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Dear valued clients and friends,

We are pleased to bring you the latest legal updates for March 2020.

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CORPORATE/M&A

Companies May Ask for More Time to Hold Annual General Meetings (“AGMs”) Given Covid-19 Situation

In a statement from the Companies Commission of Malaysia (“CCM”) on 16 March 2020, the CCM stated that companies may opt to conduct their AGMs electronically or apply for more time to hold the AGMs as a result of the Covid-19 outbreak.

Under section 340 of the **Companies Act 2016**, a public company (including a listed company) is required to hold an AGM in every calendar year, within six months of the company’s financial year end, to transact, amongst others:

- the laying of the audited financial statements and the reports of the directors and auditors;
- the election of directors in place of those retiring; and
- the appointment and the fixing of the fee of directors.

The CCM acknowledged that companies will find it challenging to hold their AGMs on a timely basis under the current situation, given the Ministry of Health’s advisory to refrain from holding public events after the World Health Organization’s declaration that Covid-19 is a pandemic.

The CCM encourages companies to conduct meetings using alternative methods such as electronic meetings at multiple venues as provided under section 327 of the **Companies Act 2016**.

A company may also apply for an extension of time to hold its AGM, based on the following:

- i. the need to comply with the advisory note of the Ministry of Health;
- ii. lack of a quorum due to the outbreak of Covid-19;
- iii. the company needs to take appropriate preventive measures as a result of the outbreak of Covid-19.

Flexibility granted for listed issuers on AGMs and issuance of periodic reports

The Securities Commission Malaysia (“SC”) and Bursa Malaysia Berhad (“Bursa”) are allowing flexibility to listed issuers on the timing of AGMs for listed Real Estate Investment Trusts (“REITs”) and the issuance of quarterly and annual reports of listed corporations. This is following the movement control order implemented by the Government of Malaysia to combat the Covid-19 outbreak. The movement control order is in force from 18 March 2020 until 31 March 2020.

In a joint statement on 17 March 2020, the SC and Bursa stated that listed corporations which may only be able to hold their AGMs beyond the prescribed six-month period as stipulated under the **Companies Act 2016** can apply to defer their AGMs with the CCM — see the previous alert.

In addition, the SC has granted a two-month extension for REIT managers of listed REITs with a financial year-end of 31 December 2019 to hold AGMs by 30 June 2020.

The joint statement can be found here: <https://tinyurl.com/r36wnob>.

For further information regarding corporate/M&A matters, please contact our [Corporate/M&A Practice Group](#).

FINANCIAL SERVICES

Currency Act 2020

The Currency Act 2020 (the “Act”) was gazetted on 28 February 2020 but no date has been appointed for the Act to come into operation. The Act introduces a regulatory regime which addresses:

1. the powers of Bank Negara Malaysia (“BNM”) relating to currency and the offences in relation to currency;
2. currency processing businesses, which is defined to mean the business of a person or on behalf of another person:
 - i. collecting currency note or currency coin;
 - ii. sorting currency note or currency coin by authenticity and quality; and
 - iii. packing currency note or currency coin by quality, quantity and denomination.
3. BNM’s enforcement powers in relation to the Act.

All currency processing businesses will need to be registered with BNM under the Act. Duties of these businesses include, without limitation:

1. managing its business, affairs and activities prudently, professionally and with integrity, accountability and transparency,
2. secrecy of information relation to its business,
3. detaining currency they have reason to believe to be counterfeit and record personal details of person from whom currency is detained and submit such information to BNM on request.

These duties also apply to businesses licensed under the **Money Services Business Act 2011** (money-changing businesses, remittance businesses, and whole-sale currency businesses).

The Act also includes a provision for an upper limit on physical cash transactions (presently, no limit has been prescribed).

Businesses which currently operate currency processing business and other persons regulated under the Act (that is, licence holders under the **Money Services Business Act 2011**) have a six-month grace period for compliance from the date of coming into operation of the Act.

Amendment to Central Bank of Malaysia Act 2009

Following the introduction of the **Currency Act 2020**, the **Central Bank of Malaysia Act 2009** has been amended (the “Amendment Act”). The substantive changes include:

- removing provisions relating to the right of BNM to issue currency, legal tender, and the right to call in currency, all of which have been provided for in the **Currency Act 2020**; and

- adding a provision to clarify that the powers of BNM under the **Currency Act 2020** are in addition to the powers granted under the **Central Bank of Malaysia Act 2009**, and not in derogation of them.

