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Legal Update

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Financial Services

Bursa Malaysia seeks Feedback on Proposed Reduction in Public Spread

On 23 July 2020 Bursa Malaysia Berhad ("Bursa") released Consultation Paper No. 2/2020 Proposed Amendments to the Main Market and ACE Market Listing Requirements in relation to Public Security Holdings Spread ("Consultation Paper").

Currently the Listing Requirements requires that at least 25% of the total number of floated units are held by 1,000 public security holders for the Main Market and 200 for the ACE Market, who each hold not less than 100 units. On a continuing basis at least 25% of total listed units are to be held by the public. However, there are circumstances where Bursa may accept a lower public spread, whether at admission or on a continuing basis. Presently Bursa may accept a lower public spread ranging from 15% to 25% taking into account, among others, the size or market capitalisation of an applicant/listed issuer, the sufficiency of liquidity, orderliness of trading and corporate governance and compliance records.

As part of their review of internal policies, Bursa has recognised the need to be more transparent and specific on the criteria for acceptance of lower public spread, and as such are proposing to incorporate the lower public spread policy into the Listing Requirements. The proposed market capitalisation threshold for lower public spreads are: 20% public spread for a market capitalization of RM1 billion or more but less than RM3 billion; 15% public spread for a market capitalization of RM3 billion or more. In addition to this, Bursa will also continue to take into account the other factors mentioned above.

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The window for feedback closed on 21 August 2020. The full Consultation Paper is available at <https://tinyurl.com/y45nrcds>.

Policy Document on Standing Facilities

On 30 July 2020, Bank Negara Malaysia ("BNM") issued a policy document which sets out the operational procedures relevant to the eligible collateral to ensure the efficiency of standing facilities operations. BNM introduced the standing facilities to ensure that overnight interbank rates trade within a corridor around the overnight policy rate by providing a lending/funding facility and a deposit/acceptance facility at the upper and lower limit of the corridor, respectively. The policy document expands eligible collateral for standing facilities operations to include corporate bonds and *sukuk* with minimum domestic rating of A3 by RAM or A- by MARC.

The full policy document is available here: <https://tinyurl.com/yy79fvc5>.

BNM *Shariah* Advisory Council rules on Restructuring of Islamic Financing Facility

On 10 August 2020, BNM announced that its *Shariah* Advisory Council has made rulings on various practices of restructuring of Islamic financing facility during the COVID-19 crisis. The rulings relate to:

1. *Restructuring of an Islamic financing facility based on original Shariah contracts*
 - a. a supplementary agreement can be used to restructure original *Shariah* contracts.
 - b. a new agreement is required if the restructuring involves:
 - i. the application of a different *Shariah* contract;
 - ii. a combination of multiple financing based on various *Shariah* contracts into a new single *Shariah* contract as part of a debt rationalisation exercise.
2. *Restructuring of an Islamic financing facility into a conventional loan (or vice versa)*
 - a. Islamic Financial Institutions ("IFI") are allowed to restructure conventional loans into an Islamic financing facility, however, the vice versa is not allowed. In cases where the customer chooses to restructure his existing Islamic financing facility to a conventional loan, it is the customer's choice, and therefore is beyond the responsibility and control of the IFI.
3. *Compounding profit on restructuring*
 - a. IFIs are not allowed to include and account for any accrued profit on an original financing as the new principal amount for the restructured facility.

Therefore, in the new restructuring:

- i. the new principal amount for the restructured facility is equivalent to the outstanding principal amount of the original facility, provided there is no additional financing;
- ii. IFIs are allowed to charge a new profit rate on the new principal amount; and
- iii. amount of accrued profit and late payment charges (where applicable) on the existing financing can be carried forward and added to the total debt obligation, but this amount cannot be capitalised in the calculation of new profit.

as well as address gaps for greater shareholder protection and confidence. The amendments also enhanced the definition of independent directors by extending the cooling-off period for specific persons (such as an existing or former officer, adviser or transacting party of the listed issuer or its related corporation), to three years (from the current two-year period), and subject a non-independent non-executive director to such revised cooling-off period.

Most of the amendments will take effect immediately from 13 August 2020. Other amendments such as the enhanced definition of independent directors will become effective on 1 October 2020.

The full announcement is available here: <https://tinyurl.com/ykubxwz>.

The full announcement is available here <https://tinyurl.com/y48u9zcv>.

SC grants M-REITS temporary increase in gearing limit

On 12 August 2020, the Securities Commission Malaysia ("SC") announced that it will temporarily increase the gearing limit for Malaysian real estate investment trusts ("M-REITs") from 50% to 60%, effective immediately, until 31 December 2022. The aim of this is to provide M-REITs better cash flow flexibility and allow managers to manage debt and capital structures more efficiently.

