

## DIVERSITY, EQUITY, AND INCLUSION IN MALAYSIA'S CORPORATE SECTOR: A LEGAL OVERVIEW

Diversity, equity, and inclusion (“**DEI**”) policies are becoming more widely acknowledged and prioritized in workplaces globally as organizations and institutions endeavour to foster an atmosphere that is more inclusive, varied, and equitable. As a multicultural and multiethnic country, Malaysia is no stranger to these discussions with the Malaysian corporate sector now embracing DEI policies as a way to promote a more equitable and inclusive society.

### **What are DEI Policies**

DEI policies are principles and practices designed to eliminate discrimination, address biases, and foster an inclusive environment within organizations. These policies aim to reflect the core values and commitments of an organization and typically include measures such as adopting blind or unbiased hiring and recruitment practices, implementing diversity training, promoting pay equity within the workforce to address the gender pay gap, and introducing accessibility initiatives. Structurally, DEI policies typically adhere to a three-pronged framework:

1. The first component focuses on diversity in the workforce, which includes not only race and ethnic backgrounds but also gender, age, disabilities, orientations, lifestyles, and economic backgrounds, among others.
2. The second component examines equity in the workplace. This refers to the fair treatment of all employees and ensuring that employees have access to the same opportunities, and resources, and are offered the necessary support to succeed.
3. The third component centres on fostering an inclusive workplace environment, aiming to ensure that all individuals, regardless of their background, are treated with dignity, respect, and support in the workplace.

### **Research behind DEI Policies**

Research suggests that when organizations practice bias free policies and procedures,

employees perceive that their organizations support diversity and that they have equal opportunities which in turn boosts employee perception toward these organizational policies that enhance their level of job satisfaction and help employees improve job performance.[1] Moreover, research also indicates that companies with effective DEI policies perform better than companies without such policies, with data proving that companies in the top quartile for gender diversity within executive teams were 25 percent (25%) more likely to have above-average profitability compared to companies in the fourth quartile.[2]

## **Legal Framework Supporting DEI Policies**

Malaysia has implemented legal measures to establish a framework that promotes equitable employment opportunities by eliminating discriminatory practices.

### Constitutional Protection

The Federal Constitution of Malaysia ("**Federal Constitution**") is the fundamental provision that protects diversity, equality, and inclusion in Malaysia. Article 8 of the Federal Constitution guarantees equality before the law and equal protection of the law,[3] and except where expressly permitted by the Federal Constitution, it prohibits discrimination against citizens on the grounds of religion, race, descent, place of birth or gender in any law or in the appointment to any office or carrying on of any trade, business, profession, vocation, or employment.[4]

### Statutory Provisions

The Employment Act 1955 ("**EA**") governs labour practices in Malaysia and sets out the rights and obligations of both employers and employees in the workplace. Although the EA doesn't explicitly mention DEI, its broad provisions on non-discrimination[5] and protection of pregnant employees against termination[6] which came into effect in 2023 align with the equity and inclusion aspects of DEI.

Section 43 of the EA also voids any provisions in employment contracts in which female employees relinquish or are deemed to relinquish any pregnancy and maternity rights conferred by the Part IX of the EA.[7] Section 14 of the Industrial Relations Act 1967 ("**IRA**") further extends this protection to collective agreements, providing that any term or condition of employment contained in a collective agreement, which is less favourable than or in contravention of the provisions of any written law applicable to workmen covered by the said collective agreement, shall be void and of no effect to that extent and the provisions of such written law shall be substituted therefor.[8]

While there is now statutory provisions to ensure that pregnant employees are not terminated during their pregnancy or after their pregnancy due to pregnancy related issues, the Federal Court previously held in the case of *Beatrice A/P AT Fernandez v Sistem Penerbangan Malaysia & Ors [2005]* that the protections awarded by Section 43 of the EA and Section 14 of the IRA would not void contract provisions that required

employees in specialised occupations to resign if they become pregnant, simply because they cannot be working till they are due to deliver.[9] The Federal Court held that such clauses are subject to the Contracts Act 1950 and continue to be valid and enforceable.[10]

