



Shearn Delamore & co.

Legal Updates

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Financial Services

Bank Negara Malaysia issues Licensing Framework for Digital Banks

Bank Negara Malaysia issued its policy document on Licensing Framework for Digital Banks on 31 December 2020. It has indicated in its press release that up to five licences may be issued to qualified applicants and notification of the grant of licence will only be made by the first quarter of 2022.

The requirements include, among others:

- the overall business plan has to include:
 - performance indicators that reflect the applicant’s value proposition in driving the financial inclusion objectives. These indicators must clearly demonstrate the proposed licensed digital bank’s progress in fulfilling the financial needs of the target segments.
 - where the financial services is intended to be offered through agent banking, at the minimum, (i) description of the unserved and/or underserved segments that would be served through the agent; (ii) description of prevailing conditions that inhibits the offering of financial services through digital/electronic means to these target segments; (iii) location where the agents are expected to operate in. The policy document on Agent Banking must be complied with.

- description of the plans for deploying the technology and the minimum information to be included is set out in paragraph 10.3(j) of the policy document.
- the limit for the total size of assets during the foundational phase is a maximum RM3 billion. Previously, the limit set out in the exposure draft was a maximum of RM2 billion.

In addition to the policy document, Bank Negara Malaysia has also issued a FAQ to assist the understanding of interested applicants.

Submission of applications to conduct digital banking business or Islamic digital banking business shall be made to the BNM no later than 30 June 2021.

Amendment to the Guidelines on Recognised Market

The Guidelines on Recognised Market (“GRM”) issued by the Securities Commission Malaysia was revised with effect from 6 January 2021.

The categories of persons which are permitted to be hosted on a peer-to-peer financing (“P2P”) platform have been expanded to include any other type of entity as may be permitted by the Securities Commission Malaysia. Prior to 6 January 2021, the categories of permitted issuers were limited only to locally registered sole proprietorships, partnerships, incorporated limited liability partnerships, private and unlisted public companies.

Guidance Note on Provision of Investment Advice

On 30 December 2020, the Securities Commission Malaysia issued a Guidance Note on the Provision of Investment Advice (the Guidance Note) to provide clarity on conduct which the Securities Commission Malaysia would consider as falling within the regulated activity of providing investment advice under the **Capital Markets and Services Act 2007**.

Under the **Capital Markets and Services Act 2007**, a person is required to hold a Capital Markets Services Licence where he:

- carries on a business of advising others concerning securities or derivatives; or
- as part of a business, issues or promulgates analyses or reports concerning securities or derivatives,

unless a statutory exemption applies.

Pursuant to the Guidance Note, the Securities Commission Malaysia has indicated that the following:

- A. any communication involving providing recommendations or opinions which are likely to induce a person to take any action or position (e.g. buy, sell or hold) regarding a particular class, sector, or instrument in relation to securities or derivatives, is likely to be considered as *“advising others concerning securities or derivatives”*.
- B. the factors, though not intended to be exhaustive, which the Securities Commission Malaysia will take into account when determining whether a person is carrying on the business of providing investment advice include:
 - pay-for-advice arrangements;

- offering a fee-based subscription to a channel or group, including on social media, which offers investment advice; or
- expectation of benefits or gratification, whether direct or indirectly, from the provision of investment advice.

Labuan Financial Services Authority issues Labuan Digital Banking Framework

A Labuan digital banking framework (the Guidelines) was issued by the Labuan Financial Services Authority on 7 December 2020. The Guidelines is intended to attract qualified fintech service providers that wish to undertake digital banking business to help spur the banking industry in Labuan International Business and Financial Centre in light of shifting customer’s preference to online or digital channels.

A corporation that:

- A. has strong financial resources and demonstrates ability to meet and maintain the applicable minimum paid-up capital requirement (that is unimpaired by loss of RM200 million or its equivalent in foreign currency);
- B. has credible and viable business plan which sets out the approach on how it intends to incorporate innovative use of technology for its operations to meet the proposed strategic business objectives; and
- C. demonstrates the ability to conduct digital financial services, e-commerce and technological-driven business,

may apply for a Labuan digital banking licence.