The full announcement is available here <https://tinyurl.com/y36cs9tp>.

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

Amendments to Bursa Listing Requirements

On 13 August 2020, Bursa amended the Main Market and ACE Market Listing Requirements to enhance the disclosure requirements in connection with new issue of securities,

Tax and Revenue

Income tax

The following public rulings and guidelines have recently been published on the [Inland Revenue Board of Malaysia's official website](#):

- i. **Tax Treatment of Research and Development Expenditure Part I – Qualifying Research and Development Activity (Public Ruling No. 5/2020)** issued on 13 August 2020;
- ii. **Tax Treatment of Research and Development Expenditure Part II – Special Deductions (Public Ruling No. 6/2020)** issued on 13 August 2020;
- iii. **Guidelines on the Application Procedure for a Special Deduction in respect of a Qualifying Research and Development** issued on 13 August 2020; and
- iv. **Pengenaan Penalti di bawah Subseksyen 112(3) Akta Cukai Pendapatan 1967, Subseksyen 51(3) Akta Petroleum (Cukai Pendapatan) 1967 dan Subseksyen 29(3) Akta Cukai Keuntungan Harta Tanah 1976** (available in Malay language only) – issued on 13 August 2020.

Income Tax & Petroleum

Income Tax

The Double Taxation Relief (Multilateral Convention to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting) Order 2020 has been gazetted on 4 August 2020.

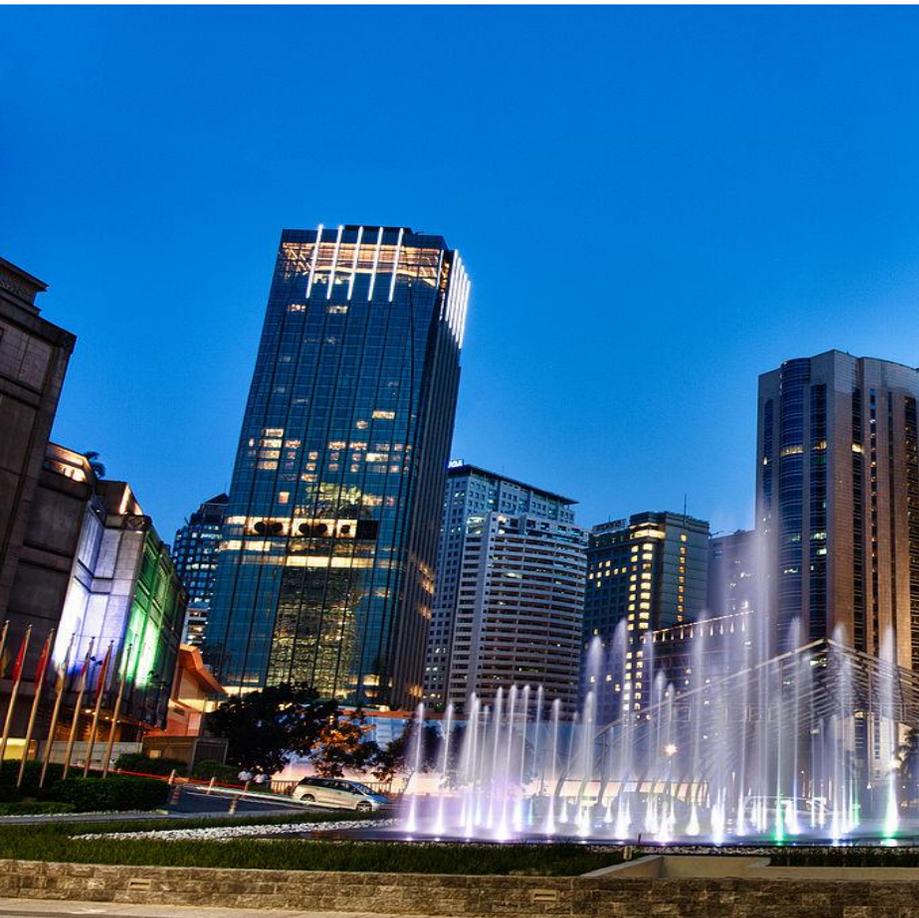
Service tax

A revised version of the Industry Guide on **Digital Services by Foreign Service Providers (FSP)** (as at 1 August 2020) has been published on the [Royal Malaysian Customs Department's MySST website](#).

Goods and Services Tax (GST)

A revised version of the GST Guide on **Declaration and Adjustment After 1st September 2018** (as at 18 August 2020) has also been published on the [Royal Malaysian Customs Department's MySST website](#).

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



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