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**RDL**

*Corporate & Commercial Law Updates*

**STAMP ACT 1949**

**▶ Stamp Duty (Remission) (No. 2) Order 2008**

50% is remitted from the stamp duty chargeable on any loan agreement executed between a purchaser named in the Sale and Purchase Agreement, who is a Malaysian citizen, and :

- (1) a bank; or
- (2) a financial institution; or
- (3) an insurance company registered under the Insurance Act 1996; or
- (4) a co-operative society registered under the Co-operative Societies Act 1993; or
- (5) an employer under an employee housing loan scheme;

to finance the purchase of only one unit of *residential property* costing not more than RM250,000 per unit provided that the Sale and Purchase Agreement is executed on or after 30 August 2008 but not later than 31 December 2010.

The term “residential property” means :

- (a) a house;
- (b) a condominium unit;
- (c) an apartment;
- (d) a flat built as a dwelling house.

**INCOME TAX ACT 1967**

**▶ 1. Income Tax (Exemption) (No. 8) Order 2008**

This Order shall have effect from the year of assessment 2008 until the year of assessment 2010.

The Minister exempts a company incorporated under the Companies Act 1965 and resident in Malaysia in the basis period for a year of assessment from the payment of income tax in respect of income received from the sale of certified emission reduction which is a *Kyoto Protocol* unit equal to one metric tonne of carbon dioxide equivalent, calculated in accordance with Kyoto rules and is issued for gas emission reductions from an activity of *clean development mechanism project*.

The income referred to above shall be the gross income from the sale of certified emission reduction unit less an amount equal to the expenditure (deemed to be incurred in the basis period for a year of assessment in which the income from the sale of certified emission reduction is received by the company), not being capital expenditure, incurred by the company for the purposes of obtaining certified emission reduction.

## ▶ 2. Income Tax (Exemption) (No. 9) and (No. 10) Order 2008

The Income Tax (Exemption) (No. 9) and (No. 10) Orders 2008, which have effect from the year of assessment 2009 until the year of assessment 2011, apply to any non-ringgit sukuk that originates from Malaysia and issued or guaranteed by the Government of Malaysia or approved by the Securities Commission under the Capital Markets and Services Act 2007 ("CMSA").

### (a) Income Tax (Exemption) (No. 9) Order 2008

The Minister exempts the following person resident in Malaysia in a basis period for a year of assessment from the payment of income tax in respect of statutory income derived from the regulated activity of dealing in securities under the CMSA relating to a business of dealing in sukuk:

- (1) a holder of a CMSA License;
- (2) a registered person under subparagraph 76(1)(a) of the CMSA; and
- (3) a registered person under subsection 76(2) of the CMSA,

where such dealing is carried on through the proprietary account of such person.

### (b) Income Tax (Exemption) (No. 10) Order 2008

The Minister exempts the following person resident in Malaysia in a basis period for a year of assessment from the payment of income tax in respect of statutory income derived from the regulated activity of dealing in securities and advising on corporate finance under the CMSA relating to the arranging, underwriting and distributing of sukuk.

- in respect of the regulated activity of dealing in securities and advising on corporate finance under the CMSA:
  - (1) a holder of a CMSA License;
  - (2) a registered person under subparagraph 76(1)(a) of the CMSA; and
  - (3) a registered person under subsection 76(2) of the CMSA.
- in respect of the regulated activity of advising on corporate finance which is solely incidental to the carrying on of its business or the practice of his profession, a specified person under Schedule 3 of the CMSA.

## ▶ 3. Public Ruling (Inland Revenue Board) on Entertainment Expenses

On 22 October 2008, the Inland Revenue Board issued a public ruling on Entertainment Expenses. This ruling explains:

- (a) the tax treatment of entertainment expense as a deduction against gross income of a business; and
- (b) steps to determine the amount of entertainment expense allowable as a deduction.

The provisions to be considered together are section 18, subsection 33(1) and paragraph 39(1)(f) of the Income Tax Act 1967.

## FOREIGN EXCHANGE ADMINISTRATION RULES ON DEALING AND PAYMENT IN FOREIGN CURRENCY

In order to promote Malaysia as an International Islamic Financial Centre, Bank Negara Malaysia issued a new circular on Foreign Exchange Administration Rules on Dealing and Payment in Foreign Currency on 28 October 2008.

