



Shearn Delamore & co.

Legal Update

July 2020

Shearn Delamore & Co

7th Floor

Wisma Hamzah Kwong-Hing,

No 1, Leboh Ampang

50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

E: info@shearndelamore.com

W: www.shearndelamore.com

Financial Services

Extension on short-selling ban

The Securities Commission Malaysia (“SCM”) and Bursa Malaysia Securities Berhad (“Bursa Malaysia”) announced a further extension, until 31 December 2020, of the existing suspension for the suspension of all short selling, other than permitted short selling, on the stock exchange of Bursa Malaysia. The scope of the ban remains the same.

Caution on usage of Crypto ATMs in Malaysia

On 8 July 2020, the SCM issued an announcement to caution the public against the usage of Crypto Automatic Teller Machines (“Crypto ATMs”). According to SCM’s announcement, Crypto ATM is a machine that allows individuals to buy and/or sell digital assets via cash, debit/credit cards or e-wallets. These machines are installed in various locations in Malaysia, facilitating the exchange of different types of digital assets with fiat currency and vice versa.

The SCM regards operators of Crypto ATMs as digital asset exchange (as defined in its Guidelines on Recognised Markets) which require registration with the SCM. The SCM has indicated that it has not authorised any entity to operate Crypto ATM to-date.

All Crypto ATM operators are asked to cease their activities immediately. An operation of a digital asset exchange without the authorisation from the SCM is an offence and, on conviction, liable to a maximum fine of RM10 million or maximum imprisonment term of 10 years.

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Revision to Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework

The SCM had, on 30 June 2020, revised Section B Part 5 of the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework.

In its latest revision, the SCM had introduced reference to “*Islamic Convertible Notes*”. The revision made includes, without limitation:

- a) paragraph 1.03 thereof was amended to clarify that a *Shariah* adviser must be appointed to advise on *Shariah* aspects in relation to issuance of Islamic convertible notes;
- b) insertion of a new paragraph 1.04 to clarify on the persons who may be appointed as *Shariah* adviser;
- c) insertion of a new paragraph 2.02 to provide that proceeds from the issuance of the Islamic convertible notes are utilised for *Shariah*-compliant purposes only.

Policy on Electronic Know-Your-Customer (“e-KYC”) by Bank Negara Malaysia

Bank Negara Malaysia (“BNM”) had, on 30 June 2020, issued a policy document on Electronic Know-Your-Customer (“e-KYC PD”) along with a set of Frequently Asked Questions on the e-KYC PD. The effective date of the e-KYC PD is the same as the issue date.

Based on the e-KYC PD, it is applicable to the following categories of persons which proposes to implement e-KYC solutions for on-boarding individual customers:

- a) banks, investment banks and life insurers licensed under the **Financial Services Act 2013**;
- b) non-bank issuer of designated payment instruments approved under the **Financial Services Act 2013**;
- c) Islamic banks and family takaful operator licensed under the **Islamic Financial Services Act 2013**;
- d) non-bank issuer of designated Islamic payment instruments approved under the **Islamic Financial Services Act 2013**;
- e) prescribed development financial institution licensed under the **Development Financial Institutions Act 2002**;
- f) licensed money-changing operator and remittance service provider licensed under the **Money Services Business Act 2011**,

(each a “Financial Institution”).

The e-KYC PD includes, amongst others, the following regulations:

- a) a Financial Institution must obtain its board approval on its overall risk appetite and internal framework governing the implementation of e-KYC;
- b) The board of directors of a Financial Institution shall set and ensure the effective implementation of appropriate policies and procedures to address any risks associated with the implementation of e-KYC.

