

LEGAL SERVICES COUNTRY PROFILE

MALAYSIA

International Legal Services Advisory Council

Attorney-General's Department

Australia

January 1998

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Introduction

The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. General information:	key data, legal language, form of government and economic indicators.
2. Basic legal information:	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. Legal services market:	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. Market access requirements:	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. Australian legal services:	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. References/sources:	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

How to order

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Commonwealth Attorney-General's Department
Robert Garran Offices
National Circuit
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Email: ilsac.secretariat@ag.gov.au
<http://law.gov.au/aghome/advisory/ilsac/ilsac.htm>**

1 General information

Official name

Malaysia.

Population

In 1993, the population was estimated to be 19.2 million.³ Malaysia is composed of approximately 40 per cent Malays (55 per cent of the Peninsular population), 30 per cent Chinese, 10 per cent Indians and 20 per cent indigenous peoples of Sarawak and Sabah.¹³

In 1988, approximately 82 per cent of the population lived in Peninsular Malaysia, 10 per cent in Sarawak and 8 per cent in Sabah. In Sabah, the predominant ethnic group is the Kadazans. In Sarawak, the predominant ethnic groups are the Ibans, Bidayuhs and Melanaus. In Peninsular Malaysia, the predominant ethnic group is Malay with a substantial minority of Chinese.¹

Languages

Bahasa Malay is the national language, but English is used extensively. The Chinese dialects (Cantonese, Mandarin and Hokkien) are widely spoken. Tamil and Punjabi are spoken by the 10 per cent of the population of Indian origin.^{1/22}

Legal language

The legal language of the courts is Bahasa Malay. Except for proceedings filed before 1990, all documents (pleadings and affidavits) must be in Bahasa Malay. Pleadings and affidavits may, and often are, accompanied by an English translation. Oral hearings may, with the permission of the court, be conducted in English. In practice, however, leave is normally granted by the superior courts. Exhibits that are in a language other than Bahasa Malay or English ought to be translated into Bahasa Malay.¹⁴

Form of government

Malaysia has a parliamentary system of democracy based upon the Westminster model. The country has a unique constitutional monarchy as the King is elected to office for five-year terms by a council of hereditary rulers of the nine states.¹³ The King appoints the Prime Minister and, on the advice of the Prime Minister, the King also appoints a Cabinet drawn from members of parliament of the party that commands a majority in the House of Representatives.

- Head of State: Yang di-Pertuan Agong (King or supreme sovereign).

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- Head of Government: Prime Minister, Dr Mahathir bin Mohamad.
- Ruling Party: Barisan Nasional (National Front) Coalition.
- Opposition Parties: Semangat '46 (dissident UMNO), Parti Islam Sa-Malaysia (PAS), the Democratic Action Party (DAP) and Parti Bersatu Sabah (PBS).¹¹

Economic information

Basic indicators	1990	1991	1992	1993*
GDP at market prices M\$ bn	114.6	123.9	140.3	157.0
Real GDP growth %	9.8	8.7	7.8	8.2
Consumer price inflation %	3.1	4.4	4.7	3.6
Exports fob US\$ bn	29.0	33.7	40.6	46.8
Imports fob US\$ bn	27.0	34.0	39.8	40.4
Current account US\$ bn	-1.7	-4.8	-1.7	.05

* Official and Economist Intelligence Unit estimates

Sources: Malaysia, Country Report, 2nd quarter 1994, The Economist Intelligence Unit

Per cent of GDP in services sector

In 1993, the services sector accounted for 44.1 per cent of GDP, making it the single largest contributor to GDP in 1993.

