International Comparative Legal Guides

Fintech 2020

A practical cross-border insight into fintech law

Fourth Edition

Featuring contributions from:

A&L Goodbody
Addison Bright Sloane
Advokatfirmaet BAHR AS
Anderson Mōri & Tomotsune
Astana International Financial Centre
AZB & Partners
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Slaughter and May
Sorainen
Stanford Law School
The Blockchain Boutique
Triay & Triay
Udo Udoma & Belo-Osagie
Uría Menéndez
Uría Menéndez – Proença de Carvalho
Walalangi & Partners (in association with Nishimura & Asahi)

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Contributing Editors:
Rob Sumroy and Ben Kingsley
Slaughter and May

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United Kingdom
+44 207 367 0720
info@glgroup.co.uk
www.iclg.com

Group Publisher
Rory Smith

Publisher
James Strode

Sub Editor
Anjalee Patel

Senior Editor
Sam Friend

Head of Production
Suzie Levy

% J K G H / G F K C 1 H ' E G T
Fraser Allan

CEO
Jason Byles

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Malaysia


Timothy Siaw


Christina Kow

Shearn Delamore & Co.

1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

Developments in 2019 in terms of sectors were:

- Payments: Remittance was an area of significant growth in 2019, with a number of notable non-bank payments service providers receiving Remittance (Class B) Licences from Bank Negara Malaysia (**BNM**). MoneyMatch, the first graduate from BNM's Regulatory Sandbox programme for incubating and ensuring the sustainability and regulatory compliance of fintech start-ups, was the first to receive a licence at the start of the year. UK-based firm TransferWise and AirAsia-backed firm BigPay also received licences. A Remittance (Class B) Licence issued under the Money Services Business Act 2011 allows for money to be sent internationally from Malaysia.
  DuitNow QR was introduced in 2019 as Malaysia's National QR Code Standard under BNM's Interoperable Credit Transfer Framework (**ICTF**). It is an extension of the DuitNow system managed by Payments Network Malaysia Sdn Bhd. (**PayNet**), a payments network and infrastructure provider in which BNM is the largest shareholder, with eleven Malaysian banks as joint shareholders. DuitNow was a service launched in late 2018 which allows users to transfer money between accounts using the recipient's phone numbers or identity card numbers instead of account numbers. DuitNow QR allows users to make payments from participating banks or e-wallets using one QR code, the DuitNow QR, as opposed to using multiple unique codes for each merchant. Participants include banks, non-bank merchant acquirers, and e-wallets.
- Blockchain: Three digital asset exchanges were registered with the Securities Commission Malaysia (**SC**) in 2019: LUNO; Tokenize; and Sinegy Technologies. These three exchanges are currently the only legal platforms on which to buy, sell, and trade digital assets in Malaysia.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Except for those specifically approved by the SC, digital asset exchanges are prohibited from operating in Malaysia. The SC has made clear that operating an exchange without prior authorisation is an offence under the securities law of Malaysia, and offenders may be liable to a fine or imprisonment or both.

The SC introduced the *Guidelines on Digital Assets* in January 2020 which regulate fundraising via digital assets, such as initial coin offerings: see section 3.1 below.

Areas such as digital asset training, digital asset fundraising, equity crowdfunding, and peer-to-peer financing are highly regulated. Therefore, regardless of the technology which businesses adopt, they have to ensure that they are operating within the confines of Malaysian securities law and with the regulations and guidelines issued by BNM and the SC.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

More than 97% of Malaysian businesses are small or medium-sized businesses (**SMEs**). Governmental action and support for SMEs have been available through policies (including the SME Masterplan 2012–2020) co-ordinated by SME Corporation Malaysia, and implemented by specified agencies of the government and the banking sector. Malaysia has both conventional and Islamic financial and capital markets providing debt and equity financing.

Financial institutions like banks and development financial institutions (which have specified sector objectives like the Small Medium Enterprise Development Bank Malaysia Berhad) provide debt financing. An established debt capital market also exists, in both conventional and *Shari'ah* compliant issues.

