



Corporate & Commercial Law Update

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▶ MINI BUDGET

The Government announced a “Mini Budget” on 10 March 2009 with a view towards spurring economic activity and easing the financial burden on the man in the street in the face of the global economic downturn. The following are the new/proposed laws which are intended to give legal effect to the Mini Budget.

Income Tax (Deduction for Expenses Relating to Remuneration of Employee) Rules 2009

- A resident employer will enjoy double deduction on the amount of remuneration paid to his full-time employee :
 - (a) who is employed by such employer from 10 March 2009 to 31 December 2010;
 - (b) whose employment with a previous employer was terminated pursuant to a separation scheme or retrenchment on or after 1 July 2008, which termination of employment was registered with the Director General of Labour;
 - (c) who is a citizen and resident in Malaysia
- The qualifications for this incentive are as follows:
 - (a) a maximum of RM10,000 per month per employee;
 - (b) a limit of 12 months of the employee’s remuneration
- These Rules take effect from the year of assessment 2009

Income Tax (Special Treatment on Interest on Housing Loan) Regulations 2009

• **Recognition of Interest Income for Financial Institutions**

The interest income received by a bank (including a bank licensed under the Islamic Banking Act 1983), a finance company or a development financial institution (“financial institution”) in respect of a housing loan shall not constitute gross income of the financial institution, and is taxed only when such interest income is received by the financial institution, if:

- (a) the financial institution approves a moratorium on the repayment of the housing loan for a period of 12 months
 - (b) the application for the moratorium is made by the borrower between 10 March 2009 and 9 March 2010;
 - (c) the borrower is a Malaysian citizen whose employment was terminated pursuant to a separation scheme or retrenchment on or after 1 July 2008;
 - (d) the termination of employment must have been registered with the Director General of Labour; and
 - (e) the housing loan was granted prior to the termination.
- These Rules take effect from the year of assessment 2009



Income Tax (Accelerated Capital Allowance) (Plant and Machinery) Rules 2009

- All qualifying expenditure incurred on plant and machinery by a resident in Malaysia between 10 March 2009 and 31 December 2010 will be entitled to accelerated capital allowances
- These allowances can be fully claimed within two years

Windfall Profit Levy (Oil Palm Fruit) (Amendment) Order 2009

- This Order amends the Windfall Profit Levy (Oil Palm Fruit) Order 2008 [P.U. (A) 250/2008] under which a windfall profit levy was imposed when the price of crude palm oil exceeded RM2,000 per tonne. The threshold has now been increased to RM2,500 per tonne for Peninsular Malaysia and RM3,000 per tonne for Sabah and Sarawak
- This Order comes into force on 10 March 2009

Income Tax (Amendment) Act 1967

[This is still a bill and has not been passed by Parliament yet.]

1. A new section 44B - Carry Back of Current Year Losses

- Current year losses of a business of up to RM100,000 for years of assessment 2009 and 2010 will be allowed to be carried back to the immediately preceding year

2. A new section 46B – Tax Deduction on Housing Loan Interest

- An individual Malaysian resident taxpayer is entitled to tax relief for housing loan interest up to RM10,000 per year provided that :
 - (a) The relief is only in respect of one residential property, which means a house, condominium, apartment or flat;
 - (b) the sale and purchase agreement is executed between 10 March 2009 and 31 December 2010;
 - (c) The taxpayer has not derived any income in respect of that residential property; and
 - (d) the relief is limited to interest for 3 consecutive years from the first year that the housing loan interest is paid
- This takes effect from the year of assessment 2009

3. New paragraphs 8A, 8B, 32A and 32B of Schedule 3 – Capital Allowance on Renovation and Refurbishment expenditure

- Capital allowances are available on qualifying expenditure incurred between 10 March 2009 and 31 December 2010 on renovation and refurbishment of a business premise. The qualifying expenditure shall be as prescribed by the Minister of Finance. The allowance can be fully claimed within 2 years.
- The total qualifying expenditure is capped at RM100,000
- This takes effect from the year of assessment 2009

4. Amendment to paragraph 15(1)(b) of Schedule 6 - Tax Exemption Received on Compensation Received for Loss of Employment

