

Shearn Delamore & co.

Dear valued clients and business partners,

We are pleased to highlight the following legal news and updates for January 2020.

Financial Services

Guidelines on Digital Assets

The Securities Commission Malaysia (“SC”) had, on 15 January 2020, issued the Guidelines on Digital Assets (“Guidelines”) which sets out the requirements for:

- a) issuers fundraising through digital token offerings; and
- b) platform operators of initial exchange offering (“IEO”) platforms.

The Guidelines is issued following the period of feedback from the public on Public Consultation Paper No. 1/2019 published by the SC in March 2019 with regards to the issuance of digital assets through initial coin offerings.

Pursuant to the Guidelines, issuers will offer digital tokens via IEO platforms rather than on their own. Some of the governance and capital requirements include:

- issuers must be locally incorporated and have a minimum paid up capital of RM500,000;
- proposed projects or businesses provide an innovative solution or a meaningful digital value proposition for Malaysia;
- issuers may raise funds up to a ceiling of RM100 million. Fundraising may be sought from retail, sophisticated, as well as angel investors subject to the investment limits provided for each;
- each issuance must be accompanied by a Whitepaper which should provide investors with among others, material information on the issuer, the digital token and the utilisation of funds through the fundraising exercise;
- the SC will conduct post issuance monitoring of the utilisation of the proceeds.

The SC has emphasised that until the coming into force of the Guidelines, no person is permitted to offer or issue any digital tokens in Malaysia. The Guidelines will become effective in the second half of 2020.

The Guidelines can be found in full [here](#). They should be read together with the SC Guidelines on Recognised Markets (May 2019) and the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019. It should also be noted that digital assets are not legal tender in Malaysia.

[Bank Negara Malaysia’s exposure draft on corporate strategic plan](#)

Bank Negara Malaysia (“BNM”) had, on 16 January 2020, issued an exposure draft on a corporate strategic plan which will be applicable to all development financial institutions prescribed under the **Development Financial Institutions Act 2002** (“DFIs”). The deadline for submission of any feedback on the exposure draft to BNM is 16 March 2020.

Pursuant to the exposure draft, the policy document (when effective) seeks to:

- a) consolidate the Guidelines on the Statement of Corporate Intent (“SCI”) and Annual Funding Requirement (“AFR”) into one single policy document;
- b) serve as a comprehensive framework for DFIs to develop robust and forward looking corporate strategies to achieve greater developmental outcomes, consistent with the economic agenda driven by the Government, to ensure that the DFIs are able to achieve their mandates on a sustainable basis;
- c) set out:
 - the responsibilities of the board and senior management in relation to the preparation and implementation of the corporate strategic plan;
 - key features to be included in the corporate strategic plan;
 - implementation of guide on performance measurement framework to incorporate additionalities as part of DFIs’ business operations with the intention to promote greater development outcomes and strengthen accountability as public institutions.

BNM’s exposure draft on recovery planning

An exposure draft was issued by BNM on recovery planning which are applicable to the following categories of persons:

- a) banks licensed under the **Financial Services Act 2013**;
- b) investment banks licensed under the **Financial Services Act 2013**;
- c) Islamic banks licensed under the **Islamic Financial Services Act 2013**;
- d) financial holding companies of entities set out in a) to c) above;
- e) all its financial and non-financial subsidiaries (as defined in the exposure draft), including insurance and/or *takaful* subsidiaries,

(collectively, the **FIs**).

The exposure draft sets out the key principles, requirements and BNM’s expectations on the development and maintenance of recovery plans for FIs. The exposure draft seeks to put in place an effective and efficient process to enhance supervisability, recoverability and resolvability of financial institutions, by incorporating essential elements of 11 of the Key Attributes into the domestic regulatory, supervisory and resolution regimes.

FIs are expected to identify and plan for the execution of a suite of recovery options to restore long-term viability under a range of idiosyncratic and system-wide stress events without taking into account the possibility of policy intervention by authorities, or access to any exceptional financial support from public funds.

The deadline to provide feedback to BNM is 31 March 2020.