Equity financing can be raised by listing on the stock exchange of Bursa Malaysia Securities Berhad, which is further discussed in question 2.3 below, venture capital investment, or utilising an equity crowdfunding platform approved by the SC under the equity crowdfunding framework.

Specific examples of funding sources include:

- Peer-to-peer (**P2P**) financing under the SC guidelines.
- Malaysia Debt Ventures Berhad, Malaysia's leading technology financier, has various schemes, including an Intellectual Property Financing Scheme of RM 200 million, to enable companies with IP rights (**IPRs**) to use their IPRs as additional collateral to obtain financing.
- The SME Investment Partner (under the SME Masterplan) which provides early-stage financing through the establishment of investment companies to invest in potential SMEs.

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Entities that focus specifically on financing to the technology sector include:

- Cradle Fund Sdn Bhd. (**Cradle**), owned by the Ministry of Finance. Cradle focuses on pre-seed, early, seed and start-up financing, and provides non-financial assistance to local tech start-ups. Its CIP 300 programme provides debt seed financing, and its Direct Equity 800 (**DEQ800**) programme launched in 2017 to early-stage start-ups that meet the applicable criteria.
- The Malaysian Digital Economy Corporation Sdn Bhd. (**MDEC**), wholly owned by the government, which focuses on building a sustainable digital ecosystem.
- The Malaysia Venture Capital Management Berhad (**MAVCAP**).
- The Malaysian Technology Development Corporation (**MTDC**).

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

SME Corporation Malaysia is the Central Coordinating Agency under the Ministry of International Trade and Industry (**MITI**) in Malaysia that formulates overall policies and strategies for SMEs, and coordinates the implementation of SME development programmes across all related government ministries and agencies.

SMEs in Malaysia are given preferential tax rates as well as a wide range of tax incentives for businesses in the manufacturing, services and agriculture sectors. Fiscal incentives include:

- The angel tax incentive granted to angel investors in technology based start-ups administered by Cradle.
- Pioneer status with income tax exemption of various percentages by the Malaysian Industrial Development Authority (**MIDA**).
- Partial corporate tax exemption for entities in the Malaysian Digital Hub under the **MDEC**.
- Malaysia Tech Entrepreneur Programme under the MDEC to attract individuals and help them set up and develop their start-ups in Malaysia, subject to specified conditions.
- The Multimedia Super Corridor (**MSC**) Malaysia status recognition by the MDEC for ICT and ICT-facilitated businesses that meet specified criteria available to local and foreign companies. Specific incentives are granted to MSC Malaysia Status entities, including the MSC Malaysia Bill of Guarantees, 100% exemption from taxable statutory income, 100% investment tax allowance, eligibility for R&D grants, and the freedom to source capital and borrow funds under specific waivers from the foreign exchange administration requirements of Malaysia.
- The Malaysian Government launched the e-Tunai Rakyat programme as part of the Annual Budget for 2020. Each eligible citizen is given RM 30 into his/her e-wallet to encourage the public, small businesses and retail stores to accept and use digital payments.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The conditions for a business to IPO in Malaysia would depend on the market it intends to list on. Bursa Malaysia Securities Berhad has three securities markets: (i) the Main Market; (ii) the ACE Market; and (iii) the LEAP Market.

The LEAP Market was introduced to provide SMEs and other companies, from all industries including fintech, with greater fundraising access and visibility. Only sophisticated investors (comprising entities set out in Part I of Schedules 6 and 7 to the Capital Markets and Services Act 2007 (**CMSA**) may invest in the LEAP Market. The LEAP Market provides opportunities for start-up fintech companies which may otherwise find it difficult to meet the Main Market or ACE Market listing requirements.