The establishment of the federal territory of Labuan as an international offshore centre has been a key factor in the development of the services sector. Labuan offers a low tax regime and confidentiality provisions designed to attract foreign businesses. Labuan is designed to promote offshore banking, insurance and trust fund management in Malaysia.³³

Total two-way trade with Australia (1992–93; mn. A\$)	2,283.79
as % of total Australian trade	1.9
rank in total Australian trade	13
Value of Australian exports (1992–93; mn. A\$)	1,309.93
as % of Australian exports	2.2
market ranking in Australian exports	11
% growth (five-year trend)	14
Value of Australian imports (1992–93; mn. A\$)	973.86
as % of Australian imports	1.6
market ranking in Australian imports	16
% growth (five-year trend)	10.2

Source: Department of Foreign Affairs and Trade, *Composition of Trade—Australia, 1993*, May 1994.

2 Basic legal information

Legal system

There are three parallel legal systems in Malaysia; common law, Islamic and, in Sabah and Sarawak, a native law system.¹³

Sources of law

The main sources of law in Malaysia are:

- the Federal Constitution;
- the statutes of the Federal Parliament;
- the statutes of State Legislative Assemblies;
- the common, or case law;
- Islamic personal laws (applicable to Muslims only); and
- Native law (applicable to natives of Sabah and Sarawak).^{15/22}

A number of matters of importance to both foreign investors and local business are governed in Malaysia by policy directives from various ministries (for example, the New Development Policy). These directives are not law but are often incorporated in contracts and are generally given effect by Government Departments and statutory and licensing authorities.¹⁴

Structure of the legal profession

The legal profession in Malaysia is fused, that is, qualified practitioners function as both solicitors and barristers. A lawyer practising in Peninsular Malaysia is known as an 'Advocate and Solicitor'. A lawyer practising in Sabah and Sarawak is known as an 'Advocate'. There are also public notaries who authenticate and preserve important documents.^{13/22/20}

Regulation of the legal profession

Currently there are separate bars for Peninsular Malaysia, Sabah and Sarawak. The legal profession in Peninsular Malaysia is regulated by the Bar Council, which is also responsible for overseeing the professional etiquette and standards of the profession in the Peninsular.¹³

The Qualifying Board is responsible for determining qualifications for admission to the Bar. The Board is made up

of representatives from the Bench, the Bar, deans of law schools and the Attorney-General, who presides.¹⁹

The disciplinary powers over the conduct of solicitors are now vested in an independent body, the Disciplinary Board, established in 1992. The Board is composed of a retired judge or serving judge and other members appointed by the Chief Justice of the High Court of Malaya. The President of the Bar is an ex-officio member. There are both investigation and disciplinary panels, each consisting of two lawyer-members and a lay member.²⁰

All practising lawyers must be insured under the Bar Council's Master Policy. The minimum mandatory sum to be insured is RM250,000 for each practice/firm and RM50,000 for each additional lawyer in the firm. In addition the Bar Council also maintains a Compensation Fund to meet claims arising out of fraud or dishonesty not covered by the Master Policy. No lawyer is allowed to practise unless he/she is covered by the Master Policy and has contributed to the Compensation fund.

Law-making bodies

In Malaysia, law-making powers are distributed between the Federal and State Parliaments. The main legislative body is the Federal Parliament. The Federal Constitution outlines the distribution of legislative powers in three lists (the Federal list, the State list and the Concurrent list).¹³

Law derived from Australia

Australian legislation has been used as a model in commercial, company and land law. The *Malaysian Companies Act 1965* was initially based upon the Australian *All Uniform Companies Act 1961* (since repealed).²² The Torrens system of land registration has also been adopted by Malaysia.¹⁸ The *Securities Industry Legislation* in Malaysia is modelled very closely on the corresponding Australian legislation.²⁹

Court structure

There are different courts for each of the three systems of law. Up until 23 June 1994, the three-tiered common law court structure consisted of subordinate courts; two High Courts, one for the States of Peninsular Malaysia, the other for the States of Sabah and Sarawak; and, at the apex, a Supreme Court.

