

Corporate/M&A

Amendments to the Main Market Listing Requirements following Enhanced IPO Framework

On 11 August 2021, Bursa Malaysia Securities Berhad (“Bursa Securities”) reviewed the Main Market Listing Requirements (“MMLR”) to ensure parity of regulation with the Securities Commission Malaysia’s (“SC”) introduction of an enhanced initial public offering (“IPO”) framework which took effect on 1 January 2021.

The enhanced IPO framework’s aim is to, amongst others, promote greater shared responsibility among key stakeholders involved in the Main Market IPO listing submission and introduce a new Recognised Principal Adviser (“RPA”) Regime to liberalise the existing industry and allow for a larger pool of qualified professionals to be involved in the submission of IPO applications to the SC.

In view of the SC’s enhanced IPO framework, Bursa Securities has proposed some amendments to the MMLR and sought public consultation on the same. Some key proposed amendments to the MMLR are as follows:

- (a) to streamline the eligibility requirements of a Principal Adviser under the MMLR to be in line with the SC’s RPA Regime;
- (b) in respect of proposals which require greater supervision and oversight of the RPA, its qualified person and senior officer under the MMLR (“Specific Proposals”) including additional listing applications, to require the RPA to be primarily responsible for the Specific Proposal (and if there is more than one RPA for the Specific Proposal, all such RPAs are jointly and severally responsible for the Specific Proposal); and
- (c) to cease to be overly prescriptive on how a RPA should conduct a due diligence exercise or on the applicable standard in a due diligence exercise, particularly for corporate proposals which involve new issuance of securities.

Legal Updates

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Notwithstanding the above, the RPA and other relevant advisers must make due and careful enquiries and comply with the equivalent obligations and standards under the SC's Guidelines on Submission of Corporate and Capital Market Product Proposals. Further, the RPA and other relevant advisers are advised to undertake the due diligence exercises in accordance with industry best practices, which is the Malaysian Investment Banking Association's Malaysia Equity Capital Markets and Debt Capital Markets Due Diligence Guides.

Bursa Securities welcomes the views and feedback from the public on the proposed amendments. The full text of the Bursa Securities' public consultation paper can be assessed [here](#).

**CONTACT US FOR FURTHER INFORMATION REGARDING
CORPORATE/M&A MATTERS.**

Dispute Resolution

Case Note: EK Integrated Construction Sdn Bhd v Rimbunan Melati Sdn Bhd

In **EK Integrated Construction Sdn Bhd v Rimbunan Melati Sdn Bhd** (Originating Summons No. WA-24C(ARB)-3-01/2020), the High Court had the opportunity to consider an application pursuant to section 41 of the **Arbitration Act 2005** (“AA”).

Section 41 provides for any party to make an application to the High Court to determine any question of law arising in the course of the arbitration with the consent of the arbitral tribunal or the consent of every other party.

Background Facts

The Defendant, Rimbunan Melati Sdn Bhd (“Rimbunan”), is the owner of a housing project. Rimbunan appointed the Plaintiff, EK Integrated Construction Sdn Bhd (“EK”), as its contractor to carry out piling, pile caps and column stumps for the said housing project. Rimbunan alleged that it discovered cracks in the houses in February 2011, and subsequently discovered in September 2011 that the cracks were caused by EK’s fraudulent concealment that the pilings driven by EK did not reach the prescribed depth.

Rimbunan subsequently brought arbitration proceedings against EK to recover costs incurred by Rimbunan in carrying out rectification works. The arbitration was ongoing at the time of the filing of EK’s Originating Summons.

EK’s Originating Summons sought an order for the issue of whether Rimbunan’s claims and/or causes of action as disclosed in the Statement of Claim are barred by limitation and ought to be dismissed in limine (“Proposed Question”) be referred to the High Court and, consequent thereto, for the Arbitrator to be directed to dismiss Rimbunan’s claims against EK.

Findings of the High Court

The High Court considered the Court of Appeal's decision in **Bauer (M) Sdn Bhd v Kukdong Engineering & Construction Co Ltd** [2016] MLJU 1779 which held that the High Court's jurisdiction under section 41 of the AA is derived only when the question framed relates to a pure question of law arising in the course of arbitration. The High Court found that this principle is applicable notwithstanding the fact that both parties consented to the reference of the Proposed Question to Court under section 41(1)(b) of the AA.