To list on the LEAP Market, an applicant must:

- be a public company incorporated in Malaysia;
- not be: (i) a subsidiary or holding company of a corporation currently listed on the Main Market or ACE Market of the Exchange, and the listing of such applicant will result in the existing listed corporation within the group ceasing to have a separate autonomous business of its own and not be capable of sustaining its listing in the future; (ii) an investment holding corporation with no immediate or prospective business operations within its group; or (iii) an incubator, including a technology incubator;
- engage an adviser, approved by Bursa Malaysia Securities Berhad, to carry out both the initial listing activities and post-listing activities, to assess the suitability for listing and submit the application for admission to the LEAP Market; and
- achieve a minimum shareholding spread of 10% of its ordinary shares upon admission to the LEAP Market.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

In 2019, Skolafund, an impact enterprise that crowdfunds scholarships to university students, was completely acquired by a donation crowdfunding platform in 2019, representing the first equity crowdfunding exit in Malaysia.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Where a fintech business falls within any business, or includes an activity that is regulated or licensed in Malaysia, the regulatory and legal requirements to conduct such business or activity must be complied with in accordance with the applicable Malaysian laws.

Fintech activities which involve banking, investment banking, insurance or *takaful*, money changing, remittance, operating a payment system or issuing payment instruments business will come under the purview of BNM. The Financial Services Act 2013 (**FSA**) is the statute that regulates and provides supervision of conventional financial institutions, payment systems and operators thereof and the oversight of the money market and foreign exchange market. BNM also regulates the Islamic financial sector, largely under the Islamic Financial Services Act 2013.

The SC, which regulates the Malaysian capital markets, has adopted a Digital Markets Strategy intended to enhance access to financing, increase investor participation, augment the institutional market and develop synergistic ecosystems for the capital markets in Malaysia. Stockbroking, provision of investment advice, financial planning, dealing in derivatives and advising on corporate finance are among the activities regulated by the SC under the CMSA.

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Both BNM and the SC have introduced a series of new regulations aimed at fintech over the course of 2019. Some highlights include:

- In January 2019, the SC announced the issuance of a *Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019* to prescribe certain digital currency and digital tokens as securities for the purposes of securities law.
- Also in January, the SC amended its *Guidelines on Recognized Markets*, introducing new requirements for electronic platforms to facilitate the trading of digital assets.
- BNM issued two policy documents regarding e-KYC (electronic Know Your Customer) in 2019; the first being a Supplementary Document to the Anti-Money Laundering Framework in September and the second being an exposure draft in December which focuses directly on e-KYC. BNM are seeking public feedback on the proposed guidelines in the e-KYC exposure draft before issuing a finalised version. E-KYC allows users to register for services directly through the platform itself, eliminating the need for a physical check.
- In December 2019, BNM released their *Licensing Framework for Digital Banks – Exposure Draft*. The digital bank exposure draft outlines the proposed licensing framework for digital banks to offer conventional or Islamic banking products and services. There is a strong focus on financial inclusion, with an emphasis on targeting underserved and unserved segments. BNM has indicated that it intends to issue up to five licences once the framework comes into effect, which is scheduled to be the first half of 2020.
- In January 2020, the SC introduced the *Guidelines on Digital Assets*. This regulates fundraising via digital assets, such as initial coin offerings. It adopts the Initial Exchange Operator model, in which issuances are done on a digital asset exchange as opposed to by individual issuers on their own.

These regulations build on already existing initiatives and frameworks, including programmes such as BNM's Regulatory Sandbox for incubating and ensuring the sustainability and regulatory compliance of fintech start-ups, and the incentives and functions of governmental or government-owned entities referred to under sections 1 and 2 above.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Yes, the *Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019* (the **Order**), which came into force on 15 January 2019, would be applicable. Under the Order, digital currency and digital tokens as defined therein are prescribed as securities and thus fall within the purview of the SC under the CMSA. All the provisions of the CMSA applicable to securities will apply to each such digital currency save for Division 3 of Part VI of the CMSA.

In conjunction with the abovementioned Order, the SC amended the *Guidelines on Recognized Markets*, which introduced a regulatory framework for persons wishing to operate a digital asset exchange. It establishes, amongst other provisions, capital adequacy, governance, and reporting requirements for operators.