These include operational, customer information, human capital, information technology (“IT”) and money laundering and terrorism financing (“ML/TF”) risks;

- c) Where the decision to verify a customer’s identity through e-KYC is automated with the use of artificial intelligence, machine learning or other forms of predictive algorithms, whether in whole or in part, Financial Institutions need to ensure that the e-KYC solution is capable of accurately distinguishing between genuine and non-genuine cases of customer identification and verification.
- d) In monitoring the effectiveness and accuracy of e-KYC solutions utilising artificial intelligence, machine learning or other forms of predictive algorithms, a financial institution shall maintain a record of the performance of the e-KYC solution segregated on a monthly basis in accordance with the reporting template specified in Appendix 3;
- e) Financial Institutions are required to submit the record of the effectiveness and accuracy of e-KYC solutions using predictive algorithms to BNM on a half-yearly basis;
- f) Licensed money-changing operators, licensed remittance service providers, approved non-bank issuers of designated payment instruments or approved non-bank issuers of designated Islamic payment instruments are required to obtain written approval from BNM prior to implementing e-KYC.

Plans for Liberalisation of Stockbroking Industry

The SCM will facilitate the entry of innovative stockbroking models with differentiated value propositions to spur greater innovation, create greater diversity among market participants and enhance value for investors, according to an announcement made by Minister of Finance Tengku Dato’ Sri Zafrul Aziz at the 16th Invest Malaysia conference.

The SC, working in tandem with Bursa Malaysia, will enable a facilitative market structure, allowing for more flexible business models with greater efficient capital structure through the separation of trading and clearing memberships on the exchange.

Temporary revisions to market management and control mechanisms

The SCM and Bursa Malaysia will implement temporary revisions to existing market management and control mechanisms, namely the dynamic and static price limits, and the circuit breaker, to provide added stability and confidence in the marketplace.

The revisions took into consideration global market conditions which remain volatile amidst persistent uncertainties due to Covid-19, continued economic weaknesses and the re-escalation of geopolitical tensions. The adjusted limits can be found here: <https://tinyurl.com/y3s79ktg>.

The revisions will be applicable for a six-month period from 20 July 2020 to 18 January 2021.

Exposure draft on Merchant Acquiring Services

BNM issued an exposure draft on Merchant Acquiring Services on 17 July 2020. The exposure draft has been issued to bring regulation up to speed with the rapidly evolving e-payment landscape in Malaysia, particularly as merchants extend their acceptance of payment instruments from cards and traditional point-of-sale ("POS") terminals to QR codes, online banking and e-money. It sets out BNM's proposed requirements and expectations on merchant acquirers registered pursuant to subsection 18(1) of the **Financial Services Act 2013**, pertaining to governance, risk management, outsourcing and IT security.

BNM welcomes written feedback on the proposed requirements, including suggestions on areas to be clarified and alternative proposals. The window for response is open until 1 September 2020.

The full exposure draft can be found here: <https://tinyurl.com/y2eoeqam>.

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

Intellectual Property

International Filings via Madrid Protocol

On 27 December 2019, Malaysia acceded to the Madrid Protocol, opening Malaysia up to the international trademark filing system. Parallel to the accession, as many are aware, the new **Trademarks Act 2019** also came into force on the same date, establishing, amongst others, the law and practical guidelines for the international filing system.

With over 1.3 million trademarks registered, the Madrid Protocol is one of the most powerful tools for brand owners who are expanding their business beyond borders and to those who are exporting their products overseas.

For those unaware of Madrid Protocol and its benefits, the Madrid Protocol is basically an international filing system which allows a trademark owner to seek protection of his or her trademark in several countries simultaneously by filing one application at a single home office.

Fees and handling of such an application will also be through the home office, reducing the need for multiple counsels or agents in the countries of interest or even the need to comply with diverse country-specific filing requirements.

The Madrid Protocol, in short, is a centralised one-stop solution for brand owners who wish to protect their trademarks in multiple member countries in the most cost-effective way.

The benefits aside, so how has the Madrid Protocol system fared in Malaysia since our accession?

The Intellectual Property Corporation of Malaysia (“MyIPO”) says that as at February 2020, 16 applications have been received from Malaysian companies under the Madrid Protocol, designating various member countries.

Inbound wise, as at February 2020, 451 international trademark applications have designated or subsequently designated Malaysia. Evidently, Malaysia is an important market for international companies that appear to be taking good advantage of this system by expanding their trademark protection to Malaysia.

Malaysian companies, on the other hand, appear to be catching up as well. With the Malaysian economy gradually recovering post-Movement Control Order, more local companies may start seeing the need to file international trademark applications before they enter foreign markets.