All International Islamic Banks (licensed under the Islamic Banking Act 1983) are allowed to conduct the following transactions with any person in or outside Malaysia:

- (1) buy or sell foreign currency against another foreign currency; or
- (2) borrow or lend in foreign currency.

All the following are allowed to make payment in foreign currency to resident intermediaries (individuals and companies) for the financial services rendered by the intermediaries to these institutions:

- (a) International Islamic Banks;
- (b) International Takaful Operators (registered under the Takaful Act 1984);
- (c) International Currency Business Units of licensed onshore banks;
- (d) takaful operators (registered under the Takaful Act 1984); or
- (e) retakaful operators (registered under the Takaful Act 1984).

The following Exchange Control Notices dated 1 September 1998 are amended accordingly:

- (i) ECM 2: Dealings in Gold and Foreign Currency; and
- (ii) ECM 4: General Payments.

## TAKAFUL ACT 1984

### ► Takaful (Exemption) (No. 2) Order 2008

This Order is effective from 27 October 2008. The following operators are exempted from the application of certain sections in the Takaful Act 1984 (the "TA") and regulations thereunder\*:

- (1) any takaful operator which is carrying on international takaful business through an international currency business unit and has obtained the prior written approval of the Director General to carry on such business - from the application of subsections 17(2) and 20(1) and section 24 of the TA;
- (2) any international takaful operator which is a company - from the application of subsections 4(3), 16(3), 17(2) and 20(1) and section 24 of the TA, the Takaful (Surplus of Assets Over Liabilities) Regulations 1985 and paragraphs (5) and (6) of the Takaful (Operators Registration) Regulations 1985; and
- (3) any international takaful operator which is a foreign institution - from the application of subsection 4(3), paragraphs 8(5)(b) and 11(1)(a), subsections 16(3) and 17(2), sections 18 and 19, subsection 20(1) and sections 24 and 34 of the TA, the Takaful (Surplus of Assets Over Liabilities) Regulations 1985 and paragraphs (5) and (6) of the Takaful (Operators Registration) Regulations 1985.



**\* Short descriptions of provisions referred to above:**

4. *Requirements for carrying on business as takaful operator.*
8. *Registration of takaful operators by Director General.*
11. *Cancellation of registration.*
16. *Establishment and maintenance of takaful funds, and allocation of surplus.*
17. *Requirements as to assets of takaful funds.*
18. *Restrictions on payment of dividends and grant of advance, loan, credit facility, and financing facility.*
19. *Disclosure of interests by directors.*
20. *Requirements as to documents evidencing title to assets of takaful funds.*
24. *Payment in Malaysian currency of solidarity moneys under family solidarity certificates.*
34. *Change in control of operator.*

## **SECURITIES COMMISSION**

### **▶ Press Release from Securities Commission on Enhanced Bumi Allocation Process to improve time-to-market of IPOs, dated 12 November 2008**

Under the new announcement by the Deputy Prime Minister and Finance Minister of Malaysia on the enhanced Bumiputera allocation process, domestic companies seeking listing will still have to comply with the NDP requirement of 30% Bumiputera equity participation, and will continue to make their shares available to MITI-approved Bumiputera institutions and investors. Any unsubscribed shares will now be available for application by the wider Bumiputera public as part of the initial public offering (IPO) balloting process.

Domestic companies which have already been listed but have not met the 30% Bumiputera equity requirement at the point of listing will also be deemed to have complied with NDP conditions on Bumiputera ownership.

As for subsequent fund-raising exercises involving placements or offers to the public that result in dilution of the Bumiputera equity ownership, the company will be required to issue sufficient shares to reinstate the Bumiputera equity ownership to the level that existed at the time of the fund-raising exercise.

The above flexibilities do not exempt companies from having to comply with any Bumiputera equity requirements imposed by the relevant Ministries as part of their licensing conditions. The existing policy of not imposing any Bumiputera equity conditions on foreign companies seeking listing on Bursa Malaysia will be maintained.

## ► Guidelines On Real Estate Investment Trusts

The Securities Commission (SC) issued the revised Guidelines on Real Estate Investment Trusts ("Guidelines") on 21 August 2008 which address several practical issues affecting industry players in the management and promotion of REITs as an attractive investment vehicle. They also included measures to promote higher standards of conduct by market intermediaries.