The SC has also introduced *Guidelines on Digital Assets* which regulates digital asset fundraising, as mentioned in section 3.1 above.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

Malaysia is very receptive to fintech innovation and technology. Specific agencies and incentives are in place to facilitate the development of the digital economy. MDEC is an agency under the Ministry of Communications and Multimedia Malaysia which has been entrusted to develop, coordinate, and promote Malaysia's digital economy, information and communications technology industry, and the adoption of digital technology amongst Malaysians. It has helped to launch several initiatives pursuant to this goal, including:

- The Malaysia Digital Hub: a programme which has been set up to attract technology investments, support local technology innovation and create a sustainable digital ecosystem in Malaysia.
- Orbit: a co-working space that serves both as a physical fintech innovation hub and a nexus point for both local and foreign fintech players, allowing start-ups to engage with industry leaders to ease solution development and early market entry.

Both BNM and the SC have policies encouraging fintech through the initiatives referred to above. For instance, BNM offers regulatory flexibility to entities approved in their Regulatory Sandbox, which was introduced to enable innovation of fintech to be deployed and tested in a live environment within view of regulators. This ensures compliance and promotes sustainability for early-stage fintech businesses. The Sandbox also allows BNM to review and adapt regulatory requirements or procedures that may unintentionally inhibit innovation or render them non-viable.

The SC has also demonstrated its receptiveness to fintech not only through introducing business-friendly policy, but through actual projects. In December 2018, the SC announced a successful completion of its pilot project, Project Castor. In Project Castor, the SC sought to explore the technical implementation and feasibility of using distributed ledger technology as the underlying market infrastructure for unlisted and over-the-counter (**OTC**) markets. A blueprint entitled *Capital Market Architecture Blueprint in a Decentralised World* has been issued, and it outlines the regulator's vision for "a future multi-tiered market environment" which contains both centralised and decentralised markets, with the latter underpinned by distributed ledger technology. According to the blueprint, the regulator used equity crowdfunding and Ethereum-based tokens to represent equity and monies. It also used smart contracts to codify the rules of offerings and distribute the appropriate tokens and assets once offerings were closed, as well as for KYC/AML requirements.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

A fintech business, or financial services business established outside Malaysia offering fintech products and services, must comply with the Malaysian laws applicable to the service or product offered. Malaysian licensing laws apply to financial services and the regulated activities set out in the CMSA, unless any waiver or exemption specifically applies by law or is granted

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by the regulator. Most of the financial services businesses regulated by BNM and the regulated activities supervised by the SC have to be conducted by a locally incorporated entity, so as to allow smoother monitoring of compliance with Malaysian laws. Therefore, any foreign entity will usually have to establish a local company to apply for the relevant licence or approval.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Yes. The Personal Data Protection Act 2010 (**PDPA**) came into force in 2013 and regulates the collection, use, processing and disclosure of personal data in Malaysia in respect of commercial transactions. The legal basis for the PDPA is to ensure information security, network reliability and integrity through the regulation of processing of personal data by a data user in any commercial transaction and protection of personal data. "Commercial transactions" by definition includes any transaction of a commercial nature, whether by way of a contract or not, including any matter relating to the supply or exchange of goods or services, agencies, investment, finance, banking and insurance, but does not include a credit reporting business under the Credit Reporting Agencies Act 2010. As such, the PDPA would be applicable to fintech businesses who are in operation within Malaysia. "Personal data" has been defined widely as any information in respect of commercial transactions, which:

(a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose;
(b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or
(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,

that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data user, including any sensitive personal data and expression of opinion about the data subject; but does not include any information that is processed for the purpose of a credit reporting business carried on by a credit reporting agency under the Credit Reporting Agencies Act 2010.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The PDPA applies to all data users in Malaysia. Moreover, the PDPA applies to data users not established in Malaysia, but which use equipment in Malaysia to process personal data other than for the purposes of transit through Malaysia.

In general, the transfer of data out of Malaysia is not allowed unless the transfer is to a place specified by the Minister and notified by Gazette, namely to such countries that have in place substantially similar data protection laws as the PDPA, or an equivalent adequate level of protection. There is currently no gazette notification of any permitted country released by the Minister to date.