For further information regarding financial services matters, please contact our [Financial Services Practice Group](#).

Intellectual Property

An Update on Malaysia's Trade Mark Law

The new **Trademarks Act 2019** ("new Act") and Trademarks Regulations 2019 ("Regulations") came into force on 27 December 2019, leading to the implementation of long awaited changes to the trade mark law in Malaysia. The more notable changes under the new Act are:

- 1) Implementation of the international filing procedure under the Madrid Protocol;
- 2) Recognition of non-conventional trademarks such as sound, smell and 3D shape marks;
- 3) Introduction of the filing of multi-class trade mark applications;
- 4) Recognition that a registered trade mark may be the subject of a security interest in the same way as any other personal or moveable property;
- 5) Remedy for groundless threats of infringement proceedings.

A copy of the new Act and the revised official fees for trade mark matters under the new Regulations can be found from the links below:

- <http://www.myipo.gov.my/wp-content/uploads/2019/12/ACT-815-TRADEMARKS-ACT-201.pdf>
- <http://www.myipo.gov.my/wp-content/uploads/2020/01/Peraturan-Cap-Dagangan-2019.pdf>

The Intellectual Property Corporation of Malaysia ("MyIPO") has issued the Guidelines of Trademarks (Transitional Matters) 2019 (as updated on 6 January 2020), to facilitate the transition of trade mark applications filed under the previous Trade Marks Act 1976 to the new Act.

Amongst others, the Guidelines provides that:

- 1) The official fee for the renewal of a registered trade mark (RM1,000 for each class in case of timely renewal) under the Regulations is applicable to any renewal of existing registered trademarks under the Trade Marks Act 1976 that is due for payment on or after 27 December 2019. This is regardless of whether the renewal fees were paid before or after 27 December 2019. The Guidelines further provide that the renewal fees or the difference of the renewal fees for any existing registered trademarks, which are due between 27 December 2019 to 27 March 2020, must be paid to MyIPO by 27 March 2020. If the renewal due date is after 27 March 2020, the registered proprietor may pay the difference of the renewal fees before the end of the renewal due date. (Paragraph 7 of the Guidelines.)

For example, if a trade mark is due for renewal on 28 March 2020 and the registered proprietor has made payment of RM550 (the official fees for e-filing of timely renewal under the Trade Marks Act 1976) before 27 December 2019, the registered proprietor shall pay the difference of RM450 by or on 28 March 2020.

- 2) An application for registration of a trade mark under Section 25 of the Trade Marks Act 1976 which has yet to be examined by the Registrar by 27 December 2019 may be converted and examined in accordance with the new Act. The applicant may also file an application for conversion of a pending application together with the payment of the prescribed fees within two months from 27 December 2019. However, it is noted that where the applicant gives notice of his intention to convert the pending application, the date of receipt of recorded by the Registrar for the application for registration of the trade mark will be determined in accordance with section 22 of the new Act. (Paragraph 4 of the Guidelines.)
- 3) In the event that an application for registration of an assignment or a registered user is pending or has yet to be finally determined by the Registrar before 27 December 2019, the Registrar may examine the application in accordance with the new Act. (Paragraphs 5 and 6 of the Guidelines.)

For further information regarding intellectual property matters, please contact our [Intellectual Property Practice Group](#).

Tax and Revenue

Finance Act 2019

The **Finance Act 2019** has been gazetted on 31 December 2019. Please refer to sections 3, 22, 27, 29, 35, 37 and 39 as to when the provisions come into operation.

Income tax

The **Income Tax (Amendment) Act 2019** has been gazetted on 31 December 2019 and has come into operation on 1 January 2020.

The **Income Tax (Deduction from Remuneration) (Amendments) Rules 2019** have been gazetted on 30 December 2019 and have come into operation on 1 January 2020.

The **Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) Rules 2019** have been gazetted on 31 December 2019. Please refer to Rule 2 in relation to the application of the Rules.

