

Financial Services

Securities Commission Malaysia Issues Consultation Paper on Proposed Regulatory Framework for Technology Risk Management by Capital Market Entities

On 1 August 2022, the Securities Commission Malaysia (“SC”) published a consultation paper and is seeking the public’s feedback on a proposed regulatory framework relating to the management of technology risks by the following capital market entities (“Proposed Regulatory Framework”).

- Bursa Malaysia Bhd and its subsidiaries;
- Federation of Investment Managers Malaysia;
- Private Pension Administrator Malaysia;
- Capital Markets Services License holders;
- Recognized market operators;
- Registered persons in Part 2 of Schedule 4 **Capital Markets and Services Act 2007** (CMSA); and
- Capital market service provider registered under section 76A of the CMSA.

According to the SC, the Proposed Regulatory Framework is intended to:

- be two-pronged: (i) for all capital market entities to have a robust and sound technology risk management framework that promotes strong oversight of technology risks in the capital market entity, and (ii) ultimately for the capital market to be cyber resilient; and
- subsume the current requirements in the Guidelines on the Management of Cyber Risk that was issued in 2016, consolidate other requirements relating to technology risks management in the various guidelines issued by the SC and introduce new requirements.

Legal Updates

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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

info@shearndelamore.com

www.shearndelamore.com

www.linkedin.com/company/shearn-delamore-&-co

The Proposed Regulatory Framework is part of the SC's commitment to enhance governance and oversight of technology risks in capital market entities while further strengthening their technological resilience. The Proposed Regulatory Framework aims to further improve capital market entities' ability and effectiveness in detecting and addressing an increasing range of technology risks due to the prevalent use of technology, emergence of new technologies and the growing sophistication of cyber threats.

The consultation paper in relation to the proposed regulatory framework is available at <https://tinyurl.com/ybd8h8vm>.

Interested parties and members of the public are welcome to submit their comments, feedback and queries to the SC by 19 September 2022 at cpresponse@seccom.com.my.

Islamic Financial Services (Minimum Amount of Capital Funds or Surplus of Assets Over Liabilities) (Licensed Person) (Amendment) (No.2) Order 2022

The Islamic Financial Services (Minimum Amount of Capital Funds or Surplus of Assets Over Liabilities) (Licensed Person) (Amendment)(No.2) Order 2022 [P.U. (A) 230/2022] (**P.U. (A) 230/2022**) was gazetted on 15 July 2022 and came into operation on 16 July 2022.

Pursuant to P.U. (A) 230/2022, the Islamic Financial Services (Minimum Amount of Capital Funds or Surplus of Assets Over Liabilities) (Licensed Person) Order 2013 [P.U.(A) 209/2013] ("P.U.(A) 209/2013") is amended in paragraph 3 as follows:

- (a) in the definition of "*licensed Islamic digital bank*", by substituting for the word "*mainly*" the words "*almost wholly*"; and
- (b) in the definition of "*foundational phase*", by substituting for the words "*its banking business*" the words "*its Islamic banking business*".

The "*foundational phase*" in P.U. (A) 230/2022 refers to the period of a minimum of three (3) years up to a maximum of five

(5) years from the date the licensed Islamic digital bank commences its operations with the asset limit as set out under the Licensing Framework for Digital Banks issued by Bank Negara Malaysia on 31 December 2020.

With the amendment, the definitions of “*licensed digital bank*” and “*foundational phase*” under paragraph 3 of P.U.(A) 209/2013 will now read as follows:

“licensed Islamic digital bank’ means a person licensed under section 10 of the Act to carry on Islamic banking business, wholly or almost wholly, through digital or electronic means;

‘foundational phase’ in relation to a licensed Islamic digital bank, means the period of a minimum of three years up to a maximum of five years from the date the licensed Islamic digital bank commences its Islamic banking business, as may be determined by the Bank.”

Bank Negara Malaysia issues exposure draft on registration procedures and requirements on professionalism of adjusters

An exposure draft was issued by Bank Negara Malaysia on 29 July 2022 for public feedback by 1 September 2022 on enhanced registration requirements for a person intending to carry on adjusting business, as well as prudential and conduct requirements which registered adjusters must always comply with.

Paragraph 1.2 of the proposed policy document provides that the policy document is intended to set out the registration requirements applicable to a person intending to carry on adjusting business as defined in subsection 2(1) of the **Financial Services Act 2013**, the fees payable and its ongoing obligations once registered by Bank Negara Malaysia as a registered adjuster.