However, the court structure recently changed following amendments to the Federal Constitution and the *Courts of Judicature (Amendment) Act 1994*, which came into force on 24 June 1994. The amendments provide for the creation of a Court of Appeal that will lead to a four-tier court system comprising the highest court in the country, namely the 'Federal Court' (currently known as the 'Supreme Court'), the 'Court of Appeal' and the 'High Court'. Each of the High Courts continues to exercise both original and appellate

jurisdiction in civil and criminal matters. Appeals from the High Court, in both civil and criminal matters, lie to the Court of Appeal (presided over by a President and two judges of the Court of Appeal). Further appeals to the Federal Court lie with leave in civil matters where the monetary value exceeds RM250,000 and unconditionally where a constitutional question is involved or, in criminal matters that originated in the High Court or in other cases, with leave of the Federal Court where a question of importance is involved. In addition, the Federal Court has original jurisdiction over all constitutional questions referred to it by the High Court and disputes between the Federation and a State or between States.^{25/20}

The States establish the Syariah or Islamic Courts and there are three levels, namely the Syariah Subordinate Court, the Syariah High Court and the Syariah Appeal Court.

A special system of courts administers native law in Sabah and Sarawak. In Sabah, these consist of the Native Court, the District Officer's Court and the Native Court of Appeal. In Sarawak these consist of the Headman's Court, the Native Officer's Court, the Resident's Native Court and the Native Court of Appeal.

In Peninsular Malaysia, it is usual for local magistrates to be appointed from the ranks of graduating lawyers, following in-service training. Many of these magistrates subsequently enter private practice.^{13/22}

Professional legal education

Primarily trained

Most lawyers (approximately 80 per cent) are now trained in Malaysia. This is due in part to easier access to legal studies, such as the external law degree course now offered by the University of London.²⁵

Qualifications for practice

Candidates for admission to practice, in most cases, must have a formal qualification in law from a tertiary institution which is recognised by the Malaysian Qualifying Board. By way of practical legal training, candidates serve a nine month pupillage with a lawyer of at least seven years standing in Malaysia.^{19/22}

The following persons may be admitted to practice provided they are either citizens or permanent residents.

Law graduates from Malaysia or Singapore

Bachelor of laws degree, or other equivalent qualifications, from the University of Malaya, University Kebangsaan

Malaysia, the International Islamic University and the National University of Singapore are recognised for admission purposes. Graduates must then complete the nine-month period of pupillage before gaining admission.

Foreign law graduates

Foreign law graduates from universities recognised by the Malaysian Qualifying Board may be eligible for admission to practice. There are no special procedures for the recognition of universities for this purpose, the Board considers applications on an ad hoc basis.

At present, graduates from the United Kingdom who have completed the course run by the Council of Legal Education (COLE) may proceed directly into the nine-month pupillage period. Graduates from the United Kingdom who have not completed the COLE course must successfully complete the exams run by the Centre for Legal Practice (CLP) before proceeding on to the period of pupillage.

Section 13 of the *Legal Profession Act* provides that qualified persons who have served in the judicial and legal services for seven years may be exempted by the Bar Council from serving any period of pupillage.

Persons who have completed Articles

After five years of articulated clerkship under a senior lawyer, a person may be eligible to sit for the examinations held by the Qualifying Board. Very few have gained admission through this system.²²

Principal universities

The universities/institutions offering legal education in Malaysia include:

- University of Malaya, Jalan Lembah Pantai, Kuala Lumpur;
- University Kebangsaan Malaysia (National University of Malaysia), Bangi, Selangor; and
- International Islamic University, Jalan University, 46350 Petaling Jaya.²

Malaysian legal education and training are modelled largely on the English system.^{24/13}

Other domestic training institutions

The MARA Institute of Technology, 40450 Shah Alam, Selangor, is the other main domestic training institution. The Institute is restricted to Malays and indigenous people. Given

that the Institute is not an University, it cannot award degrees. However, it does offer a Diploma in law (3 years) and an advanced Diploma in Law (a further one year). Advanced Diploma graduates are eligible to undertake the normal period of pupillage for the purpose of admission to practise.²