The **Income Tax (Deduction for Payment of Educational Loan of Perbadanan Tabung Pendidikan Tinggi Nasional by Employers on behalf of Employees) (Amendment) Rules 2019** have been gazetted on 31 December 2019 and have effect from year of assessment 2019 until year of assessment 2022.

Further, the Inland Revenue Board of Malaysia has recently issued a new **Tax Investigation Framework 2020** to replace the Tax Investigation Framework issued on 15 May 2018.

Petroleum income tax

The **Petroleum (Income Tax) (Amendment) Act 2019** has been gazetted on 31 December 2019 and has come into operation on 1 January 2020.

Sales tax

The following orders and regulations have been gazetted between 26 December 2019 and 31 December 2019 (both dates inclusive) and have come into operation on 1 January 2020:

- i. **Sales Tax (Rates of Tax) (Amendment) Order 2019;**
- ii. **Sales Tax (Person Exempted from Payment of Tax) (Amendment) (No. 2) Order 2019;**
- iii. **Sales Tax (Amendment) Regulations 2019;**
- iv. **Sales Tax (Imposition of Sales Tax in respect of Designated Areas) (Amendment) (No. 2) Order 2019;**
- v. **Sales Tax (Compounding of Offences) (Amendment) Regulations 2019;**
- vi. **Sales Tax (Customs Ruling) (Amendment) Regulations 2019.**

Service tax

The following orders and regulations have been gazetted on 31 December 2019 and have come into operation on 1 January 2020:

- i. **Service Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2019;**
- ii. **Service Tax (Digital Services) (Amendment) Regulations 2019;**
- iii. **Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) (Amendment) (No. 2) Order 2019;**
- iv. **Service Tax (Customs Ruling) (Amendment) Regulations 2019.**

The Royal Malaysian Customs Department has recently published the following Service Tax Policies on 1 January 2020 on its [MySST website](#):

- i. **Service Tax Policy on Expansion of Scope of Taxable Service (Service Tax Policy No. 1/2020);**
- ii. **Service Tax Policy on Service Tax Exemption on Imported Taxable Service (Service Tax Policy No. 2/2020);**
- iii. **Service Tax Policy on Claiming a Refund by Offsetting Method on Service Tax on Imported Digital Service Provided by Foreign Registered Person (Service Tax Policy No. 3/2020);**
- iv. **Service Tax Policy on Service Tax on Online Distance Learning Services (Service Tax Policy No. 4/2020);**

- v. **Service Tax Policy on Service Tax on Online Newspaper, Online Journals and Periodicals (Service Tax Policy No. 5/2020);**
- vi. **Service Tax Policy on Service Tax Treatment on Provision of Training and Coaching Services for Disabled Person (Service Tax Policy No. 6/2020).**

Sales tax & service tax

A revised version of the Specific Guide on **Customs Ruling** (as at 2 December 2019) has also been published on the Royal Malaysian Customs Department's [MySST website](#).

Customs duty

The following regulations and order have been gazetted on 31 December 2019 and have come into operation on 1 January 2020:

- i. **Customs Regulations 2019;**
- ii. **Customs (Customs Ruling) (Amendment) Regulations 2019;**
- iii. **Customs Duties (Pangkor) Order 2019.**

Excise duty

The following regulations and orders have been gazetted on 31 December 2019 and have come into operation on 1 January 2020:

- i. **Excise (Customs Ruling) (Amendment) Regulations 2019;**
- ii. **Excise (Determination of Value of Locally Manufactured Goods for the Purpose of Levying Excise Duty) Regulations 2019;**
- iii. **Excise (Bottling and Movement of Intoxicating Liquors) (Amendment) Regulations 2019;**
- iv. **Excise (Sale of Intoxicating Liquors) (Amendment) Regulations 2019;**
- v. **Excise (Sale by Retail of Intoxicating Liquors by Chemists) (Amendment) Order 2019;**
- vi. **Excise (Amendment) (No. 2) Regulations 2019;**
- vii. **Excise Duties (Pangkor) Order 2019.**

For further information regarding tax and revenue matters, please contact our [Tax and Revenue Practice Group](#).
