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Conducting Your Business under the Recovery Movement Control Order

After nearly three months of adapting business operations to the "new normal" under the Movement Control Order ("MCO") and then Conditional MCO ("CMCO"), individuals and businesses in Malaysia were eager to find out whether the CMCO would be extended beyond its original end date of 9 June 2020. On 7 June 2020 Prime Minister Muhyiddin Yassin announced that the CMCO will be replaced by a Recovery MCO ("RMCO") from 10 June 2020 until 31 August 2020.

The implementation of the RMCO will see the lifting of restrictions in stages, whilst focusing on the protection of higher-risk groups and enhanced public health. Significant emphasis has also been placed by Prime Minister Muhyiddin Yassin on regenerating the national economy.

The following newsletter is intended to provide an overview of key information regarding the operation of businesses under the new RMCO. We will firstly outline the measures introduced, with a primary focus on factors affecting businesses namely which businesses are now allowed to reopen and the manner in which businesses should operate under the RMCO. We will then address the latest changes to travelling restrictions and immigration rules applicable to foreign employees during the RMCO. Finally, this newsletter will explore the key initiatives for businesses under the new short-term economic recovery plan entitled "Building the Economy Together" released on 5 June 2020 to mitigate the consequences of the COVID-19 outbreak.

I. Business Operations under the RMCO

Under the RMCO, almost all businesses are allowed to operate, subject to strict compliance with recommended standard operating procedures ("**SOPs**").

1. Permitted and Prohibited Businesses

Although a minor number of businesses continue to remain prohibited, business operations for permitted businesses under the RMCO can return somewhat to normal:

- Permitted businesses: Although the government advises continued compliance with the recommended SOPs, most sectors of the economy have been allowed and encouraged to reopen. Following the announcement of the RMCO, businesses permitted to reopen include salons providing haircuts and beauty treatments, food markets and stalls, commercial sales and promotional activities taking place outside of the business premises and businesses providing certain recreational activities. Such recreational activities include museum visits, indoor busking, self-service laundry facilities and fishing. Furthermore, as long as space is optimised and health and safety protocols are complied with, meetings and workshops can now take place, therefore meaning the workplace can once again embrace a certain sense of normality.
- Prohibited businesses: Certain businesses (namely those involving large gatherings) are still not allowed to open in order to curb a resurgence in the number of COVID-19 cases in Malaysia. These businesses include pubs, nightclubs, reflexology centres, karaoke centres and theme parks; the complete list of prohibited activities can be found in the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 7) Regulations 2020 published on 9 June 2020. Moreover, mass social gatherings, religious gatherings, open houses and other activities that encourage the gathering of large numbers of people in one place continue to be prohibited.

2. Mandatory Adherence to the Standard Operating Procedures

Whilst some sense of normality is being resumed in workplaces, safety protocols and SOPs must be stringently adhered to. Such SOPs include ensuring procedures are in place to address health and safety measures against the COVID-19 pandemic, temperature screening at entry points to buildings and offices, the use of face masks and adequate disinfectant products, increased cleaning of the premises and the arrangement of shared workspaces and common areas in such a way that encourages social distancing and limited interaction between employees themselves and with clients or consumers.

In terms of health and safety protocols, capacity and operating hours, SOPs vary depending on the sector of activity. Such activity sectors mainly include manufacturing, professional services, financial services, construction, hotels, transportation and logistics, oil and gas, agricommodity and retail. Each company must therefore ensure that it complies with the sectorial SOPs established by the relevant regulatory authority, as found on Majlis Keselmatan Negara's website.

II. Immigration and Travelling Rules under the RMCO

Under the RMCO, the government has approved new travelling rules, specifically concerning interstate travel, and has updated immigration rules for foreign employees outside Malaysia.

1. Relaxed Travelling Rules under the RMCO

The strict ban on interstate travel is lifted as a result of the RMCO, apart from travel to 'red areas', namely areas that remain under an enhanced movement control order. Domestic tourism is therefore permissible and encouraged again.

International travel, however, remains off the cards whilst Malaysia's borders remain closed. Malaysians are still not permitted to travel abroad and the ability of both Malaysians and non-Malaysians to enter the country remains significantly limited. The ban on Malaysians travelling abroad will be in place until 31 August 2020, apart from some minor exceptions. The emphasis of Prime Minister Muhyiddin Yassin's speech was instead on kick-starting the national economy through reviving domestic tourism as a result of the relaxed interstate travel restrictions.

