing services to a customer, your contract with your customer should clearly specify, among other considerations, your services, your responsibilities, the customer's obligation to pay, as well as the extent of your liability to the customer.

2. Non-Disclosure Agreement (NDA)

When discussing with potential service providers, customers and/or any other third party you are considering forming a commercial contract with, there will definitely be the need to share confidential information of a proprietary nature. In these situations, it would be extremely important to consider an NDA between the parties. This would protect the information from being disseminated and/or used by the other party for purposes other than that agreed in your contract.

3. Memorandum Of Understanding (MOU)

If you are negotiating or having early discussions on any joint project or collaboration, you may want to set up an MOU at the start of the project. This is so you can record the basic terms for everyone working on that particular project. It is important for the parties to determine whether they wish to be bound by the terms of the MOU. If the MOU is intended to be non-binding, then parties must state clearly that they do not want to be bound by the MOU until a formal contract is given. A non-binding MOU is commonly used to represent the discussion or terms of collaboration between parties before each is required to undertake further steps before the formal agreement.



Consult a Mechanic: Lawyers

It is always good to know when and how to contact an expert. Some of you may want to consult a mechanic before you begin your journey — so that you can have all the kinks sorted out. Some might feel more comfortable summoning a mechanic when absolutely needed. Either way, you want to be sure that you have received sound advice from the right expert.

Setting Objectives

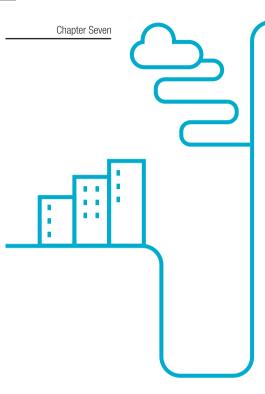
There is no right or wrong way to go about this. Instead, you are encouraged to consider your social enterprise's needs and requirements in order to make a well informed decision that will suit you best in the long run.

Consider the following:

- What are the key concerns you need to address?
- How do these issues impact your business?
- Do these issues demand your immediate attention or action?
- Do you require preemptive measures or are you in a fire-fighting situation?
- To what extent do you wish for the lawyer be involved?

Thinking through the above questions will help you better understand your objectives and expectations and communicate more effectively if you do decide to engage a lawyer.





Choosing a Lawyer

With the development of technology, legal directories are easily accessible through various online portals such as the Malaysian Bar website, Legal 500, and Law Asia. You can search and select lawyers or law firms by area of expertise, location, and qualifications. Seeking recommendations or referrals from peers, family, and other contemporaries is a great way to find the right fit. During the selection process, you will need to consider an efficient way to manage your costs and resources.

Tips when considering a lawyer:

- Assess lawyer's credentials and personality. Don't be afraid to ask about the length
 of their practice, areas of practice, and notable past transactions or projects, etc.
- It is beneficial to appoint a lawyer with relevant industry knowledge, expertise, and
 experience who will understand the nitty gritty details of the specific industry and
 could offer insights to the customary practice and challenges.
- You will want a lawyer who not only understands the law but is willing to take a
 practical approach in providing you advice.
- Having the right seniority level for the scope could significantly impact the outcome
 of the legal issues and costs.
- Trust your instincts and ask yourself whether the person is trustworthy, reliable, a
 good listener, and someone you can relate to and enjoy working with.

Billing

- Find out how the lawyer charges for their services. Typically, big to mid-sized firms bill in increments of six minutes or on an hourly basis. The range of hourly rates vary from firm to firm and depend on location and area of expertise. In some cases, law firms may offer services based on a fixed or capped fee.
- For real estate related matters, legal costs are fixed and prescribed under the Solicitors Remuneration Order 2006.
- Most firms do not charge for the first meeting consultation.

The Hub: Becoming a Social Enterprise

Congratulations! You have arrived at the transportation hub of the city and you have become a social enterprise. But don't confuse this achievement with arriving at your final destination. Relatively speaking, you are only at the beginning of your journey in making an impactful change to society and the environment with a self-sustaining business model.

Malaysia is just beginning to see the true potential that this sector can bring to our society and economy. We cannot afford to sit around and wait for social enterprise specific laws to come together before deciding to embark on our journey of social entrepreneurship. The need is here and the need is now.

The Journey Continues: Where to go from here

Social entrepreneurs are changing the business landscape in Malaysia and are making a meaningful contribution to the environment and society as a whole. It is our hope that, as this sector continues to grow and mature, the law begins to recognise social enterprise as a worthy business entity deserving its own legal framework.

In anticipation of favourable policy change, we hope to see more recognition and widespread participation in this sector. Our world can only improve under the care of pioneering social entrepreneurs.

HOW YOU CAN GET INVOLVED

For more comprehensive information on Malaysian Social Enterprise, please download the "Malaysian Social Enterprise Blueprint: Unleashing the Power of Social Enterpreneurship" document from se.mymagic.my/publications

For more information about MaGIC Social Entrepreneurship, visit our website at se.mymagic.my or contact us at se@mymagic.my

For more updates, follow us at:





@MaGICCyberjaya