

Citizenship and Residence Planning and Loss of Malaysian Citizenship

Introduction

In modern times, the growing cross-border mobility of people all over the world brings into focus even more various legal issues, including regarding citizenship of and the right of residence in a country. This note is intended to give some guidance to Malaysians who have settled or are planning to settle in other countries. There are law firms, migration agencies, and citizenship and residence planning agencies which provide assistance and advice to such people on various aspects of the subject.

In this note, it is intended to focus in general terms upon the aspect of loss of Malaysian citizenship under the Constitution of Malaysia.

Automatic Loss of Malaysian Citizenship?

There is no such thing as automatic loss of Malaysian citizenship on the happening of a certain event, for example, a Malaysian citizen becoming a citizen of another country. The Constitution contains elaborate provisions regarding citizenship, including regarding loss of citizenship. The Constitution provides for two modes of loss of citizenship, one renunciation of citizenship and the other by an order of deprivation made by the Federal Government.

Renunciation of Citizenship

Renunciation of citizenship must be a voluntary and formal act made in writing by a citizen of or over the age of twenty-one years and of sound mind and which is registered with the Government. There is no law in Malaysia by which a Malaysian citizen must renounce his or her citizenship of Malaysia when **becoming a resident or citizen of another country**. However, there may be countries which require a person who becomes their citizen to renounce his or her original citizenship. A person can choose in certain cases to become a citizen of another country without renouncing Malaysian citizenship and can then await the consequences of proceedings for

deprivation of Malaysian citizenship. It is certainly not a criminal offence to become a citizen of another country while not renouncing Malaysian citizenship.

Some countries accept the concept of dual or multiple citizenship. Others do not.

Passports

It is not intended here to discuss the subject of passports beyond what is stated further below.

The Process of Deprivation of Citizenship

In the process of deprivation of citizenship: -

- a notice shall be given by the Government to the citizen of the ground on which the order for deprivation of that person's citizenship is proposed to be made and of his or her right to have the case referred to a committee of inquiry;
- upon the application of the citizen, the Government shall and in any other case, may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two members appointed by the Government for that purpose;
- upon the conclusion of the inquiry, a report by the committee shall be submitted to the Government; and
- the Government shall have regard to the report in determining whether to make the order.

Where there are No Grounds for Deprivation

If there is no ground established, naturally there cannot be deprivation of citizenship merely by executive fiat.

Discretion

The use of the phrase “shall have regard to the report” and the word “may” in the Constitution regarding the procedure for deprivation of citizenship indicates an element of discretion. The report will not be binding on the Government. A person may therefore still not end up being deprived of his or her citizenship of Malaysia even if there is a finding that there is a ground for depriving that person of his or her citizenship. The Government can choose not to make an order of deprivation of citizenship.

Examples of Grounds for Deprivation of Citizenship

A ground for deprivation of citizenship is one where a citizen of Malaysia had by a voluntary act (other than marriage) become a citizen of another country.

Another ground is where a citizen of Malaysia “has voluntarily claimed and exercised in any country outside the Federation (meaning, Malaysia) any rights available under the law of that country, being rights accorded exclusively to its citizens.”

Regarding the quoted words, it is stated in the Constitution that, without prejudice to the generality” of the clause in the Constitution which contains those words, the exercise of a vote in any political election in a place outside Malaysia shall be deemed to be the voluntary claim and exercise of a right available under the law of that place.

It is also stated in the Constitution that any person who –

- applies to the authorities of a place outside Malaysia for the issue or renewal of a passport; or
- uses a passport issued by such authorities as a travel document

shall be deemed voluntarily to claim and exercise a right available under the law of that place, being a right accorded exclusively to the citizens of that place.

Putting it simply, voting in political elections in another country when the right to vote is available only to citizens of that country or merely applying for the issue or renewal of a passport of another country is a ground for deprivation of Malaysian citizenship.

Getting married to a citizen of another country by which a person thereby becomes a citizen of that country is not by itself a ground for deprivation of Malaysian citizenship. However, a Malaysian citizen may face deprivation proceedings in Malaysia if he or she gets married to a citizen of another country and then, acting under the law of that other country, takes the additional step of applying for citizenship of that country on the ground of qualifying for citizenship of that country by reason of being married to a citizen of that country.

No Retrospective Effect to Act of Renunciation or Order for Deprivation of Citizenship

There is no provision in the Constitution for a retrospective effect to an act of renunciation or an order for deprivation of citizenship.

No Right of Appeal or Review

There is a provision in the Second Schedule to the Constitution by which a decision of the Government regarding deprivation of citizenship shall not be subject to appeal or review in any court. However, there are decisions of the courts suggesting that the courts can intervene as regards such issues as errors of procedure committed in the process of deprivation so as to render a decision void.

Statelessness

There is provision in the Constitution against depriving, in some instances, a person of Malaysian citizenship if the Government is satisfied that as a result such person would not be a citizen of any country. Statelessness of people is still a huge problem in these times. There is made the point in international law that every person on this planet should be the subject of a state. A person may owe duties to the state of which he or she is a subject (for example, conscription into the state's armed forces).

Correspondingly, a person should be entitled to the protection of his or her state. Statelessness can lead to chaos. For example, it can be difficult to deport a stateless person.

Conclusion

Readers are advised to seek appropriate advice and assistance as regards the facts of a particular case. Certainly, when planning a change in residence to or the obtaining of citizenship of another country, care must be taken so that legal problems can be avoided or minimised.