



Corporate & Commercial Law Update

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▶ CAPITAL MARKETS AND SERVICES (AMENDMENT OF SCHEDULE 5) ORDER 2009

The 5th Schedule to the Capital Markets & Services Act 2007 (“CMSA”) was amended with effect from 3 August 2009, thereby amending the categories of transactions that do not require the prior approval of the Securities Commission. The following are the new categories :

1. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities by or guaranteed by —
 - (a) the Federal Government;
 - (b) any State Government; or
 - (c) Bank Negara.
2. The listing of a corporation or the quotation of securities on the alternative market of the stock exchange.
3. Issuance of securities in relation to proposal under subparagraph 212(2)(c)(i) or (ii), except for debentures or Islamic securities.
4. All trades in securities effected —
 - (a) in the money market;
 - (b) on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2); or
 - (c) on such other exchange outside Malaysia which is recognized under the rules of the stock exchange.
5. Invitation or offering to underwrite or subunderwrite securities pursuant to an underwriting agreement.
6. Issuance or allotment of securities to an underwriter or subunderwriter pursuant to an underwriting agreement.
7. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities of a company to existing members of a company within the meaning of section 270 of the Companies Act 1965.

Offshore companies and foreign corporations

8. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities by an offshore company as defined under the Offshore Companies Act 1990—
 - (a) exclusively to persons outside Malaysia; or
 - (b) to another offshore company or foreign offshore company as defined under the Offshore Companies Act 1990.



9. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities of a foreign company as defined under the Offshore Companies Act 1990 to an offshore company or foreign offshore company as defined under the Offshore Companies Act 1990.
10. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities, except debentures, Islamic securities, unit trust and prescribed investments, of a foreign corporation that is listed on an exchange outside Malaysia which is recognised under the rules of the stock exchange pursuant to —
 - (a) an employee share or employee share option scheme;
 - (b) a bonus issue;
 - (c) a distribution of new shares in lieu of dividends;
 - (d) a distribution of shares held by the foreign corporation in its subsidiary in lieu of dividends; or
 - (e) a rights issue.
11. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities, except debentures, Islamic securities, unit trust and prescribed investments, of a foreign corporation that is not listed on the stock exchange or an exchange outside Malaysia pursuant to —
 - (a) an employee share or employee share option scheme;
 - (b) a bonus issue;
 - (c) a distribution of new shares in lieu of dividends; or
 - (d) a non renounceable rights issue.
12. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities, except debentures, Islamic securities, unit trust and prescribed investments, of a foreign corporation that is listed on an exchange outside Malaysia to a person falling within paragraph 7, 8, 9, 11, 12, 13 or 14 of Schedule 6 or 7, as the case may be, or any other person as may be specified by the Commission in any guideline issued under section 377, provided that —
 - (a) such exchange is recognised under the rules of the stock exchange; and
 - (b) the distribution of such securities is made by a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.
13. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, existing securities, except debentures, Islamic securities, unit trust and prescribed investments, of a foreign corporation that is not listed on the stock exchange or an exchange outside Malaysia to existing holders of those securities or any other person as may be specified by the Commission in any guideline issued under section 377.

Acquisition and disposal of assets by a listed corporation

14. Acquisition or disposal of assets which results in a significant change in the business direction or policy of a corporation that is listed on the alternative market of the stock exchange.
15. Disposal of assets which results in a significant change in the business direction or policy of a corporation that is listed on the main market of the stock exchange.



Equity and equity-linked securities

16. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, securities, except debentures, Islamic securities, unit trust and prescribed investments, of —
- (a) a private company;
 - (b) a public company that is not listed on the stock exchange and is not seeking listing on the main market of the stock exchange;
 - (c) a corporation seeking listing on the alternative market of the stock exchange; or
 - (d) a corporation that is listed on the alternative market of the stock exchange other than in respect of a transfer of listing status of such corporation to the main market of the stock exchange.
17. In respect of a corporation that is listed on the main market of the stock exchange —
- (a) when the corporation makes available, offers for subscription or purchase, or issues an invitation to subscribe or purchase, securities relating to —
 - (i) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;
 - (ii) an entitlement in respect of a warrant, option or right without consideration;
 - (iii) a subdivision or consolidation of shares;
 - (iv) an employee share or employee share option scheme;
 - (v) a bonus issue;
 - (vi) a rights issue;
 - (vii) a private placement exercise; or
 - (viii) any other corporate exercise under the rules of the stock exchange as may be specified by the Commission, except —
 - (AA) for debentures, Islamic securities, unit trusts and prescribed investments; or
 - (BB) when the corporation makes available, offers for subscription or purchase, or issues an invitation to subscribe or purchase, securities as part of a proposal falling under paragraph 212(2)(f); or
 - (b) the quotation of securities referred to in subparagraph (a) on a stock market of a stock exchange.
18. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, structured warrants provided that the issuer of the structured warrants complies with eligibility requirements specified in the guidelines issued by the Commission and quotation of the structured warrants on a stock market of a stock exchange.
19. In respect of a corporation that is listed on the stock exchange —
- (a) the distribution of treasury shares as dividends; or
 - (b) the distribution of new shares in lieu of dividends.
20. Distribution of assets in lieu of dividends by a public company that is not listed on the stock exchange.

Debentures and Islamic securities

21. Issuance of notes pursuant to a note issuance facility or revolving underwriting facility as may be specified by the Commission.



22. All trades in foreign currency denominated debentures or Islamic securities effected in a manner as may be specified by the Commission.
23. Issuance of debentures or Islamic securities by a corporation to its related corporation where such debentures or Islamic securities shall include a term that prohibits the transfer of such debentures or Islamic securities, as the case may be, to any other person.

▶ **ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING (INVOCATION OF PART IV) ORDER 2009**

With effect from 12 June 2009, the provisions of sections 13, 15, 16, 17, 18, 19, 21, 22, 25, 26, 27 and 28 of the Anti-Money Laundering & Anti-Terrorism Financing Act 2001 (“AMLA”) have been invoked in respect of —

- (a) Borneo Housing Mortgage Finance Berhad and Sabah Credit Corporation in relation to building credit business as defined in the Banking and Financial Institutions Act 1989 (“BAFIA”);
- (b) scheduled institutions carrying on leasing business or factoring business as defined in BAFIA;
- (c) a financial advisor licensed under the Insurance Act 1996;
- (d) Bank Perusahaan Kecil & Sederhana Malaysia Berhad, a prescribed institution as defined in the Development Financial Institutions Act 2002; and
- (e) an issuer who has obtained written approval from Central Bank of Malaysia under the Payment Systems Act 2003 to issue electronic money, a designated payment instrument as prescribed in the Payment Systems (Designated Payment Instruments) Order 2003.

The above mentioned sections of AMLA relate, inter alia, to the requirement to keep records of transactions, to verify by reliable means the identity, representative capacity and legal capacity of each person with whom business is conducted and to adopt internal compliance programs.

▶ **PRACTICE NOTES TO MALAYSIAN CODE ON TAKE-OVERS AND MERGERS (THE “CODE”)**

Practice Note No. 1.2 of the Code has been deleted by virtue of a Gazette notification dated July 16, 2009. The effect of this is that the Code no longer applies to the take-over of a private company, regardless of the amount of its shareholders’ funds, paid up capital or the purchase consideration for its voting shares.