

## Corporate/M&A

### Revised Rules on Take-overs, Mergers and Compulsory Acquisitions

On 28 December 2021, the Securities Commission Malaysia (“SC”) introduced the revised Rules on Take-overs, Mergers and Compulsory Acquisitions (“Take-over Rules”), which is effective from 29 December 2021. Some revisions in the Take-over Rules are as follows:

- The SC emphasised that any legal or professional advice on the interpretation, application or effect of the Take-over Rules is not an appropriate alternative to obtaining a consultation or ruling from the SC. In cases of doubt, the SC must be consulted.
- The end of an offer period has been further clarified by including additional circumstances, for example, (a) the time when a potential offeror announces that the possible offer will not proceed, or (b) when the scheme of arrangement has become effective.
- In relation to the exemption from the mandatory offer obligation, any acquisition of shares by an offeror or his persons acting in concert within six months after the shareholders’ meeting from a person who was a director or substantial shareholder of the offeree at the time of the whitewash proposal shall be deemed as a favourable deal, and unless such acquisition is waived by the SC, the exemption granted by the SC on the mandatory offer obligation will be invalidated.
- A take-over offer must not be subject to any conditions or pre-conditions which depend on the subjective judgments by the offeror. However, the SC may accept an element of subjectivity in certain circumstances (for example, cases involving official authorisations or regulatory approvals). Any inclusion of pre-conditions in the offer shall require the SC’s prior consent.
- The SC has introduced restrictions on dealings before the offer period, where any person (save for the offeror) who has confidential price-sensitive

# Legal Updates

JANUARY 2022

Shearn Delamore & Co  
7<sup>th</sup> Floor

Wisma Hamzah Kwong-Hing,  
No 1, Leboh Ampang  
50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

[info@shearndelamore.com](mailto:info@shearndelamore.com)

[www.shearndelamore.com](http://www.shearndelamore.com)

[www.linkedin.com/company/shearn-delamore-&-co](http://www.linkedin.com/company/shearn-delamore-&-co)

information concerning an actual or contemplated offer must not deal in the securities of the offeree (including convertible securities, warrants, options and derivatives in respect of such securities).

The Take-over Rules can be accessed [here](#).

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

# Financial Services

## Exposure drafts issued by Bank Negara Malaysia

Bank Negara Malaysia has issued the following exposure drafts to the public for feedback:

### (a) Climate Risk Management and Scenario Analysis

This exposure draft:

- is intended to complement the Climate Change and Principle-based Taxonomy, the Value-based Intermediation Financing and Investment Impact Assessment Framework (“VBIAF”) and the VBIAF Sectoral Guides;
- will apply to the following financial institutions:
  - licensed businesses, and financial holding companies approved, under the **Financial Services Act 2013**;
  - licensed Islamic banks, licensed takaful operator, licensed retakaful operator and financial holding companies approved, under the **Islamic Financial Services Act 2013**; and
  - development financial institutions prescribed under the **Development Financial Institutions Act 2002**;
- sets out the proposed requirements and guidance on climate risk management and scenario analysis to ensure that financial institutions strengthen the management of financial risks stemming from climate change to enhance the resilience of the financial sector against climate-related risks and to facilitate an orderly transition to a low-carbon economy; and

- will come into effect on 1 June 2022 subject to the transitional arrangements as set out in paragraph 4.1 thereof.

Feedback to the exposure draft must be submitted to Bank Negara Malaysia by 31 March 2022.

## (b) Management of Participating Life Business

This exposure draft:

- applies to life insurers licensed under the **Financial Services Act 2013** carrying on participating life business. A “*participating life policy*” provides policy owners with the opportunity to participate in the profits of the insurance fund, in addition to receiving guaranteed benefits. The profits may be distributed by way of bonus determined by the licensed insurer;
- sets out the requirements for the effective management of participating life business to promote the sustainability of the business and the protection of policy owners’ interests;
- will also include clarity to the requirements governing the uses of estate, management of small and shrinking participating life fund, submission of bonus revision and independent review of the participating life business; and
- will supersede, among others, the policy document on Management of Participating Life Business issued on 15 July 2015.