Post-graduate legal courses

Masters degree by thesis and doctoral degrees are offered at the three universities mentioned above (see *Principal universities*).^{22/25}

Other domestic legal qualifications

(See *Qualifications for practice* above)

Practical legal training

Graduated must complete a nine-month period of pupillage with a lawyer of at least seven years standing. (see *Qualifications for practice* above)

Foreign legal training

Sources

Many Malaysian lawyers undertake their law training abroad in recognised institutions, for example, in the United Kingdom, Singapore, Australia and New Zealand.¹⁹ A considerable number of Malaysians go to England, Australia and the United States for masters and doctoral courses.¹⁹

Skills obtained

See *Sources* above.

3 Legal services market

Professional associations (law societies/bar associations)

The Bar Council, States of Malaysia¹⁶
No. 5 Jalan Tun Perak
50050 Kuala Lumpur
Malaysia

Advocates' Association of Sarawak
PO Box 197
Kuching
Sarawak
Malaysia

Sabah Law Association
PO Box 11350
88815 Kota Kinabalu
Sabah
Malaysia

Local legal firms

Local legal firms

As at 22 August 1994, there were 2,335 law firms operating in Peninsular Malaysia.¹⁴

Local lawyers

As at 19 August 1994, there were 5,033 practising lawyers in Peninsular Malaysia and the Federal Territory of Labuan.¹⁴

Per cent in international commerce

The internationalisation of the Malaysian economy has resulted in an increase in the number of lawyers involved in international commerce or related transactions and up to 10 per cent of all lawyers are now engaged in such activity. These lawyers tend to be concentrated in the larger firms that specialise in these areas.²⁵

Dollar value of legal services

Information not available.

Local legal firms involved in international work

See *Practice mx* below.

Practice mix

The local law firms involved in international work listed below all practise corporate law, and are reported as possessing the following particular strengths:

- Cheang & Ariff—intellectual property and real estate;
- Chooi & Co—commercial law, banking, intellectual property, joint venture, property and business law;
- Presgrave & Matthews—litigation;
- Rashid & Lee—corporate law, banking, joint venture property, commercial and business law;
- Raja, Darryl & Loh (formerly Mah-Kok & Din)—general practice, commercial, intellectual and real property, insurance and litigation;
- Shearn Delamore & Co—employment law, intellectual property, litigation, corporate and property;
- Shook Lin & Bok—banking and finance and litigation;
- Skrine & Co—banking and finance; and
- Zain & Co—banking and finance and litigation.²³

Australian and other foreign legal firms

Australian firms

Presently no foreign law firm operates in Malaysia, as legal practice is restricted to Malaysian citizens and residents. However, the following Australian firms have arrangements in place:

- The Allens Arthur Robninson Group have close but informal arrangements with a leading commercial law firm in Kuala Lumpur. The Group's Singapore office, Allens Arthur Robninson practises extensively as international counsel in relation to a wide range of Malaysian related work, in conjunction with Malaysian lawyers where need be;³⁴
- Mallesons Stephen Jaques is represented in Kuala Lumpur through agency arrangements;²⁸
- Clayton Utz is associated with the Malaysian law firm of Skrine & Co, through the Pacific Rim Advisory Council (PRAC). This firm has 18 partners, two consultants, 35 legal assistants and a total staff of more than 250 persons;²⁶
- Freehill Hollingdale & Page undertakes legal work on Malaysian assignments from its Singapore Office acting

where necessary in conjunction with one of its correspondent Malaysian law firms. The firm also provides international commercial arbitration and alternative dispute resolution services in Malaysia. This firm's Singapore Office has four partners and three legal assistants; and¹⁷

- Garland Hawthorn Brahe has informal arrangements with law firms in Kuala Lumpur.⁴

Note: Australian law firms located in Singapore are able to provide some services to Malaysian and other clients.²⁹

Australian lawyers

None, except as noted in *Foreign Lawyer/Firm Regulation* below.