- The tax exemption on the compensation received by a taxpayer for loss of employment is increased from RM6,000 to RM10,000 for every completed year of service with that employer
- This applies to any compensation paid for employment that ceased on or after 1 July 2008



▶ NEW MEASURES TO FACILITATE GREATER ACCESS TO CAPITAL MARKETS

Proposed Revision to terms and conditions of Bonds and Sukuk

Following the announcement of the Mini Budget, the Securities Commission (“SC”) has announced that, to facilitate access to the capital markets, as of 16 March 2009, revisions of the principal terms and conditions of bonds and sukuk which have been approved by the SC pursuant to section 212 of the Capital Markets & Services Act 2007 no longer require the SC's prior approval and would now only need to be *notified* to the SC, if these bonds and sukuk have been *issued* in the market. However, the SC's prior approval is still required for proposals to revise the principal terms and conditions of bonds and sukuk which are *not yet issued* in the market, but which have nevertheless been approved by the SC.

As a result of these new measures, the issuer would no longer need to prepare applications for revisions for SC's approval and would further save in terms of cost of submission to SC.

Notifications to the SC can only be made by the principal adviser if the following requirements have been complied with:

- Consent from bond/sukuk holders, trustee, credit rating agency, other regulatory authorities and other relevant parties, where applicable, has been obtained;
- Due process is to be observed in obtaining bond/sukuk holders' approval for the proposed revision. This would include the requirement for related and interested parties to abstain from voting;
- All material information pertinent to the revision, including the impact on credit rating and the Shariah Adviser's opinion on the proposed revision, has been communicated and disclosed to bond / sukuk holders;
- For revisions to sukuk issues, the Shariah Adviser's advice on the proposed revision and opinion on whether or not such revision complies with the principles of Shariah (in this regard, pre-consultation with the SC for clarification concerning Shariah matters is highly encouraged); and
- 2 separate announcements to be made on the Fully Automated System For Issuing/Tendering (FAST) - one on the proposed revision (to be announced on FAST prior to obtaining the approval of bond/sukuk holders) and another on the outcome of the bond/sukuk holders' decision (to be announced on FAST immediately after the bond/sukuk holders have decided on the proposed revision). The announcement made on FAST on the proposed revision must be copied to the SC within the same day of the announcement. Announcements on FAST will not be applicable to bonds/sukuk (including loan stocks) that are listed and traded on Bursa Malaysia.

Removal of Mandatory Credit Rating Requirement for Convertible and Exchangeable Bonds and Sukuk

In addition to the initiative regarding the revisions to the terms and conditions of bonds and sukuk, the SC has also introduced a removal of the mandatory credit rating requirement for convertible and exchangeable bonds and sukuk, with effect from 16 March 2009.

The introduction of this exemption is intended to generate cost savings to the issuer, in particular, with regard to the cost of engaging a rating agency. It is also intended to reduce the time to market as the rating exercise would typically require several weeks.



The rating exemption is extended to convertible bonds/sukuk (or loan stocks) and exchangeable bonds/sukuk which meet the following requirements:

- Where investors of the bonds/sukuk or loan stocks are given the right to convert or exchange the bonds/sukuk or loan stocks into the underlying shares during the tenure of such issue; and
- The underlying shares are listed on any securities exchange.

Exemption from having to obtain SC's Prior Approval for Rights Issues and Issuance/offering of Equity Securities by Unlisted Public Companies

The SC has also introduced an exemption from having to obtain the SC's prior approval for rights issues and issuance/offering of equity securities by unlisted public companies. The SC's approval will still be required for a rights issue proposal which forms part of an initial public offering (IPO), reverse take-over (RTO) or where the proceeds are being utilised for an acquisition which results in a significant change in the business direction of a listed corporation. This exemption will take effect following the gazette of a Ministerial Order, which will be communicated at a later date.

Disapplication of the Malaysian Code of Take-overs and Mergers 1998

To give greater agility to private companies to expand or restructure their businesses, the SC is also intending to implement a disapplication of the Malaysian Code of Take-overs and Mergers 1998 to private companies. However the control of a public company through taking over a private company will still be subject to the Code. The disapplication will be gazetted and communicated at a later date.