Feedback to the exposure draft must be submitted to Bank Negara Malaysia by 31 March 2022.

## (c) Management of Insurance Funds

This exposure draft:

- applies to insurers licensed under the **Financial Services Act 2013**;

- is intended to ensure protection of policy owners' interests through appropriate segregation of insurance funds, proper attribution of assets and liabilities in insurance funds, robust controls over withdrawals from insurance funds, and maintenance of proper records of policies and claims;
- sets out, among others, requirements relating to the establishment, maintenance, composition and withdrawal of insurance funds;
- will supersede, among others, the policy document on Management of Insurance Funds issued on 17 December 2018.

Feedback to the exposure draft must be submitted to Bank Negara Malaysia by 31 March 2022.

#### (d) Governance, Risk Management, and Operations for Money Services Business

This exposure draft:

- applies to persons licensed under the **Money Services Business Act 2011** ("MSB Licensees");
- sets out, among others, the minimum standards that MSB Licensees must observe in implementing sound governance, appropriate risk management and robust internal control systems for their business. The standards will be put in place to strengthen consumer protection and safeguard the industry from being used as a conduit for illegal activities, money laundering and terrorism financing;
- will supersede the Guidelines on Governance and Operational Requirements on Conduct of Money Services Business issued on 15 October 2012, the Guidelines on Risk Management and Internal Controls for Conduct of Money Services Business issued on 6 December 2012 and the other guidelines/circulars/notices set out in Appendix I thereof.

Feedback to the exposure draft must be submitted to Bank Negara Malaysia by 28 February 2022.

## (e) Payment Cards Framework

This exposure draft:

- will apply to the following financial institutions:
  - issuers of credit card, debit card and international brand prepaid card which are approved under the **Financial Services Act 2013** or the **Islamic Financial Services Act 2013**;
  - merchant acquirers of merchant acquirers of credit card, debit card and international brand prepaid card registered under the **Financial Services Act 2013** or the **Islamic Financial Services Act 2013**; and
  - operators of payment systems approved under the **Financial Services Act 2013** or the **Islamic Financial Services Act 2013**;
- is to ensure that the cost of accepting payment cards continues to remain fair and reasonable through revision of the interchange fee ceilings to reflect the latest underlying cost.
- outlines the measures which enable merchants to manage their payment acceptance cost and address other distortions and frictions in the payment card market to foster greater usage and acceptance of payment cards.

Feedback to the exposure draft must be submitted to Bank Negara Malaysia by 15 February 2022.

## Bank Negara Malaysia issues Code of conduct for Malaysia wholesale financial markets

Bank Negara Malaysia has issued a policy document which sets out the code of conduct for Malaysia's wholesale financial markets on 31 December 2021.

The policy document:

- is intended to apply to all market participants who act in the wholesale financial markets, either acting in the capacity as a sell-side or buy-side entity, and across various money market and foreign exchange products;
- updates and set out the principles and standards to be observed by market participants in the wholesale financial markets, that is, money market and foreign exchange market, including over-the-counter derivatives market for interest rates or exchange rates;
- also sets out the eligibility requirements for dealers and brokers, the market conduct and internal control requirements to safeguard professionalism and integrity of the wholesale financial markets; and the role of industry associations in preserving market integrity; and
- will come into on 31 January 2022 save for paragraphs 8.1 to 8.3 and 28.2 to 28.4 which will take effect on 31 July 2022.

## Wholesale Market Conduct Practices Guidance Document

This guidance document:

- came into effect on 31 December 2021;
- is applicable to licensed banks, licensed investment banks, licensed Islamic banks and prescribed development financial institutions. Other types of

market participants are encouraged to adopt the guidance where relevant to their participation in wholesale financial markets;

- is intended to provide guidance to market participants on managing conduct risks arising from activities in the wholesale financial markets such as (i) the setting up and operating effective trade and communications surveillance programmes; and (ii) forming a strong conduct control environment.
- supersedes the notification on Managing Unauthorised Trading and Market Manipulation issued on 20 November 2015 (which is not publicly available).

