



Corporate & Commercial Law Update

- ▶ STAMP DUTY
- ▶ REAL PROPERTY GAINS TAX
- ▶ ACQUISITION OF PROPERTIES BY FOREIGN INTERESTS
- ▶ PERSONAL DATA PROTECTION

▶ Stamp Duty

1. By virtue of Stamp Duty (Remission) Order 2009, which was deemed to have come into operation on September 15, 2009, any service agreement executed between September 15, 2009 and December 31, 2010 will be liable to be stamped at a maximum of RM50.00
2. With effect from January 1, 2010 and until December 31, 2015, 20% of the stamp duty payable on the principal or primary instrument of financing made according to Syariah principles is remitted on condition that the instrument has been approved by the Syariah Advisory Council of Bank Negara Malaysia or the Securities Commission as the case may be.

▶ Real Property Gains Tax

With effect from January 1, 2010, the provisions of the Real Property Gains Tax Act 1976 were effectively resuscitated with the revocation of Real Property Gains Tax (Exemption) (No.2) Order 2007. However, with the simultaneous coming into effect of the Real Property Gains Tax (Exemption) (No.2) Order 2009, a disposal of real property made on or after January 1, 2010 which disposal is made after 5 years from the date of acquisition is exempted from real property gains tax, while a disposal made within 5 years of acquisition is subject to 5% tax on the gain, if any.

▶ Acquisition of Properties By Foreign Interests

Pursuant to the Guideline on the Acquisition of Properties (“Guideline”) issued by the Economic Planning Unit, Prime Minister’s Department (“EPU”), with effect from January 1, 2010, the following property acquisitions by foreign interests do not require the approval of the EPU:

- (a) acquisition of any commercial unit valued at RM500,000 and above;
- (b) acquisition of any agricultural land valued at RM500,000 and above or of at least 5 acres in area for the following purposes:



- (i) to undertake agricultural activities on a commercial scale using modern or high technology; or
 - (ii) to undertake agro-tourism projects; or
 - (iii) to undertake agricultural or agro-based industrial activities for the production of goods for export;
- (c) transfer of any property to a foreigner based on family ties amongst immediate family members;
- (d) acquisition of any residential unit by foreign interests valued at RM500,000 and above.
2. Under the Guideline, any foreign interest is not allowed to acquire the following:
- (a) any property which is valued at less than RM500,000 per unit;
 - (b) any residential unit under the category of low and low-medium cost as determined by the State Authority;
 - (c) any property built on Malay reserved land; and
 - (d) any property allocated to Bumiputera interests in any property development project as determined by the State Authority.
3. There are also certain transactions which are exempted from requiring the approval of the EPU, including:
- (a) acquisition of any residential unit under the “Malaysia My Second Home” Programme;
 - (b) acquisition of any property by a manufacturing company;
 - (c) acquisition of any property by any company that has been granted the status of International Procurement Centre, Operational Headquarter, Representative Office, Regional Office, Labuan offshore company and Bio-Nexus or other special status by the Ministry of Finance, Ministry of International Trade and Industry and other ministries;
 - (d) acquisition of any property in the Multimedia Super Corridor (“MSC”) area by MSC status companies provided that such property is only used for its operational activities or as residence for its employees;
 - (e) acquisition of any property in an approved area in any regional development corridor by any company that has been granted such status by the local authority;



- (f) acquisition of any property by a company that has obtained the endorsement from the Secretariat of the Malaysian International Islamic Financial Centre;
- (g) acquisition of any residential unit to be occupied as a hostel for the employees of any local company owned by foreign interests provided that such residential unit is valued at RM100,000 and above;
- (h) transfer of any property to a foreign interest pursuant to a will and court order.

► Personal Data Protection

The Personal Data Protection Bill was tabled in the Malaysian Parliament in November 2009 but it is still unclear when it will be passed. On the assumption that it is passed without substantial variation, the following persons will fall within the purview of the proposed Act:

- (a) any person who processes; and
- (b) any person who has control over or authorizes the processing of,

any personal data in respect of commercial transactions. The aforesaid includes any person who, although not incorporated under the Malaysian Companies Act 1965, maintains in Malaysia a regular practice or an office, a branch or agency through which it carries on any activity. It also includes a person who, although not established in Malaysia, uses equipment in Malaysia for processing the personal data otherwise than for the purposes of transit through Malaysia

Generally under the proposed Act:

1. a “data user” (defined as a person who processes any personal data or has control over or authorizes the processing of any personal data) shall not “process” (defined to mean, *inter alia*, to collect, record, hold or store the personal data or carry out any operation or set of operations on the personal data) personal data about a “data subject” (defined as an individual who is the subject of the personal data) unless the data subject had given his consent to such processing;
2. the above prohibition does not apply if, *inter alia*, the processing is necessary :
 - (a) for the performance of a contract to which the data subject is a party;
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract;
 - (c) for compliance with any legal obligation to which the data user is the subject, other than an obligation imposed by a contract;



3. a data user shall by written notice inform a data subject, as soon as practicable (eg when the data subject is first asked by the data user to provide his personal data, or when the data user first collects the personal data of the data subject):
 - (a) that personal data of the data subject is being processed by or on behalf of the data user, and shall provide a description of the personal data to that data subject;
 - (b) the purposes for which the personal data is being or is to be collected and further processed;
 - (c) of any information available to the data user as to the source of that personal data;
 - (d) of the data subject's right to request access to and to request correction of the personal data and how to contact the data user with any inquiries or complaints in respect of the personal data;
 - (e) of the class of third parties to whom the data user discloses or may disclose the personal data;
 - (f) of the choices and means the data user offers the data subject for limiting the processing of personal data, including personal data relating to other persons who may be identified from that personal data;
 - (g) whether it is obligatory or voluntary for the data subject to supply the personal data; and
 - (h) where it is obligatory for the data subject to supply the personal data, the consequences for the data subject if the data subject fails to supply the personal data.
4. no personal data shall without the consent of the data subject be disclosed *inter alia* for any purpose other than the purpose for which the personal data was to be disclosed at the time of the collection of the personal data, or to any party other than a third party of a class of third parties of whom the data user had by written notice informed the data subject;
5. a person who knowingly or recklessly without the consent of the data user collects or discloses personal data that is held by the data user, or procures the disclosure to another person of personal data that is held by the data user, commits an offense unless it is *inter alia* shown that such person acted in the reasonable belief that he had in law the right to collect or disclose the personal data or to procure the disclosure of the personal data to the other person, or that he acted in the reasonable belief that he would have had the consent of the data user if the data user had known of the collecting or disclosing of personal data or procuring the disclosure of personal data and the circumstances of it.