2. Updated Immigration Rules for Foreign Employees Outside Malaysia

The Immigration Department of Malaysia issued on 10 June 2020 "Guidelines for the entry of Expatriate / Skilled Worker / Knowledge Worker Entering Malaysia for Key Posts and Technical Posts, and for Dependents and Foreign Maids" (the "**Guidelines**"). The expatriate definition includes Residence Pass-Talent holders, Employment Pass holders, and Professional Visit Pass holders.

The Guidelines authorise expatriates and their related dependant pass holders to enter Malaysia provided that they get an approval from the Director General of Immigration Department Malaysia ("**DGIM**"). The following steps must be observed to get such approval:

- The company employing the individual must get a Support Letter from the relevant Approving Agency or Regulatory Body according to their respective sectors (i.e. MITI, CIDB, MDEC. MIDA, etc.). If the company's activities do not fall under any Approving Agency, then the Support Letter is not required.
- The company must apply to the DGIM for entry permission by sending an e-mail (to pbf@imi.gov.my) clearly stating a strong reason for the expatriate's need to enter Malaysia, together with the Support Letter. What will constitute "a strong reason" for the DGIM remains to be clarified.
- Within seven working days from the date the request is submitted, the DGIM will approve or reject the application (silence is tantamount to refusal).
- Upon approval by the DGIM, the Expatriate Services Division will issue an Entry Approval Letter to the company.

In addition to the above, an expatriate with an expired pass or a new employee who is currently stranded abroad is required to obtain a visa from the respective Malaysian Embassy / Consulate General / High Commission prior to entering Malaysia. As per usual, the company must also obtain an Approval Letter from the Expatriate Committee of the relevant Approving Agency for its new employee.

Once the DGIM's approval is obtained, the foreign employee is required to comply with the following requirements before and after entering the country:

- The employee is required to undergo PCR COVID-19 test abroad within three days prior to entering Malaysia and must be medically confirmed to be tested negative for COVID-19.
- Upon arrival in Malaysia, the expatriate must present the Entry Approval Letter to the Immigration Officer at the entry point, together with their PCR COVID-19 result.
- The employee must download and install the "MySejahtera" mobile application. MySejahtera is an application developed by the government to assist in managing the COVID-19 outbreak in Malaysia. It also allows users to perform health self-assessment.
- Finally, the employee must undergo a 14-day home quarantine. Moreover, the employee may be required to undergo a COVID-19 / Swab Test upon instruction by the Ministry of Health.

The full Guidelines, including those concerning dependents and foreign maids stranded abroad, can be found here.

III. Initiatives for Businesses in the New Economic Recovery Plan PENJANA

On 5 June 2020 Prime Minister Muhyiddin Yassin unveiled a Short-Term Economic Recovery Plan (or "**PENJANA**" for *Pelan Jana Semula Ekonomi Negara*) worth MYR 35 billion. PENJANA is the fourth such economic stimulus plan introduced by the Malaysian government to tackle the economic difficulties caused by the COVID-19 Pandemic. Previous Economic Stimulus Packages ("**ESPs**") were announced on 27 February, 27 March and 6 April 2020 respectively. Our newsletters on the first two Economic Stimulus Packages can be found here and here.

The government's proposed approach takes the form of six steps: Resolve, Resilience, Restart, Recover, Revitalise and Reform. PENJANA comes under the fourth step and aims to support the Malaysian economy in the so-called "new normal". It does this by addressing current issues through three pillars, namely: empowering people, propelling businesses, and stimulating the economy. To achieve these objectives the Minister of Finance proposed 40 initiatives in the published PENJANA booklet (which can be found here).

In this newsletter we will detail some of the key initiatives from a business perspective. However, the PENJANA booklet only provides an outline of the measures to be taken and further details are expected from the Malaysian authorities imminently.

1. Empowering People

The “Empowering People” pillar seeks to secure and enhance employment and training through 11 measures, which include the following:

- Extension of the Wage Subsidy Programme (“**WSP**”): The WSP, introduced in the previous Prihatin ESP, will be extended until September 2020 with a subsidy of MYR 600 per employee for all eligible employers. The eligibility criteria to the WSP will also be relaxed, allowing employers to benefit from the WSP while reducing weekly working hours and pay (up to 30%), and to receive the wage subsidy for employees on unpaid leave.
- Hiring and training assistance for businesses: Incentives will be implemented to encourage the hiring of the youth (MYR 600 per month for up to six months for apprenticeships for school leavers and graduates) and unemployed workers (MYR 800 per month for workers below 40 years old and MYR 1,000 for those above 40 years of age for up to six months). Applications will open by mid-June 2020.
- Flexible work arrangement incentives: In view of an increase in work-from-home arrangements, flexible work arrangement incentives will be provided from 1 July 2020 to both employers (tax deductions for employers who implement flexible work arrangements; details need to be provided with regard to the qualifying expenses), and employees (individual income tax exemption of up to MYR 5,000 to an employee who receives a handphone, notebook or tablet from his or her employer; and special individual income tax relief of up to MYR 2,500 on the purchase of handphone, notebook or tablet). SOCSO will also provide coverage for workers who are involved in accidents while working at home under the Employment Injury Scheme from June 2020.
- Internet connectivity: The Government announced that it will pump MYR 3 billion to help internet connectivity for education and productivity, mainly by providing one Gigabyte capacity for free between 8 a.m. and 6 p.m. daily to browse educational websites, news and video conferencing applications, from mid-June to 31 December 2020.