Local lawyers

Not applicable.

Foreign legal firms

Presently, no foreign law firms operate in Malaysia. Legal practice is restricted to Malaysian citizens and residents. However, in some circumstances, foreign counsel may be admitted on a case-to-case basis.²

Status of lawyers employed

Local lawyers

Not applicable (see *Foreign firms* above).

Foreign lawyers

Not applicable (see *Foreign firms* above).

Principal home countries

Not applicable (see *Foreign firms* above).

Practice mix

Not applicable (see *Foreign firms* above).

Commercial arbitration

Arbitration in Malaysia is regulated by the *Arbitration Act 1952*, Order 69 of the *Rules of the High Court 1980*, the United Nations Commission on International Trade Law (UNCITRAL) rules as adapted by the Regional Centre for Arbitration and the rules of the specialised arbitration tribunals.¹³

Firms/centres

Kuala Lumpur Regional Centre for Arbitration²¹
No. 12 Jalan Conlay 50450
Kuala Lumpur
Malaysia
Telephone: (03) 242 0103 or 242 0702
Facsimile: (03) 2424513

Principal coverage

The Regional Centre for Arbitration is one of two non-profit, regional centres established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC); the other centre is in Cairo. The Kuala Lumpur Centre serves 14 member countries in Asia and the Pacific and functions under the supervision of the AALCC. The Centre has entered into cooperative agreements with arbitral institutions in a number of countries. Cooperative agreements allow for the provision of facilities for arbitration under the auspices of other institutions (for example, the International Centre for the Settlement of Investment Disputes (ICSID), the American Arbitration Association (AAA), and national institutions in Australia such as the Australian Centre for International Commercial Arbitration (ACICA)).³⁵

Foreign restrictions

Foreign attorneys are considered as neither advocates nor solicitors under the *Legal Profession Act 1976* (the *Legal Profession Act*). In addition, section 36 of the *Legal Profession Act* gives Malaysian advocates and solicitors the exclusive right to appear and plead in courts of justice in Malaysia. However, the arbitration tribunal is not considered a court of justice therefore, foreign attorneys may act in arbitration proceedings.²¹

There are no special rules relating to the participation of foreign companies and foreign-owned subsidiaries in arbitral proceedings.¹³

International instruments

The *International Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965* came into force for Malaysia on 14 October 1966.⁸ Malaysia has enacted the following legislation, pursuant to Article 69 of the ICSID Convention, to make its provisions effective in the territory:

- the Convention on the Settlement of Investment Disputes Act 1966 (Act of Parliament 14 of 1966);
- the Notification on entry into force of the Convention on the Settlement of Investment Disputes Act 1966 (Notification No. 96 of Mar. 10, 1966); and

Legal Services Country Profile: Malaysia

- the Arbitration (Amendment) Act 1980 (Act A 478 of 1980).³²

Malaysia became a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)* on 5 November 1985.

Malaysia has not adopted the *UNCITRAL Model Law on International Commercial Arbitration (1985)*.⁸

4 Market access requirements

Foreign lawyer/ firm regulation*

(*The *Legal Profession Act* provides for the admission of foreign lawyers who possess expertise or qualifications not found amongst local lawyers in Malaysia.¹³)

Body responsible

Foreign lawyers/firms are not permitted to practice in Malaysia, hence no body has been established which is directly responsible for the regulation of foreign lawyers/firms.²²

Laws & regulations

The legal profession in Malaysia is regulated by the *Legal Profession Act*. The *Legal Profession Act* has been in force in Peninsular Malaysia since 1 June 1977.

It is not in force in Sabah and Sarawak. The profession in these two States is regulated by:

- Sabah: *Advocates Ordinance* CAP. 2R.E. 1953 and Act 3/1960;
- Sarawak: *Advocates' Ordinance* CAP. 110 Rep. 1966.¹⁶

Foreign lawyer admission to practice requirements*

(*The residency requirement in the *Legal Profession Act* effectively bars non-citizens/non-resident lawyers from practice in Malaysia.⁹ Therefore the following admission to practice requirements are only applicable to Malaysian citizen/resident lawyers, unless otherwise stated.)