Amongst the proposed requirements that Bank Negara Malaysia intends to introduce are:

- new obligations on meeting minimum continuous professional development (“CPD”) requirements annually to ensure adjusting employees of the registered adjuster keep abreast with relevant market and industry development.
- additional requirements imposed on the board of directors of a registered adjuster and senior management to ensure effective implementation of proper governance and control measures.
- imposition of rigorous fit and proper requirements on shareholders and key responsible person (i.e., a director and chief executive officer) of a registered adjuster.

Proposed enactment of Consumer Credit Act

The Government of Malaysia is working on the formulation of a Consumer Credit Act with the Ministry of Finance leading this initiative.

A consultation paper was issued by the Consumer Credit Oversight Board Task Force on 4 August 2022 for public feedback by 5 September 2022 on a proposed framework for regulating the conduct of entities carrying out the business of providing credit or credit services to consumers, with an immediate focus on those that are not currently subject to direct regulation by any authority.

Pursuant to the consultation paper, the proposed Consumer Credit Act:

- will provide for an authorisation framework for, among others, non-bank factoring and leasing companies, impaired loan buyers, debt collection agencies and Buy Now Pay Later companies.
- will provide a comprehensive and consistent framework for credit consumer protection through the imposition of minimum standards of conduct on credit providers and credit service providers.

- will provide for the establishment of a Consumer Credit Oversight Board as a new independent competent authority for consumer credit.
- defines a “*credit consumer*” for the purposes of the Consumer Credit Act as:
 - an individual who obtains, has obtained, or intends to obtain, credit from a credit provider, wholly or predominantly for personal, domestic or household purposes;
 - a person who is a small or micro enterprise who obtains, has obtained, or intends to obtain credit from a credit provider, not exceeding an amount of RM500,000;
 - any other person or class, category or description of person as may be prescribed by the Minister; or
 - an individual who acts as a guarantor, not for the purpose of making profit, to a credit consumer under paragraph (a), (b) or (c) in respect of a credit agreement to which the Consumer Credit Act applies.

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Technology, Media & Telco

Upcoming Amendments to the Personal Data Protection Act 2010

It has been announced by the Minister of Communications and Multimedia (“Minister”) during the Parliamentary session on 4 August 2022 that the following amendments to **the Personal Data Protection Act 2010** (Act 709) (“PDPA”) are expected to be tabled in Parliament come October 2022:

1. Mandatory Appointment of Data Protection Officer

The PDPA does not presently require data users to appoint any data protection officer (“DPO”). The proposed amendment, if passed by Parliament, would make it a legal requirement for DPOs to be appointed by data users.

2. Mandatory Data Breach Notification

While not legally necessary, data users have been able to make data breach notifications to the Personal Data Protection Commissioner (“Commissioner”) on a voluntary basis, based on a Data Breach Notification form publicly accessible on the official portal of the Department of Personal Data Protection. Through the proposed amendments, however, data users will be expected to comply with the new statutory obligation to report incidents of data breaches to the Commissioner within 72 hours.

3. Compliance with Security Principle by Data Processors

The PDPA at present does not impose direct obligations on a data processor, defined to mean any person, other than an employee of the data user, who processes the personal data solely on behalf of the data user, and does not process the personal data for any of his own purposes.

The proposed amendments are said to aim at extending the applicability of the security principle under Section 9 of the PDPA to data processors. This likely means that

data processors will, as with data users, have to take practical steps to protect personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction.

4. Right to Data Portability

The proposed amendments also aim to introduce a new data portability provision into the PDPA, to support transfer of personal data between data users upon the request of a data subject, where it is technically feasible.

5. Abolishment of White-List for Cross-Border Transfer

Section 129 of the PDPA at present prohibits the transfer of personal data to places outside Malaysia unless to such places as specified by the Minister by notification published in the Gazette (“Whitelist”).

The proposed amendment seeks to replace the Whitelist with a “*blacklist*” which will generally allow cross-border transfers of personal data except for transfers to blacklisted destinations.

The efficacy of this approach in facilitating cross-border transfer while safeguarding the rights and interests of data subjects remains to be tested.

Businesses will likely have to undergo adaptations in terms of their business and operational practices where the processing of personal data is concerned, should the legislature vote in favour of the proposed amendments. It is therefore crucial that businesses keep abreast with the progress of the upcoming amendments to ensure continued compliance with the PDPA.

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