The PDPA provides that a data user may transfer personal data outside of Malaysia under the following conditions:

(a) the data subject has given their consent for the transfer;
(b) the transfer is necessary for the performance of a contract between the data subject and the data user;
(c) the transfer is necessary for the conclusion or performance of a contract between the data user and a third party, which:
  (i) is entered into at the request of the data subject; or
  (ii) is in the interests of the data subject;
(d) the transfer is for the purpose of any legal proceedings or for the purpose of obtaining legal advice or for establishing, exercising or defending legal rights;
(e) the data user has reasonable grounds for believing that in all circumstances of the case:
  (i) the transfer is for the avoidance or mitigation of adverse action against the data subject;
  (ii) it is not practicable to obtain the consent in writing of the data subject to that transfer; and
  (iii) if it was practicable to obtain such consent, the data subject would have given his consent;
(f) the data user has taken all reasonable precautions and exercised all due diligence to ensure that the personal data will not in that place be processed in any manner which, if that place is Malaysia, would be a contravention of the PDPA; and
(g) the transfer is necessary in order to protect the vital interests of the data subject; or the transfer is necessary as it is in the public interest in circumstances as determined by the Minister.

On 4 April 2017, the Personal Data Protection Commission issued the Personal Data Protection (Transfer of Personal Data To Places Outside Malaysia) Order 2017, a public consultation setting out jurisdictions which it is considering recommending to be approved as places to which personal data may be transferred outside Malaysia. Among the criteria considered by the Commissioner in preparing a list of those places are:

(i) places that have comprehensive data protection law (which can be from a single piece of comprehensive personal data protection legislation, or otherwise a combination of several laws and regulations in that place);
(ii) places that have no comprehensive data protection law but are subject to binding commitments (multilateral/bilateral agreements and others); and
(iii) places that have no data protection law but have a code of practice or national co-regulatory mechanisms.

The Personal Data Protection (Transfer of Personal Data To Places Outside Malaysia) Order 2017 has not been finalised to date.

A public consultation entitled "Review of Personal Data Protection Act 2010" was issued on 14 February 2020 to seek feedback from the public on issues such as data portability, transfer of personal data out of Malaysia, extension of the data protection obligations to Federal Government or State Governments and data protection in cloud computing.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Failure to comply with the PDPA will result in the imposition of a fine between RM 10,000 to RM 500,000 and/or imprisonment of up to three years, depending on which section/rule has been breached. Pursuant to Section 133 of the PDPA, where a body corporate commits an offence under the PDPA, any person who at the time of the commission of the offence was:

(a) a director, chief executive officer, chief operating officer, manager, secretary;
(b) other similar officer of the body corporate;
(c) was purporting to act in such capacity; or

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(d) was responsible for the management of any of the affairs of the body corporate,

may also be charged severally or jointly and be deemed to have committed that offence in the event that the body corporate is found liable.

The said person may escape liability if he proves that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Yes. The following cyber security laws or regulations have general application in Malaysia:

(a) Communications and Multimedia Act 1998;
(b) Communications and Multimedia Commission Act 1998;
(c) Computer Crimes Act 1997;
(d) Copyright Act 1987;
(e) Consumer Protection Act 1999;
(f) Consumer Protection (Electronic Trade Transactions) Regulations 2012;
(g) Digital Signature Act 1997;
(h) Electronic Commerce Act 2006;
(i) Malaysian Communications and Multimedia Content Code (Version 6, published in 2012);
(j) Penal Code;
(k) Personal Data Protection Act 2010;
(l) Personal Data Protection Regulations 2013;
(m) Personal Data Protection Standard 2015; and
(n) Strategic Trade Act 2010.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Malaysia is a member of the Financial Action Task Force (**FATF**) and the Asia/Pacific Group on Money Laundering. The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (**AMLA**) reflects the FATF recommendations on money-laundering and anti-terrorism financing. The main offence of money laundering is engaging in a transaction that involves, acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses, removes from, or brings into, Malaysia, proceeds of an unlawful activity or instrumentalities of an offence. Further, the Minister of Home Affairs may declare an entity known to have committed, participated in or facilitated, or known to have attempted to commit, participate in or facilitate, a terrorist act to be a specified entity. These include United Nations Security Council Resolutions (**UNSCR**) 1267 and 1988 (and the Al-Qaida Sanction List) as well as a Malaysian list in line with UNSCR 1373. No citizen or entity incorporated in Malaysia may knowingly provide or collect any property for use by a specified entity.