Citizenship

Peninsular Malaysia

Section 11(1)(c) of the *Legal Profession Act* provides that, apart from the holders of Special Admission Certificates, qualified persons must be either a citizen or a permanent resident of Malaysia to be admitted to the Bar.¹⁶ This residency requirement effectively bars non-citizens/non-resident lawyers from practice in Malaysia.⁹

Sabah and Sarawak

See *Educational qualifications* below.

Educational qualifications

Peninsular Malaysia

The High Court admits “qualified persons” under section 10 of the *Legal Profession Act*. Section 3 of the *Legal Profession Act* prescribes the following three classes of “qualified persons”.

1. Those who have passed the final examination leading to the degree of Bachelor of Laws at the University of Malaya, the University of Malaya in Singapore, the University of Singapore, or the National University of Singapore.
2. Those who are admitted as a Barrister-at-Law of England; or
3. Those who are in possession of such other qualifications as may, by notification in the Gazette, be declared by the Qualifying Board to be sufficient.

Sabah and Sarawak

To qualify for admission in Sabah and Sarawak applicants must be:

- a member of the Bar of England, Scotland, Northern Ireland or Ireland;
- a Solicitor entitled to admission without further practical experience or examination in the United Kingdom by virtue of the *Colonial Solicitors Act 1900* (United Kingdom);
- a Solicitor in England, Scotland, Northern Ireland or Ireland;
- a person with Sabah or Sarawak connections who has a Bachelor of Laws degree from the University of Malaya or Singapore or a person with a Certificate in Legal Practice awarded by the Qualifying Board under the *Legal Profession Act*, who has completed a 12 months practical training; or
- a legal practitioner admitted to practice by the Supreme Court in any territory in the British Commonwealth.

(“Sabah or Sarawak connections” means that the applicant:

- must have been born in that State; and
- is either ordinarily resident there for five years or domiciled there when making his or her application for admission.

In Sarawak, an applicant under any of the above heads must have Sarawak connections (section 4(2)(c)(i) of the *Advocates Ordinance* (Sarawak)).

For both States an applicant must have been normally resident in the State for eighteen months.

Additional educational requirements

Peninsular Malaysia

Section 11(2) *Legal Profession Act* provides that all qualified persons must either pass or be exempted from the Bahasa Malaysia Qualifying Examination conducted by the Qualifying Board (see *Qualifications for practice*).

Sabah and Sarawak

None known.

Experience

Peninsular Malaysia

None known.

Sabah and Sarawak

None known.

Pupillage period

Peninsular Malaysia

Section 11(1)(d) of the *Legal Profession Act* provides that qualified persons must serve the prescribed period of pupillage in Malaysia. Section 12(2) defines the prescribed period as nine months. However, section 13(3) provides the Bar Council with the discretion to exempt a qualified person from up to six months of that pupillage. Two grounds for exemption are particularly relevant to overseas Commonwealth practitioners: that the applicant has already served a six month pupillage anywhere in the Commonwealth; and that the applicant has been in active practice in the Commonwealth for six months.

Sabah and Sarawak

None known.

Government approvals

No additional requirements for Government approvals are known.

Other

None known.

Admission authority

Peninsular Malaysia

The High Court, pursuant to section 10 of the *Legal Profession Act*, is responsible for admissions. Under the provisions of Part IIA of the *Legal Profession Act*, a Special Admission Certificate may be issued by the Attorney General. However, pursuant to section 28B, a judge must admit the holder of such a certificate.