Like the **Currency Act 2020**, the Amendment Act was gazetted on 28 February 2020 but no date has been appointed for the Act to come into operation.

Update to Exposure Draft on Licensing Framework for Digital Banks

BNM updated the Exposure Draft on Licensing Framework for Digital Banks (“Exposure Draft”) on 3 March 2020. The updated exposure draft simplifies the regulatory framework applicable to digital banks during the foundational phase. The aim is to reduce the regulatory burden for new entrants to the market which have strong value propositions for the development of the Malaysian economy, while balancing safeguarding the financial stability and integrity.

The changes made to the updated exposure draft include, without limitation:

- the risk categories to calculate credit and market risk components for risk-weighted assets have been rationalised into simpler categories.
- 25% of the digital bank’s on-balance sheet liabilities must be held in high quality liquid assets.
- expansion of the types of documents to the list of documents that must be read with the updated exposure draft.
- the elements comprised in the simplified regulatory framework applicable during the foundational phase of a digital bank’s operations have been expanded and clarified in Appendices 1 and 2 to the updated exposure draft, respectively.
- an additional standard has also been inserted at paragraph 14.6 of the updated Exposure Draft, requiring licensed digital bank to comply with additional requirements specified by BNM (taking into account specific risk profile or business model of a licensed digital bank and BNM’s ongoing supervisory monitoring and assessment of the licensed digital bank).

Considering the update, BNM is extending the consultation period for the Exposure Draft until 30 April 2020.

2020 Economic Stimulus Package in response to COVID-19

The Government of Malaysia announced a RM20 Billion 2020 Economic Stimulus Package (“Stimulus Package”) to address the economic risks associated with the outbreak of COVID-19. The Stimulus Package adopts three strategies:

1. mitigating the impact of COVID-19;
2. spurring public focused economic growth; and
3. promoting quality investments.

The measures employed aim to:

- assist the most affected businesses, particularly in the tourism and healthcare sectors, through ways such as but not limited to:
 - easing cashflow through tax reliefs, discount on electricity bills and tax reliefs;
 - introducing temporary allowances for workers;
 - increased spending on healthcare equipment;
 - access to credit facilities;
 - subsidising training and development of human capital;

- assist the general public through ways such as but not limited to:
 - reducing Employees Provident Fund deductions by 4%;
 - one-time cash pay-outs;
 - subsidies for the agriculture, food and digital commerce sector;
 - RM2 billion for infrastructure repair and upgrading projects in rural areas;
 - *electricity discounts of 2% for industrial, commercial and domestic users;
 - *a new monetary assistance scheme amounting to RM600/month for up to six months for employees given no-pay leave;
- boost investment and grow jobs through ways such as but not limited to:
 - accelerating planned investment projects, such as a quota for 1,400MW of solar power generation;
 - a RM13 billion initiative by TNB to accelerate projects;
 - a RM2 billion co-investment funds between the Government and private investors at a ratio of 1:3 for investment in early-stage and growth stage Malaysian companies;
 - a RM300 million SME Automation & Digitalisation Facility at an interest rate of 3.75% by Bank Negara Malaysia;
 - tax deductions and reliefs.

The new Prime Minister Muhyiddin Yassin indicated that the new Government has added to the stimulus package (the points marked with an asterix (*)) and will be following through on the execution of the stimulus package.

<https://tinyurl.com/rowm3d5>

Flexibility to, and Relief Measures for, Capital Markets Services Licence Holders

The Securities Commission Malaysia (“SC”) announced:

- via a circular dated 20 March 2020 that it would be accordingly flexibility to Capital Markets Services Licence (“CMSL”) holders in complying with certain requirements. This primarily involves extending the time for compliance with requirements which would otherwise be due during this period of the Movement Control Order (“MCO”). For instance, the deadline for submission of auditor's reports, audited financial statements, monthly fund management company reports, and statistical returns have all been extended.

The deferment of the regulatory submissions comes as part of the SC’s wider relief package for the capital market in support of the government’s measures to contain the spread of Covid-19.