## Discussion Paper on Licensing Framework for Digital Insurers and Takaful Operators

A discussion paper on the Licensing Framework for Digital Insurers and Takaful Operators was issued by Bank Negara Malaysia on 4 January 2022 seeking for public feedback by 28 February 2022.

The discussion paper:

- states that Bank Negara Malaysia is developing the Digital Insurance and Takaful Framework (“Framework”) to facilitate the licensing of a new set of digital insurers and takaful operators (“DITOs”) under the **Financial Services Act 2013** and **Islamic Financial Services Act 2013**, respectively;
- provides that existing licensed insurer and takaful operator wishing to carry out digital insurance and takaful business separately from their existing business, may apply to carry on digital insurance or takaful business through a separate entity (that is, its subsidiary) or through a joint venture agreement. However, the existing licensed insurer and takaful operators are not required to obtain a separate licence in digitalising their current business operations;



- sets out the proposed entry requirements and key assessment criteria for the licensing of DITOs, potential temporary or foundational regulatory flexibilities, the overall regulatory framework, as well as market infrastructure to support the development of digital insurance and takaful in Malaysia;

Bank Negara Malaysia has indicated that separate policy document(s) will be issued to address the prudential and business conduct requirements relating to DITOs later in 2022.

## Issue of Guidelines on Conduct for Capital Market Intermediaries

The Guidelines on Conduct for Capital Market Intermediaries (“Conduct Guidelines”) was issued by the Securities Commission Malaysia on 31 December 2021.

The Conduct Guidelines:

- apply to:
  - a holder of Capital Markets Services Licence;
  - a registered person;
  - a person registered under section 76A of the **Capital Markets and Services Act 2007** to provide capital market services, (collectively “CMI”); and
  - its representatives, in the direct employment of, or acting for, or in arrangement with, a CMI, who carries on for that CMI any capital market related service, whether or not remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;
- sets out the minimum standards of conduct that must be adhered to by a CMI and its representatives and these standards shall not be excluded or modified by the CMI through any provision, clause or term contained in any agreement, contract or document provided to its clients; and

- comes into effect on 1 April 2022.

## Securities Commission Malaysia issues Guidelines on Corporate Governance for Capital Market Intermediaries

The Securities Commission Malaysia issued the Guidelines on Corporate Governance for Capital Market Intermediaries (“Corporate Governance Guidelines”) on 31 December 2021. Save for paragraphs 5.04 – 5.08 which will only come into effect on 1 July 2022, the other provisions of the Corporate Governance Guidelines came into effect on 31 December 2021.

Pursuant to the Corporate Governance Guidelines:

- it only applies to holders of Capital Markets Services Licence which is a company (“CMSL Holder”);
- sets out the requirements which a CMSL Holder must comply to ensure that robust corporate governance structure, as well as policies and practices are in place to safeguard against unethical conduct, mismanagement and fraudulent activities; and
- if the CMSL Holder is subject to more than one governance related requirements, the stricter requirement will apply.

## Direction on Dealings with Specified Person and in Restricted Currency

A new Direction on Dealings with Specified Person and in Restricted Currency (“Direction”) was issued by Bank Negara Malaysia and came into effect on 3 January 2022.

The Direction:

- amends the definition of “*Specified Person*”;
- permits a person, without having to obtain the prior written approval of Bank Negara Malaysia, to enter

into, or make or receive payment arising from an international trade with or involving a Specified Person:

- in goods, where such trade is licensed under the **Customs Act 1967**, or does not involve movement of goods into or out of Malaysia; or
- in services, where such trade is allowed in writing by a relevant authority exercising statutory power in Malaysia, or does not involve provision of services to or from a person in Malaysia; and
- revokes the Direction on Dealings with Specified Person and in Restricted Currency issued on 30 April 2020.

**CONTACT US FOR FURTHER INFORMATION REGARDING  
FINANCIAL SERVICES MATTERS.**

# Tax & Revenue

## Finance Act 2021

The **Finance Act 2021** has been gazetted on 31 December 2021. Please refer to Sections 3, 29, 36, 45, 52, 59, 64 and 66 as to when the provisions come into operation.