Sabah and Sarawak

The body responsible for admission in Sabah and Sarawak is also the respective High Courts.²⁰

Special admission

Peninsular Malaysia

The High Court, under section 18(1) of the *Legal Profession Act*, may admit any person, (who would be otherwise eligible for admission in Malaysia if he or she were a Malaysian citizen), to any one case provided he or she has special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia and he or she has been instructed by an advocate and solicitor in Malaysia. Section 18(2) provides that the High Court is to have regard to the views of the Attorney-General, the Bar Council and the parties to the case in reaching its decision.

Sabah and Sarawak

If an applicant is intending to live permanently in that State and is replacing an existing advocate of twelve months standing, the Chief Judge may grant a temporary certificate to an applicant who does not meet the residency requirements. Furthermore, the Chief Justice may grant any legal practitioner licence to hear a particular case if under instruction of a local advocate and if the Chief Justice is satisfied that, in the interests of justice, it is necessary.¹⁶

Additional requirements

Visa restrictions

Visas are required and may be obtained from the Department of Immigration.²²

Work permits

Work permits are required for any employment in Malaysia and may be obtained from the Department of Immigration.²² Applications for an employment pass must be made before arrival in the country and must have sponsorship in Malaysia. The sponsor must agree to be responsible for the maintenance

and repatriation from Malaysia of these visitors if it becomes necessary. An employment pass is issued to any person entering Malaysia to engage in employment for not less than two years and subject to a maximum of ten years. All holders of employment passes are also issued multiple entry visas for the period the pass is valid.¹³

Regulation of foreign law firms*

*(*It is not possible for foreign law firms to practise in their own right in Malaysia.²²)*

Use of firm name

Not applicable.

Employment of local lawyers

Not applicable.

Local firm association

Foreign lawyers cannot form partnerships with local lawyers.¹³

Government approvals

Not applicable.

Other

Not applicable.

Restrictions on practice*

*(*Non-citizens/non-resident lawyers are effectively barred from practice in Malaysia, except for the admission of foreign lawyers who possess expertise or qualifications not found amongst local lawyers in Malaysia.^{9/13})*

Local law

Not applicable.

Home law

Not applicable.

Foreign law

Not applicable.

International law

Not applicable.

Other

Section 36 of the *Legal Profession Act* permits only Malaysian advocates and solicitors to appear and plead in courts of justice in Malaysia.

Recent regulatory changes

Legal education and professional training changes

There are a number of regulatory changes in progress to revamp the system of legal education for professional training. One suggestion is the restriction of the recognition of overseas degrees and the introduction of a compulsory diploma in local law to be completed successfully by all law graduates.

The Government is also considering substituting the compulsory period of pupillage of nine months, where graduates cannot find places for pupillage, with a simulated professional training in a classroom akin to the one conducted by the Leo Cussens Institute in Victoria, Australia.²⁰

A proposal is also being considered for the establishment of an Academy of Law to cover all persons legally qualified, whether in practice or not (including academics and those in the judiciary).

Constitutional changes

In May 1994, the Government began debating proposed changes to the constitution which would reduce the influence of British common law and strengthen the indigenous components of Malaysian society within the judiciary. In addition, the *Constitution Amendment 1994* further reduces the roles of the monarchy and introduces a code of ethics for the judiciary.³

5 Australian legal services

Australian law firms*

(*For Australian law firms and lawyers providing services see 3—Legal services market above.)

Prospects for Australian legal services

Legal assistance required by Australian businesses

Australian businesses generally require legal assistance in three main areas:

- entering joint venture agreements;
- incorporating a local company; and
- obtaining approvals from relevant Malaysian Government authorities.