The requirements to be complied with are set out in the Guidelines and these include, without limitation:

- placement of a non-interest bearing security deposit of RM5 million or its equivalent in any foreign currency with the Labuan Financial Services Authority. The deposit is refundable after three years from the date of placement, subject to the assessment of the digital bank's performance over three years.
- establishment of an operational office in Labuan to comply with the **Labuan Financial Services and Securities Act 2010** or, as the case may be, **Labuan Islamic Financial Services and Securities Act 2010**.
- establishment of an in-house core banking system that processes and records daily banking transactions in regard to the Labuan banking activities as set out in paragraph 6 of the Guidelines.
- have in a place robust Know-Your-Customer ("KYC") including e-KYC framework which consist of proper customer due diligence and enhanced due diligence processes for onboarding clients and for transactional activities.
- have a credible exit plan to ensure that the bank is able to unwind its business operations voluntarily without any regulatory intervention and in an orderly manner without causing disruption to its customers and the financial system.

CONTACT US FOR FURTHER INFORMATION REGARDING FINANCIAL SERVICES MATTERS.

Tax and revenue

Operation hours of IRB Counters during Movement Control Order ("MCO"), Conditional MCO & Recovery MCO period

The Inland Revenue Board ("IRB") has issued a media statement on the operation hours of its counters during the MCO, Conditional MCO and Recovery MCO period. For more information, please click [here](#).

Income tax

The **Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020** have been gazetted on 24 December 2020 and are deemed to have come into operation on 1 January 2016.

The **Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020** have been gazetted on 24 December 2020 and are deemed to have come into operation on 1 January 2019 except for rule 2 which came into operation on 1 January 2021.

The **Income Tax (Costs of Renovation and Refurbishment of Business Premise) Rules 2020** have been gazetted on 28 December 2020 and have effect from the year of assessment 2020.

The **Income Tax (Deduction for Expenditure of Issuance of Sukuk and Retail Sukuk Structured pursuant to the Principle of Wakalah) Rules 2021** have been gazetted on 12 January 2021 and have effect from the year of assessment 2021 until year of assessment 2025.

The **Income Tax (Deduction for Value of Benefit given to Employees) Rules 2021** have been gazetted on 26 January 2021 and have effect from the year of assessment 2020.

Petroleum income tax

The IRB has recently issued the [Garis Panduan Tuntutan Insentif Bagi Industri Petroleum Huluhan di bawah Akta Petroleum \(Cukai Pendapatan\) 1967 \(Pindaan\)](#), which is only available in the Malay language, on 30 December 2020.

Labuan tax

The **Labuan Business Activity Tax (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020** have been gazetted on 24 December 2020 and are deemed to have come into operation on 1 January 2019.

Sales tax

The **Sales Tax (Amendment) Act 2020** has been gazetted on 31 December 2020 and has come into operation on 1 January 2021.

Service tax

The **Service Tax (Amendment) Act 2020** has been gazetted on 31 December 2020 and has come into operation on 1 January 2021.

The following guides have recently been published on the [Royal Malaysian Customs Department's MySST website](#):

- i. [Panduan Perkhidmatan Pengurusan](#) (as at 15 January 2021) — to replace the earlier version dated 1 October 2020

which is presently available only in the Malay language; and

- ii. [Specific Guide on Refund on the Acquisition of Services by Foreign Missions and International Organizations](#) (as at 18 January 2021) — to replace the earlier version dated 13 July 2020.

Customs duty

The **Customs (Amendment) Act 2020** has been gazetted on 31 December 2020 and has come into operation on 1 January 2021.

Excise duty

The **Excise (Amendment) Act 2020** has been gazetted on 31 December 2020 and has come into operation on 1 January 2021.

CONTACT US FOR FURTHER INFORMATION REGARDING TAX AND REVENUE LAW MATTERS.