In addition to the provisions of the EA and the IRA, the Persons with Disabilities Act 2008 ("**PWDA**") also promotes inclusion and safeguards the rights and access of persons with disabilities to employment, ensuring that they have the right to access to employment on equal basis with persons without disabilities.[11] Employers are required to protect the rights of persons with disabilities, on equal basis with persons without disabilities, ensuring that employees with disabilities have access to just, favourable, safe and healthy conditions of work, including equal opportunities and equal remuneration for work of equal value, protection from harassment and the redress of grievances.[12] Employers are also required to promote stable employment for persons with disabilities by properly evaluating their abilities, providing suitable places of employment, and conducting proper employment management in the workplace.[13]

### Corporate Governance

From a corporate governance perspective, the Bursa Malaysia Main Market Listing Requirements ("**MMLR**") and ACE Market Listing Requirements ("**ACE MLR**") have incorporated measures to promote diversity in the board composition of listed issuers. Listed issuers are to ensure that at least one (1) director of the listed issuer is a woman.[14]

The Malaysian Code on Corporate Governance ("**MCCG**") issued by the Securities Commission of Malaysia also encourages diversity in the composition of boards of companies, highlighting that boards should include the right group of people, with an appropriate mix of skills, knowledge, experience and independent elements that fit the company's objectives and strategic goals.[15] Companies are encouraged to ensure that board and senior management appointments are made premised on objective criteria, merit and with due regard for diversity in skills, experience, age, cultural background and gender.[16] Furthermore, the MCCG recommends that at least thirty percent (30%) of the board is comprised of directors who are women.[17] The MCCG highlights that the participation of women in decision-making positions should not be focused on board positions alone but should be broadened to include members of senior management.[18] Boards are also encouraged to disclose a company's policy on gender diversity for the board and senior management in its annual report.[19]

Whilst companies are not exactly required to adopt the recommendations set out in the MCCG, the MMLR and the ACE MLR does require the boards of listed issuers to provide an overview of the application of the principles set out in the MCCG in its annual report, [20] as well as disclose the application of each practice set out in the MCCG during the financial year to Bursa Malaysia in a prescribed format and announce the same together with the annual report.[21] Be that as it may, more statutory and/or regulatory measures should be implemented to ensure the adoption of DEI measures and policies by the Malaysian corporate sector, particularly for unlisted entities in Malaysia.

## **Conclusion**

To conclude, Malaysia has made some strides in integrating DEI into its legal framework. Nevertheless, there are still opportunities for further improvements. As the global focus on creating more inclusive workplaces grows, the Malaysian corporate sector should strengthen its DEI policies and align with international standards.

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1. Bhatti, M. A., Alshagawi, M., Zakariya, A., & Juhari, A. S. (2019). Do multicultural faculty members perform well in higher educational institutions?: Examining the roles of psychological diversity climate, HRM practices and personality traits (Big Five). *European Journal of Training and Development*, 43(1–2), 166–187. <https://doi.org/10.1108/EJTD-08-2018-0081>.
  2. McKinsey & Co. (2022, August 17). What Is Diversity, Equity, and Inclusion? McKinsey & Co. <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-diversity-equity-and-inclusion>.
  3. Article 8(1) of the Federal Constitution.
  4. Article 8(2) of the Federal Constitution.
  5. Section 69F of the EA.
  6. Section 41A of the EA on the restriction on termination of pregnant female employee and Section 42 of the EA on the restriction on termination of female employee after eligible period.
  7. Section 43 of the EA.
  8. Section 14(3) of the IRA.
  9. BEATRICE A/P AT FERNANDEZ v SISTEM PENERBANGAN MALAYSIA & ORS [2005] 3 MLJ 681 at para 26.
  10. BEATRICE A/P AT FERNANDEZ v SISTEM PENERBANGAN MALAYSIA & ORS [2005] 3 MLJ 681 at para 23.
  11. Section 29(1) of the PWDA.
  12. Section 29(2) of the PWDA.
  13. Section 29(3) of the PWDA.
  14. Paragraph 15.02(1)(b) of the MMLR and Paragraph 15.02(1)(b) of the ACE MLR.
  15. Principle A Board Leadership and Effectiveness, Part II: Board Composition.
  16. Practice 5.5 of the MCCG.
  17. Practice 5.9 of the MCCG.
  18. Guidance 5.10 of the MCCG.
  19. Practice 5.10 of the MCCG.
  20. Paragraph 15.25(1) of the MMLR and Paragraph 15.25(1) of the ACE MLR.
  21. Paragraph 15.25(2) of the MMLR and Paragraph 15.25(2) of the ACE MLR.

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