Entities providing financial services, and licensed stockbrokers, derivatives dealers and fund managers under the CMSA are reporting institutions under the AMLA. Entities designated as reporting institutions have to conduct customer due diligence, report suspicious transactions to BNM and maintain specific records in accordance with the provisions of the Act and the requirements of BNM. Certain obligations are prescriptive, while others are risk-based (for example, enhanced due diligence has to be conducted where aspects of a transaction are classified as high-risk). Specific anti-money laundering requirements apply to reporting institutions that exchange digital currency for fiat money, exchange money for digital currency, or exchange one digital currency for another digital currency in Malaysia.

The Malaysian Anti-Corruption Commission (**MACC**) enforces the Malaysian Anti-Corruption Commission Act 2009 (the **MAC Act**). The main offences under the MAC Act relate to giving or receiving gratification. Gratification is widely defined in the MAC Act, and includes:

- any gift, reward, property or interest in property, financial benefit, or any other similar advantage;
- any office, dignity, employment, contract of services, and agreement to give employment or render services in any capacity;
- any payment, release, discharge, discount, deduction or liquidation of any liability;
- any valuable consideration of any kind;
- any forbearance to demand any money or money's worth or valuable thing;
- any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding items.

In proceedings relating to any of the offences described above, any gratification received or solicited, given, offered or promised, by or to an accused is presumed to have been done so corruptly, unless the contrary is proved. The MAC Act imposes an obligation on persons to report bribery transactions to the MACC or the police. Failure to do so will result in a fine or imprisonment or to both on conviction of the offence. The MAC Act applies to the commission of offences whether within or outside Malaysia.

The MACC maintains a database of offenders found guilty of corruption.

The **Malaysian Penal Code** also prohibits the commission of the criminal offences of bribery and corruption, such as taking a gratification in order to, by corrupt or illegal means, influence a public servant, and criminal breach of trust. Whoever commits criminal breach of trust shall be punished with imprisonment for a term of up to 10 years and with whipping, and shall also be liable to a fine. A criminal breach of trust is committed where a person dishonestly misappropriates, or converts to his own use, any property that he is entrusted with or where the person has dominion over such property, or the person dishonestly uses or disposes of that property in violation of any direction of law or of any legal contract.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

A fintech business operating in Malaysia must comply with the Malaysian laws and regulations relevant to its activities, location and legal structure. For example, the provisions of the Electronic Commerce Act 2006 govern the validity of electronic communications and transactions.

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5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The following legislation is applicable in relation to employment in Malaysia:

- Employment Act 1966 (**EA**);
- Children and Young Persons (Employment) Act 1966;
- Industrial Relations Act 1967;
- Employment (Restriction) Act 1968;
- Occupational Safety and Health Act 1994;
- Factories and Machinery Act 1967;
- Minimum Wages Order 2016;
- Minimum Retirement Age Act 2012; and
- Workman's Compensation Act 1952.

The EA applies to all employees with a monthly wage of RM 2,000 or below. The minimum notice period should be as prescribed in the employment contract or the EA, whichever is longer. The minimum notice period prescribed under the EA is as follows:

(a) four weeks' notice (for employment of less than two years);
(b) six weeks' notice (for employment of two years or more but less than five years); and
(c) eight weeks' notice (for employment of five years or more).

5.2 What, if any, mandatory employment benefits must be provided to staff?

Under the EA, employees in Malaysia are entitled to paid annual leave and sick leave (depending on the number of years of service), payment for overtime work, maternity leave of 60 days, and paid holiday of at least the 11 gazetted public holidays including National Day and Labour Day.