Australian law firms in Singapore, acting in conjunction with Malaysian lawyers, have been active in advising Australian and other international investors in relation to sophisticated commercial transactions.¹⁷

Areas in which legal Australian services might be of value

In view of the similarity between Malaysian and Australian law, Australian advice derived from Australian experience is of particular relevance in Malaysia, and is frequently sought by Malaysian business people and law firms.¹⁷

Advice is also often sought by Malaysian businesses on how to operate in Australia.¹⁸

Future prospects

Given the increasing sophistication of the Malaysian economy, it is expected that there will be a significant growth in the scope for the provision of commercial legal services by Australian firms.¹⁷

Dispute resolution services

Centres/firms

The Australian Centre for International Commercial Arbitration ACICA provides services on the settlement of international commercial disputes of all kinds to the region. The Institute of

Arbitrators, Australia which is closely related to ACICA, has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate domestic disputes and the promotion of arbitration as a means by which commercial disputes can be resolved. ACICA has entered into arrangements with the ICSID in accordance with the provisions of the ICSID Convention.

ACICA has Co-operation and Trade Arbitration Agreements with 28 International Arbitral Centres around the world including those in the world's major trading nations in Asia, Europe, the Middle East and the Americas.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the International Chamber of Commerce Court of Arbitration in Paris.

ACICA has concluded a Co-operation Agreement and is in regular communication with Regional Centre for Arbitration in Kuala Lumpur.

For further information on ACICA³¹ contact:

**The Secretary General
ACICA
Level 1
22 William Street
Melbourne Victoria 3000
Telephone: (03) 9629 6799
Facsimile: (03) 9629 5250**

The Australian Commercial Disputes Centre (ACDC) provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the ICSID in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the whole Asia Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres.

For further information on ACDC³⁰ contact:

**The Chief Executive Officer
Australian Commercial Disputes Centre
Level 5
50 Park Street
Sydney NSW 2000
Telephone: (02) 9267 1000
Facsimile: (02) 9267 3125**

Legal education and training

Overseas students studying law in Australia

Undergraduate/post-graduate

In 1993, there were 241 Malaysian students recorded as studying law/legal studies at undergraduate level and 10 studying at post-graduate level in Australian (public & private) universities.¹⁰

Short courses

Not known.

Overseas students studying in Australia

Commonwealth-funded higher education institutions

In 1993, there were 7 240 Malaysian students recorded as studying at Australian publicly funded tertiary institutions.¹⁰

Overall

Malaysia is a major source of overseas students in Australian institutions. It is estimated that there are about 10–11,000 students from Malaysia in Australia at any given time. The total number of Malaysians studying abroad is estimated to be 50–60,000. The majority of Malaysian students seek degrees or long-term recognised diploma courses.³³

Qualifications recognised

Presently, Malaysian citizen/resident law graduates from Malaysia, Singapore, and recognised overseas universities and law schools in England, Australia and New Zealand may be admitted in Malaysia. To qualify for admission, graduates must satisfy a nine-month period in pupillage with a lawyer of at least seven-years standing.

The Australian university law schools which are currently recognised by the Malaysian Qualifying Board are:

- The University of Sydney
- The University of Queensland
- The University of Melbourne
- The University of Adelaide
- The University of Western Australia

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- The University of Tasmania
- Monash University
- The University of New South Wales
- Macquarie University
- The Australian National University
- Bond University
- The University of Technology, Sydney.

The New Zealand university law schools which are currently recognised by the Malaysian Qualifying Board are:

- The University of Auckland
- The University of Canterbury
- The University of Otago
- The Victoria University of Wellington.¹⁹

Malaysian citizen/resident law graduates from universities in England and other jurisdictions whose qualifications are approved by the Qualifying Board may also be admitted in Malaysia. Applicants with approved law degrees are required to successfully complete a Certificate in Legal Practice (CLP) set by the Qualifying Board and satisfy a nine-month period in pupillage before admission to practice.¹⁹

Malaysian law degrees are generally recognised for the purposes of admission to practice in Australia and graduate programs in Australian law schools.²²

Australian Education Centre representation

**Australian Education Centre⁵
6th Floor, West Block
Wisma Selangor Dredging
142-C Jalan Ampang 50450 Kuala Lumpur
Malaysia
Telephone: 60-3-2483755
Facsimile: 60-3-2482078**

Dollar value of educational services

Information not available.

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