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

Tax and Revenue

Income tax

The following [technical guidelines](#) have recently been published on the [Inland Revenue Board of Malaysia’s official website](#):

- i. **Garis Panduan Mengenai Duti Setem ke atas Suratcara Pindah Milik Saham bagi Saham dalam Syarikat yang Tidak Tersenarai di Bursa Malaysia Berhad** (available in Malay language only) — issued on 23 June 2020 to replace Technical Guideline dated 6 November 2019;

- ii. **Garis Panduan Permohonan untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967 Bagi Tabung Kebajikan dan Pendidikan** (available in Malay language only) — issued on 15 July 2020; and
- iii. **Garis Panduan Permohonan untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967 Bagi Tabung Pengurusan Rumah Ibadat** (available in Malay language only) — issued on 15 July 2020.

Sales tax

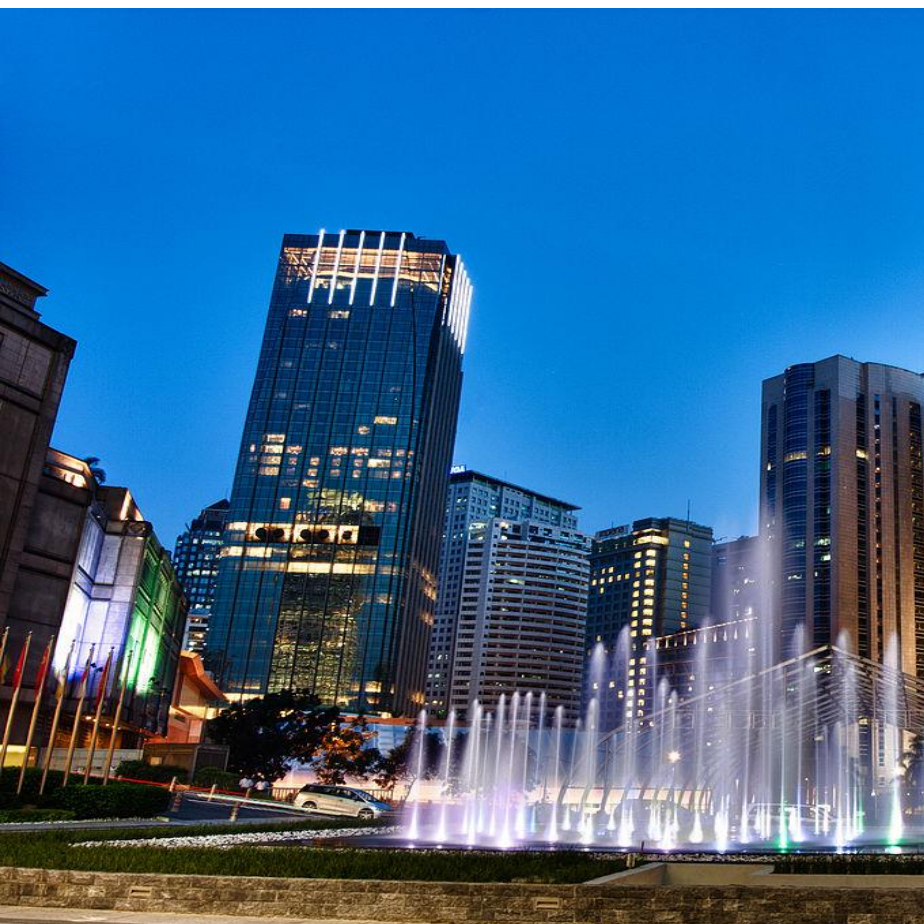
The **Sales Tax (Amendment) Regulations 2020** have been gazetted on 30 June 2020 and have come into operation on 1 July 2020.

Service tax

The following guides have recently been published on the [Royal Malaysian Customs Department’s MySST website](#):

- i. **Industry Guide on Transmission and Distribution of Electricity Services** (as at 1 July 2020);
- ii. **Industry Guide on Information Technology Services** (as at 13 July 2020); and
- iii. **Specific Guide on Refund on the Acquisition of Services by Foreign Missions and International Organizations** (as at 13 July 2020).

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



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km@shearndelamore.com

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