▶ AMENDMENTS TO GUIDELINES ON UNIT TRUST FUNDS

On 18 February 2009 the SC amended the Guidelines on Unit Trust Funds which had been issued on 3 March 2008. Among the central provisions amending the Guidelines are that fund managers are now allowed to:

- use short position of futures contract for hedging purposes;
- borrow cash for the purpose of meeting repurchase requests for units and for short-term bridging requirements; and
- place deposits with, and borrow from, foreign financial institutions.

New provisions have been implemented pertaining to corporate governance, in that management companies and trustees, as well as any other delegates of the fund, should observe the best of corporate governance standards.

The procedure relating to the registration and lodgment of deeds by management companies to the SC has also been amended. Previously, a fund's deed was required to be lodged with the SC within 7 days after the registration of the deed by the SC. As of these recent amendments however, the deed is now to be lodged together with an application to register the deed.

Further amendments include a change in the submission of Compliance Returns to the SC by management companies and a removal of all provisions pertaining to wholesale funds, which are now governed by the separate Guidelines on Wholesale Funds issued on 18 February 2009.



► GUIDELINES ON WHOLESALE FUNDS

These Guidelines issued by the SC are effective from 18 February 2009 and serve to replace and supersede the Guidelines on Restricted Investment Schemes issued on 7 April 2006 as well as the requirements for wholesale funds contained in the Guidelines on Unit Trust Funds issued on 3 March 2008.

Under these Guidelines, the role and duties of fund managers are defined in detail and include managing and administering wholesale funds in a proper and diligent manner, keeping a register of investors to wholesale funds, and conducting risk assessments for the regular monitoring of any identified risks at least once every quarter.

Further, the Guidelines serve to enhance the flexibility of wholesale funds by easing the restriction on leverage, expanding the list of qualified investors and removing the limits to the number of investors, and relaxing certain administrative requirements pertaining to wholesale funds. The Guidelines are also intended to increase transparency with regard to wholesale funds by conferring upon fund managers a stricter duty of disclosure towards investors. Fund managers are now required to provide each investor with a monthly statement of accounts and send to every investor quarterly reports and annual reports of the wholesale fund. These reports are intended to highlight to investors the key risk factors faced by the wholesale fund and the wholesale fund's investment outlook for that reporting period.

The provisions as to the information memorandum issued by fund managers have also been enhanced in order to safeguard the interests of potential investors to wholesale funds. The information memorandum must define the investment limits and restrictions of wholesale funds and contain risk disclosure statements to warn potential investors of investment risks in the funds. Fund managers are required to comply with the minimum content requirement of the information memorandum as set out in Appendix 2 of the Guidelines.

► FTSE BURSA MALAYSIA KLCI

Bursa Malaysia has announced that Bursa Malaysia together with FTSE, its index partner, have integrated the KLCI with internationally accepted index calculation methodology to provide a more investable, tradable and transparently managed index. It was said that "the enhanced KLCI, whilst remaining representative of the Malaysian stock market, will provide a platform for a wider range of investable and appealing opportunities".

With effect from Monday 6 July 2009, the KLCI will be known as the *FTSE Bursa Malaysia KLCI*.

The FTSE Bursa Malaysia KLCI constituents will consist of the 30 largest companies listed in the Main Board that meet the 2 main eligibility requirements stated in the FTSE Bursa Malaysia Ground Rules i.e. the free float and liquidity requirements. Each company is required to have a minimum free float of 15% and must ensure that at least 10% of its free float adjusted shares in issue are traded in the 12 months prior to an annual index review in December.

FTSE will use the real time and closing prices sourced from Bursa Malaysia to calculate the FTSE Bursa Malaysia KLCI. The calculation will be based on a value weighted formula and adjusted by a free float factor. The FTSE Bursa Malaysia KLCI values will be calculated and disseminated on a real time basis every 15 seconds.

A review of the FTSE Bursa Malaysia KLCI will be done by the FTSE Bursa Malaysia Index Advisory Committee on a semi-annual basis in June and December.