In examining the Proposed Question, the High Court considered the parties' pleadings and found that since Rimbunan pleaded section 29 of the **Limitation Act 1953**, the question as to when Rimbunan's cause of action accrued depends on the finding of fact on whether EK had fraudulently concealed the fact that the pilings did not reach the required depth. As such, it is not a pure question of law as the material facts to be established are heavily disputed.

The High Court proceeded to consider whether the Proposed Question arose in the course of the arbitration. The High Court held that the words "*in the course of the arbitration*" simply means that the question of law emanated during the arbitration proceedings at any point of time between commencement of arbitral proceedings until the date the Award is published. As the issue of limitation was first raised in the Statement of Defence after arbitration had commenced, the issue can be said to have arisen in the course of arbitration.

The High Court proceeded to consider section 41(2) of the AA which provides that the Court shall not consider an application under section 41(1) of the AA unless it is satisfied that the determination is likely to produce substantial savings in costs and substantially affects the rights of one or more of the parties. The High Court found that there were no averments on the matters stated in section 41(2) of the AA and in view of the express stipulation of section 41(2) of the AA, it was incumbent on EK to aver to these matters in its affidavits, which EK has failed to do so.

Notwithstanding the High Court's findings above, the High Court proceeded to consider the commencement date of

arbitration proceedings and found that the commencement date was between 9 May 2016 and 6 June 2016 when EK received the Notice of Arbitration, and not 15 December 2017 as contended by EK where Rimbunan requested Ar. Lim Fang Keong to be the arbitrator as the PAM Rules did not apply. As such, the High Court found that in any event, Rimbunan's claim was not time barred.

As EK had failed to establish the Proposed Question is a question of law as required under section 41(1) of the AA and the requirements in section 41(2) of the AA have not been fulfilled, the High Court dismissed EK's application. In any event, the Proposed Question is answered in the negative as EK has failed to prove on a balance of probabilities that Rimbunan's claims and/or the causes of action are barred by limitation.

Conclusion

The decision by the High Court affirms the Court of Appeal decision in **Bauer (M) Sdn Bhd v Kukdong Engineering & Construction Co Ltd** [2016] MLJU 1779 that the High Court's jurisdiction under section 41 of the AA is derived only when the question framed relates to a pure question of law arising in the course of arbitration. The decision also emphasises the necessity for a party making an application under section 41 of the AA to also comply with the provisions of section 41(2) of the AA by establishing through affidavit evidence that the determination is likely to produce substantial savings in costs and substantially affects the rights of one or more of the parties.

CONTACT US FOR FURTHER INFORMATION REGARDING DISPUTE RESOLUTION MATTERS.

Financial Services

Extension of the Short Selling Ban

Bursa Malaysia extends Intraday Short Selling (“DSS”) and Short Sale of Day Trading Eligible Securities (“PDT Short Sale”) Suspension to 31 December 2021.

On 26 August, 2021 Bursa Malaysia-

- extended the temporary suspension of IDSS and PDT Short Sale until 31 December 2021 in view of the various initiatives to strengthen control measures for IDSS.
- Indicated that the temporary suspension of IDSS and PDT Short Sale will be uplifted from 1 January 2022 with additional control measures as set out in its Participating Organisations’ Circular No. R/R 5 of 2021.

CONTACT US FOR FURTHER INFORMATION FINANCIAL SERVICES MATTERS.

Tax & Revenue

Tax Matters During the National Recovery Plan Phases

In view of the implementation of the National Recovery Plan in Malaysia, the Inland Revenue Board (“IRB”) has issued a list of Frequently Asked Questions on tax matters arising during this period. The FAQ ([updated as at 19 August 2021](#)) is accessible via this [link](#).

Income tax

The following public ruling has recently been published on the IRB’s official website:

- [Taxation of Income Arising from Settlements \(Public Ruling No. 4/2021\)](#) — issued on 13 August 2021.

Sales tax

The following specific guide has recently been published on the Royal Malaysian Customs Department’s MySST website:

- [Panduan Pengecualian Cukai Jualan di bawah Butiran 58A, Jadual A Perintah Cukai Jualan \(Orang Yang Dikecualikan Daripada Pembayaran Cukai\) 2018](#) (as at 17 August 2021) — presently available in Malay language only

Service tax

An amendment to the following policy has recently been published on the Royal Malaysian Customs Department’s MySST website:

- [Service Tax Policy No. 10/2020 \(Amendment No. 1\)](#) issued on 9 August 2021.

CONTACT US FOR FURTHER INFORMATION REGARDING TAX & REVENUE MATTERS.

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of

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Dispute Resolution Practice Group

and

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Tax & Revenue Practice Group

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