The Guidelines now allow up to 70% foreign shareholding in REIT management companies, an increase from 49% since 2005. In addition, greater flexibilities are provided for REIT Managers to manage their REITs' portfolio mix. A portion of a REIT's portfolio may also consist of real estate that it does not wholly own or have a majority ownership in.

The Guidelines were also revised to allow REIT Managers to seek a general mandate from unit holders for issuance of units up to 20% of its fund size. Previously, the issuance of any number of new units required REIT Managers to hold meetings to seek unit holders' specific approval.

Additionally, the SC's prior approval on real estate valuation is now only required when the acquisition of a real estate is financed, or re-financed within one year, through the issuance of new units. In all other circumstances, the SC will conduct a post-review of the valuations to ensure that they are reasonable and well-supported.

In order to strengthen investor protection, REIT Managers are required to appoint a designated person responsible for compliance to ensure securities laws, land laws, guidelines and rules are complied with at all times, and also streamline similar requirement between REIT Managers and all other capital market intermediaries.

To further safeguard investor interest, REITs will not be allowed to acquire non-income generating real estates such as vacant land, and may only acquire property that is under construction or uncompleted real estates up to 10% of its total asset value. Rules governing related party transactions have been introduced to regulate such transactions and trustees now have a greater role to play in related party transactions.

The revised Guidelines require principal advisers to comply with the *Guidelines on Principal Advisers for Corporate Proposals*. These specify who can act as principal advisers for the submission of corporate proposals to the SC, in addition to the proposals involving initial public offers of REITs on Bursa Malaysia.

The Guidelines also refer to the need to comply with the *Guidelines on Due Diligence Conduct for Corporate Proposals* which set out the SC's expectations on issuers, advisers and experts in their conduct of due diligence to ensure that investors can make informed investment decisions based on sound and accurate information.

## MALAYSIA DEPOSIT INSURANCE CORPORATION ACT 2005

### ► Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2008

These Regulations came into operation on 15 September 2008. The Regulations stipulate, among other things, as follows:

#### 1. Publication in daily newspaper upon merger and others

Where:

- (a) there is a merger or amalgamation involving a member institution; or
- (b) any deposit in a member institution is transferred to or acquired by another member institution or any other person,

the member institution shall publish in not less than two daily newspapers published in Malaysia, one of which shall be in the national language and the other in English, regarding the period of insurance coverage for the deposits held by it.

## 2. Notification of approvals and events

A member institution shall notify the Corporation in writing of an approval of any of the following events, within 7 days of such approval:

- (a) a change in control of the member institution or any of its subsidiaries;
- (b) a change in control of any corporation related to the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (c) a restructuring, amalgamation, merger, arrangement or otherwise which involves the member institution, or any of its subsidiaries, or a substantial portion of the assets or liabilities of the member institution or any of its subsidiaries;
- (d) a restructuring, amalgamation, merger, arrangement or otherwise which involves any corporation related to the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (e) a transfer of all or a substantial portion of the assets or liabilities of the member institution or any of its subsidiaries;
- (f) a transfer of all or a substantial portion of the assets or liabilities of any corporation related to the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (g) a substantial acquisition of assets or liabilities by the member institution or any of its subsidiaries; or
- (h) a substantial acquisition of assets or liabilities by any corporation related to the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary.

## 3. Notification of other events

A member institution shall also notify the Corporation in writing of any of the following events, within 7 days of the event:

- (a) a substantial withdrawal of deposits from the member institution or any problem with the liquidity of the member institution, which may be considered as not usual in the course of its business;
- (b) issuance of any demand or notice pursuant to paragraph 218(2)(a) of the Companies Act 1965 against the member institution;
- (c) commencement of any dissolution process or liquidation proceedings (whether voluntary or otherwise) in respect of the member institution or any of its subsidiaries; or
- (d) commencement of any dissolution process or liquidation proceedings (whether voluntary or otherwise) in respect of any corporation related to the member institution, if such commencement materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary.

Should you require a copy of any of the above documents, kindly contact our Admin Manager who will be pleased to assist you.