The Employees Provident Fund Act 1991 requires employees and their employers to contribute towards their retirement savings, and allows the employees to withdraw these savings at retirement or for specified purposes before then.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

The Employment (Restriction) Act 1968 requires non-Malaysian citizens to obtain a valid work permit before they can be employed.

Fintech companies may be eligible to apply for MSC Status from the MDEC. Companies with MSC Status are eligible to apply for special employment passes and exemptions to employ foreign knowledge workers.

Under the Malaysia Tech Entrepreneur Programme provided by MDEC, a tech founder with no track record of established business may apply for a one-year pass, and an individual who is an established entrepreneur may obtain a five-year pass to stay in Malaysia, subject to meeting specified application requirements as set out in https://www.mtep.my.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions are protectable under the patent, copyright and industrial design laws as well as confidential information under the common law in Malaysia. This would include the Patents Act 1983, the Copyright Act 1987 and the Industrial Designs Act 1996.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Copyright

Under the Copyright Act 1987, copyright shall initially vest in the author of the copyrighted work. The Copyright Act 1987 provides for presumptions in cases of commissioned work or work made in the course of employment. As such:

(a) where the work is commissioned by a person who is not the author's employer, copyright is deemed to be transferred to the person who commissions the work; or
(b) where the work is made in the course of the author's employment, the copyright is deemed to be transferred to the author's employers.

However, this is subject to any contrary agreement.

Where the work is made by or under the direction or control of the government, government organisation or international body, the copyright shall initially vest in the government, government organisation or international body.

Trade marks

Under the new Trademarks Act 2019, any person claiming to be the *bona fide* proprietor of a trade mark may apply to the Registrar for the registration of that mark if the person is using or intends to use or has authorised or intends to authorise another person to use the trade mark in the course of trade. While the proprietor of a registered trade mark is the person whose name appears on the Register as the owner, the concept of proprietorship for the purposes of an application for registration depends on who is entitled to the exclusive use of the trade mark, i.e. the first person to use the mark in the course of trade and to develop business goodwill in relation to that mark.

Patents

Under the Patents Act 1983, the right to a patent belongs to the inventor unless the invention is made by an employee (including government employees, and employees of a government organisation or enterprise) or pursuant to a commission, in which case the right to the invention will be deemed to accrue to the employer or the person who commissioned the work, subject to any contrary agreement.

Industrial designs

Under the Industrial Designs Act 1996, the author of the industrial design is entitled to make an application for registration, except for:

(a) industrial designs created pursuant to a commission or money or money's worth – the person who commissioned the work is the original owner;
(b) industrial designs created by an employee in the course of employment – the employer is the original owner; and
(c) industrial designs subject to any contrary agreement.

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6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Except for copyright where registration is voluntary and there are common law rights such as passing off, one must have a patent, trade mark or industrial design registration in Malaysia to enjoy protection of these rights in Malaysia.

Malaysia is a member of the following Intellectual Property international treaties/conventions/agreements:

(a) Paris Convention for the Protection of Industrial Property 1883.
(b) Agreement on Trade-Related Aspects of Intellectual Property Rights.
(c) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.
(d) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.
(e) Madrid Protocol (implemented on 27 December 2019).
(f) Patent Cooperation Treaty.
(g) Berne Convention for the Protection of Literary and Artistic Works 1886, as revised by the Paris Act of 1971.
(h) World Intellectual Property Organisation (**WIPO**) Copyright Treaty.
(i) WIPO Performances and Phonograms Treaty.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

There are currently no specific rules or restrictions on monetisation or exploitation of IP in Malaysia. IP in Malaysia is generally exploited either by way of creating licences for the use of IP or co-development of new inventions/products, or selling the IP rights for a value. There has been significant progress in the development and the implementation of IP monetisation mechanisms. Essentially, the aim was to harness the value of locally-nurtured IP as revenue-generating streams.