## Income tax

The following Rules and Order have recently been gazetted:

- (i) [Income Tax \(Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at the Technical and Vocational Certificate Levels\) Rules 2021](#) — gazetted on 31 December 2021 and deemed to have effect from year of assessment 2015;
- (ii) [Income Tax \(Conditions for the Grant of Rebate under subsection 6D\(4\)\) Order 2021](#) — gazetted on 31 December 2021 and has effect from year of assessment 2021;
- (iii) [Income Tax \(Deduction for Expenditure in relation to Vendor Development Programme\) Rules 2022](#) — gazetted on 6 January 2022 and have effect from year of assessment 2021; and
- (iv) [Income Tax \(Deduction for Investment in a Project of Commercialisation of Research and Development Findings\) Rules 2022](#) — gazetted on 6 January 2022 and deemed to have come into operation on 7 November 2020.

The following public rulings and technical guideline have recently been published on the Inland Revenue Board's official website:

- (i) [Notification of Change of Accounting Period by a Company / Limited Liability Partnership / Trust Body / Co-operative Society \(Public Ruling No. 6/2021\)](#) —

issued on 29 December 2021 to replace Public Ruling No. 8/2019 dated 6 December 2019;

- (ii) [Partnerships Taxation Part I – Determination of the Existence of a Partnership \(Public Ruling No. 7/2021\)](#) — issued on 29 December 2021;
- (iii) [Partnerships Taxation Part II – Computation and Allocation of Income \(Public Ruling No. 8/2021\)](#) — issued on 29 December 2021;
- (iv) [Private Retirement Scheme \(Public Ruling No. 9/2021\)](#) — issued on 29 December 2021 to replace Public Ruling No. 9/2014 dated 24 December 2014;
- (v) [Tax Treatment of Research and Development Expenditure Part II – Special Deductions \(Public Ruling No. 10/2021\)](#) — issued on 29 December 2021 to replace Public Ruling No. 6/2020 dated 13 August 2020;
- (vi) [Bilateral Credit and Unilateral Credit \(Public Ruling No. 11/8/2021\)](#) — issued on 31 December 2021 to replace Public Ruling No. 11/2011 dated 20 December 2011; and
- (vii) [Guidelines on the Application Procedure for a Special Deduction in respect of a Qualifying Research and Development Activity](#) — issued on 29 December 2021.

## Service tax

The revised versions of the following industry guides and a new policy have recently been published on the Royal Malaysian Customs Department's MySST website:

- (i) [Guide on Food & Beverages](#) (as at 27 December 2021) — to replace the earlier version dated 2 November 2018;
- (ii) [Guide on Motor Vehicle Service or Repair](#) (as at 28 December 2021) — to replace the earlier version dated 24 August 2018;

- (iii) [Guide on Parking Services](#) (as at 28 December 2021) — to replace the earlier version dated 24 August 2018; and
- (iv) [Dasar Cukai Perkhidmatan Bil. 3/2021 – Pengecualian Cukai Perkhidmatan ke atas Perkhidmatan Pembrokeran berkaitan Dagangan Saham](#) (available in Malay language only) — issued on 31 December 2021.

## Indirect tax

The following guideline and FAQ have also been published on the Royal Malaysian Customs Department's MySST website:

- (i) [Guideline on Voluntary Disclosure and Amnesty Programme](#) (as at 31 December 2021); and
- (ii) [FAQ on Voluntary Disclosure and Amnesty Programme](#) (as at 31 December 2021).

**CONTACT US FOR FURTHER INFORMATION REGARDING TAX & REVENUE MATTERS.**

COPYRIGHT © 2022 SHEARN DELAMORE & Co. ALL RIGHTS RESERVED.

THIS UPDATE IS ISSUED FOR THE INFORMATION OF THE CLIENTS OF THE FIRM AND COVERS LEGAL ISSUES IN A GENERAL WAY. THE CONTENTS ARE NOT INTENDED TO CONSTITUTE ANY ADVICE ON ANY SPECIFIC MATTER AND SHOULD NOT BE RELIED UPON AS A SUBSTITUTE FOR DETAILED LEGAL ADVICE ON SPECIFIC MATTERS OR TRANSACTIONS.