2. Propelling Businesses

The second pillar of PENJANA aims to sustain operations and stimulate consumption. Consumption has greatly shifted to e-commerce during the period of the MCO and CMCO to the detriment of many traditional businesses. Some of the significant measures under this section are as follows:

- Supporting SME adoption of e-commerce and access to a larger consumer base through (i) an e-commerce campaign; (ii) co-funding (together with online platforms) e-commerce vouchers on local retailers’ products; and (iii) the provision of grants and loans to eligible enterprises subscribing digitalization services under specific programmes (SME Digitalisation Matching Grant; SME Technology Transformation Fund; and Smart Automation Grant).
- The extension or implementation of several financing schemes for SMEs and microenterprises (PENJANA SME Financing for MYR 2 billion; PENJANA Microfinancing for MYR 400 million), the tourism sector (PENJANA Tourism Financing for MYR 1 billion), and Bumiputera businesses (Bumiputera Relief Financing for MYR 500 million).
- Several tax measures for:
  - Businesses facing additional expenses through tax relief for COVID-19 related expenses, including COVID-19 testing and purchase of PPE and thermal scanners.
  - Businesses in financial distress through (i) 50% remission of penalty for late payment of SST from 1 July 2020 to 30 September 2020; (ii) extension of special tax deduction for renovation and refurbishment of business premises to 31 December 2021; (iii) extension of Accelerated Capital Allowance on eligible capital expenses including Information and Communications Technology equipment to 31 December 2021; and (iv) extension until 30 September 2020 of the tax deduction for landlords who reduce at least 30% of gross rental on premises rented to SME tenants.
  - New businesses set up with (i) income tax rebate up to MYR 20,000 per year for three years of assessment for newly established SME between 1 July 2020 to 31 December 2021; and (ii) stamp duty exemption for SMEs on any instruments executed for mergers and acquisitions between 1 July 2020 and 30 June 2020.

3. Stimulating the Economy

Finally, the pillar “Stimulating the Economy” provides measures to attract new investors, support targeted sectors of the economy and promote the consumption of local products and services in order to maintain Malaysia as a preferred destination for foreign investment. Among the 15 measures included under this section, businesses are mainly benefitting from:

- A set of tax incentives intended to attract foreign companies and encourage them to relocate their business to Malaysia, including: (i) exemption of tax for foreign companies investing in manufacturing sectors (10-year exemption for capital investment between MYR 300 – MYR 500 million, and 15-year exemption for capital investment above MYR 500 million) for applications received from 1 July 2020 to 31 December 2020; (ii) Investment Tax Allowance of 100% for three years for Malaysian companies relocating overseas facilities into Malaysia with capital investment above MYR 300 million; and (iii) Special Reinvestment Allowance for manufacturing and selected agriculture activity, from YA 2020 to YA 2021.
- Tax incentives targeting some specific sectors, mainly:
  - The tourism sector through (i) tourism tax exemption from 1 July 2020 to 30 June 2021; (ii) extension of service tax exemption for hotels to 30 June 2021; (iii) extension of the period for income tax relief of MYR 1,000 for tourism expenses to 31 December 2021; and (iv) extension of the period for deferment of tax instalment payment for tourism industry to 31 December 2020.
  - The automotive sector with (i) full sales tax exemption on locally assembled cars; and (ii) 50% sales tax exemption on imported cars, both from mid-June 2020 until December 2020.
  - The commodity sector by granting 100% export duty exemption on crude palm oil, crude palm kernel oil, and refined bleached deodorized palm kernel oil from 1 July 2020 to 31 December 2020.

- Last but not least, PENJANA announces that a COVID-19 Temporary Measures Act will be proposed by the Government and tabled to the Malaysian Parliament in July 2020. This Act is intended to mitigate the potential negative economic impact caused by contractual breaches and enforcement of insolvency actions; it will provide relief from certain contractual obligations and financial distress for businesses affected by COVID-19 and the MCO. In this regard, further clarity is sought from the government.

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