Some of these efforts include:

- MDEC's IP Valuation Module (to assist SMEs in evaluating IP) launched on 7 March 2013.
- The Industrial Designs (Amendment) Act 2013 that came into force on 1 July 2014 allows for a registered industrial design to be the subject of a security interest in the same way as other personal or movable property.
- Introduction of IP Financing Scheme (**IPFS**) for SMEs to allow easier access to credit through their IP assets instead of movable assets.
- The sum of RM 19 million was allocated for training programmes for local IP evaluators conducted by the Intellectual Property Corporation of Malaysia (**MyIPO**), as well as to create an IP right market platform. The IP right market platform is vital to enable SMEs to fully utilise the opportunities to set up their IPR for sale and licensing.
- Implementation of an integrated online system by MyIPO to facilitate registration and verification of intellectual property.
- Malaysia's new Trademarks Act 2019 came into force on 27 December 2019 and provides for multi-class filings as well as the implementation of the Madrid Protocol which would assist with the monetising of trade mark rights in Malaysia and elsewhere. A registered trade mark is recognised as personal or moveable property and may be subject of a security interest.

Further, the Malaysian Competition Commission (**MyCC**) finalised and published the MyCC Guidelines on Intellectual Property Rights and Competition Law, effective from 6 April 2019. The Guidelines provide for situations involving intellectual property in which the Competition Act 2010 will be applicable. Entities who are involved in the monetisation of IP in Malaysia would need to be aware of acts that may be deemed to be anti-competitive or abuse of dominant position.

The Malaysia's 2020 Budget proposes for income tax exemption of up to 10 years on qualifying IP income derived from patent and copyright software of qualifying activities. There has also been a proposal to improve the research and development (**R&D**) framework in Malaysia by allocating funds to intensify R&D projects in Malaysia.

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Timothy Siaw graduated with a B.Sc. and an LL.B. from Monash University, Australia in 1990 and has been admitted as a Barrister and Solicitor of the Supreme Court of Victoria and as an Advocate and Solicitor of the High Court of Malaya. Tim heads the Telecommunications, Media & Technology practice group of the firm. He has practised for over 25 years in the areas of information technology, intellectual property, media, communications, competition, data protection, and consumer protection. He advises on the regulatory requirements and compliance under the purview of the Malaysian Communications and Multimedia Commission. Tim negotiates and drafts ICT, technology transfer and licensing agreements. Tim is the author for the Cable and Satellite Broadcasting Association of Asia (CASBAA), reports on Malaysia's OTT TV Policies and has contributed to the annotations of the various statutes in relation to Intellectual Property for Lexis-Nexis. Tim has been identified as a leading lawyer in various publications including *Chambers Asia*, *The Legal 500 Asia Pacific*, *Asialaw*, *Who's Who Legal*, *Euromoney Expert Guides* and *IAM Patent 1000* over the years.

Shearn Delamore & Co.
Level 7, Wisma Hamzah-Kwong Hing, No. 1
Leboh Ampang
50100 Kuala Lumpur
Malaysia

Tel: +603 2027 2660
Email: timothy@shearndelamore.com
URL: www.shearndelamore.com

Christina Kow was admitted to practise in the High Court of Malaya in 1986. She holds an LL.B. and B.Com. from the University of Melbourne, Victoria, Australia. She is the head of the financial services practice in Shearn Delamore & Co. and regularly advises multinational banks and other financial institutions and capital market intermediaries on regulatory matters. Her areas of advice cover foreign exchange administration, the regulation of financial institutions, payment systems, securities (including collective investment schemes, securities borrowing and lending, and licensing of regulated activities) and derivatives.
She also has extensive experience in financing transactions, having acted for borrowers as well as lenders in different transactions, including onshore and offshore financing transactions under conventional as well as *Shari'ah* compliant facilities.

Shearn Delamore & Co.
Level 7, Wisma Hamzah-Kwong Hing, No. 1
Leboh Ampang
50100 Kuala Lumpur
Malaysia

Tel: +603 2027 2786
Email: christina@shearndelamore.com
URL: www.shearndelamore.com

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