- on 24 March 2020 further relief measures which includes, without limitation:
 1. waiver of the annual licensing fees for the Year 2020 for all individual CMSL holders and Capital Markets Services Representatives Licence (“CMSRL”) holders. Where a qualifying CMSRL holder has made the payment prior to the announcement, that CMSRL holder will be offered a credit to offset next year’s licensing fees.
 2. reduction of the minimum 20 Continuing Professional Education points requirements to 10 points with effect from 1 July 2020 for a period of 12 months for all CMSRL holders and employees of registered persons.
 3. the minimum days required for training is reduced from five to three days with effect from 1 July 2020 for a period of 12 months for all trading and marketing representatives.

Suspension of Short Selling by SC and Bursa Malaysia Securities Berhad

Both the SC and Bursa Malaysia Securities Berhad announced for the suspension of all short selling, other than permitted short selling, on the stock exchange of Bursa Malaysia Securities Berhad effective from 24 March until 30 April 2020.

Permitted short selling applies only to ETFs units and constituent securities needed to create ETF units by a market maker approved by Bursa Malaysia Securities Berhad.

The measure is to mitigate potential risks from the heightened volatility and global uncertainties amidst Covid-19.

Bank Negara Malaysia issues Policy Document on Statutory Reserve Requirement

Bank Negara Malaysia (“BNM”) released the Statutory Reserve Requirement policy document on 20 March 2020, which applies to:

- i. banks and investment banks licensed under the Financial Services Act 2013; and
- ii. Islamic banks licensed under the Islamic Financial Services Act 2013.

On even date, the Statutory Reserve Requirement (“SRR”) is reduced from 3.00% to 2.00%.

The policy document also sets out:

- how SRR is to be computed;
- the components of “eligible liabilities” (as defined in the policy document) and the way it is to be calculated; and
- the penalty for failing to comply with the minimum SRR.

The aim behind these measures is to improve liquidity by releasing more funds into the banking system.

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

TAX & REVENUE

Tax & Customs Matters during Movement Control Order Period

In view of the Movement Control Order (“MCO”) currently in force in Malaysia, the Inland Revenue Board (“IRB”) has issued a list of Frequently Asked Questions on tax matters arising during the MCO period including extensions of time given for the filing of tax returns and notices of appeal by way of Forms, submission of documents in respect of ongoing tax audits or investigations and so on. For the full FAQ, please refer to http://lampiran1.hasil.gov.my/pdf/pdfam/faq_2.pdf.

Similarly, the Royal Malaysian Customs Department (“RMCD”) also issued a list of FAQ — please refer to <https://tinyurl.com/w49roak>. Although the RMCD had earlier announced that the deadline for submission of any return ending 31 March 2020 is extended until 15 April 2020 (<https://tinyurl.com/tjefq9e>), this has been further extended to 30 April 2020 in light of the extension of MCO period announced by the Prime Minister on 25 March 2020. To view the latest announcement, please refer to <https://tinyurl.com/veuhvpa>.

Income Tax

The following guideline and practice note have recently been published on the IRB's official website:

- i. **Practice Note No. 1/2020 on Penjelasan Berhubung Peruntukan Kerugian dalam Perintah Cukai Pendapatan (Pengecualian) (No. 3) 2018 [P.U.(A) 251/2018] bagi Unit Perniagaan Mata Wang Antarabangsa** (available in Malay language only) issued on 17 February 2020; and
- ii. **Operational Guideline No. 1/2020 on Procedure on Submission of Amended Return Form** issued on 6 March 2020 (to replace Operational Guideline No. 4/2019 issued on 30 August 2019).

Service Tax

The following policies have recently been published on RMCD's MySST website:

- i. **Service Tax Policy on Accounting of Service Tax for Persons Exempted from Payment of Service Tax under Item 3 and 4, Service Tax (Persons Exempted from Payment of Tax) Order 2018 (Service Tax Policy No. 7/2020)** issued on 28 February 2020;
- ii. **Service Tax Policy on Group Relief Facility on Provision of Taxable Services to Company within the Same Group of Companies (Service Tax Policy No. 8/2020)** issued on 28 February 2020; and
- iii. **Service Tax Policy on Service Tax Treatment on Group A: Accommodation First Schedule Service Tax Regulations 2018 under Economic Stimulus Package 2020 (ESP 2020) (Service Tax Policy No. 9/2020)** issued on 6 March 2020.

Customs Duty

The **Customs (Compounding of Offences) Regulations 2020** have been gazetted on 3 March 2020.

Excise Duty

The **Excise (Compounding of Offences) Regulations 2020** have been gazetted on 3 March 2020.

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



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