

Dear Clients & Friends

This issue of the Rahmat Lim & Partners Quarterly Bulletin summarises some of the key developments in Malaysia for Q1 2018. We hope you find this issue useful. To read the articles, please click on the titles below.

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## **1. New corporate rescue mechanism in force from 1 March 2018 introduces judicial management schemes and corporate voluntary arrangements**

The corporate rescue mechanism under Division 8 of Part III of the Companies Act 2016 came into force on 1 March 2018, together with the Companies (Corporate Rescue Mechanism) Rules 2018. The new regime introduces two new corporate rehabilitation mechanisms for financially distressed companies, i.e. judicial management schemes and corporate voluntary arrangements.

### **Judicial management scheme**

The new judicial management procedure will allow a distressed company or its creditors to apply for an order to place the company under the management of a qualified insolvency practitioner.

An application for a judicial management order may be filed if the company or its creditor considers that:

- the company is not or will not be able to pay its debts; and
- there is a reasonable chance to rehabilitate the company or to preserve all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up.

The court will grant a judicial management order if it is satisfied that:

- the company is or will not be able to pay its debts; and
- the making of the judicial management order would likely result in:
  - the survival of the company, or the whole or part of its undertaking as a going concern;
  - the company obtaining approval from the court of a compromise or arrangement with its creditors or members; or
  - a more advantageous realisation of the company's assets compared to a winding up.

The essential features of a judicial management scheme are as follows:

- Upon an application for a judicial management order, a moratorium on legal proceedings against the company by its creditors automatically applies, until the application is dismissed or an order is granted.
- A second moratorium will automatically apply for the period during which a judicial management order is in force. Such an order will remain in force for six months, unless earlier discharged, although the judicial manager may apply for an extension of time.
- An appointed judicial manager is required, within 60 days (or such longer period as the court may allow), to send the creditors of the company a statement of his proposals for achieving the purposes for which the order was made, and to present a copy of this statement before a meeting of the company's creditors.
- If the proposals are approved by a majority of 75% in value of the creditors present and voting either in person or in proxy, the proposals will be binding on all creditors of the company.

### **Corporate voluntary arrangement**

In comparison with a judicial management scheme, a corporate voluntary arrangement (“**CVA**”) allows a company to present a proposal to its unsecured creditors for a voluntary arrangement with minimal intervention from the court.

A CVA cannot be proposed by the following types of company:

- a public company;
- a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia;
- a company which is subject to the Capital Markets and Services Act 2007; or
- a company which has created a charge over its property or any of its undertaking.

The essential features of a CVA regime are as follows:

- The directors of a company may initiate a CVA by submitting a proposal for voluntary arrangement to the company's creditors.
- A nominee appointed by the directors as a trustee or supervisor is then required to submit to the directors a statement indicating whether or not in his opinion the proposed CVA has a reasonable prospect of being approved and implemented; and whether the company is likely to have sufficient funds available for it during the proposed moratorium to enable the company to carry on its business.
- Upon the filing of such statement and other relevant documents with the courts, a moratorium will automatically commence and remain in force for a period of 28 days, during which period the nominee is required to summon separate meetings of the company and its creditors.
- A resolution approving the CVA at the meeting of the company may be passed by a simple majority, whereas the required majority to approve the CVA at the meeting of creditors is 75% of the total value of the creditors present and voting in person or by proxy.
- Once approved by the requisite majorities, the CVA will be binding on all creditors of the company.
- The initial moratorium period may be extended beyond the initial 28-day period, to not more than 60 days, if approved by a 75% majority in value of creditors and consented to by the nominee and members of the company.

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## **2. Bank Negara Malaysia issues policy document for digital currencies**

On 27 February 2018, Bank Negara Malaysia ("**BNM**") issued a policy document entitled "Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) - Digital Currencies (Sector 6)" ("**Policy**"), which has taken into account feedback received during the public consultation period on the exposure draft released on 14 December 2017. The Policy aims to ensure that effective measures are in place against money laundering and terrorism financing risks associated with the use of digital currencies and to increase the transparency of digital currency activities in Malaysia.

Any person offering services to exchange digital currencies either from or to fiat money, or from or to another digital currency, whether in the course of carrying on a digital currency exchange business or otherwise, is subject to obligations under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") as a reporting institution pursuant to the First Schedule of the AMLA.

The Policy sets out the minimum requirements and standards that a reporting institution must observe to increase the transparency of activities relating to digital currencies and ensure effective and robust AML/CFT control measures are put in place to mitigate risks that reporting institutions may be used as conduits for illegal activities.

Digital currencies are not legal tender in Malaysia. Accordingly, digital currency businesses are generally not covered by current prudential and market conduct standards or arrangements that are applicable to financial institutions regulated by BNM. As envisaged in the Policy, BNM will continue to monitor developments in this area through data submitted to it, and BNM may publish information that is relevant to inform the public on risks associated with digital currency activities.

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### **3. Bank Negara Malaysia issues discussion paper on responsibility mapping**

On 23 February 2018, Bank Negara Malaysia (“**BNM**”) issued a discussion paper on “Responsibility Mapping” (“**Discussion Paper**”) which sets out its thinking for a framework relating to responsibilities of individuals holding senior leadership positions in financial institutions.

BNM has introduced various reforms in recent years to strengthen corporate governance in the Malaysian financial system. With efforts to raise the bar for existing corporate governance standards substantially in place, the Discussion Paper explains that BNM is now sharpening its focus on the equally important, softer, aspects of governance (i.e. organisational culture and conduct). Leaders of financial institutions have a significant influence over organisational culture through the tone they set from the top, in their actions, decisions and attitudes. The Discussion Paper notes that clarity on the roles, responsibilities and accountability will incentivise leaders to take greater ownership in fostering a sound culture and addressing misconduct risk.

The Discussion Paper outlines what BNM’s approach to responsibility mapping entails through the following three key elements:

- identifying the senior roles within each financial institution;
- allocating responsibilities of the senior roles to specific individuals; and
- holding individuals in senior roles to account.

BNM invites feedback on the Discussion Paper. Responses must be submitted by 20 April 2018.

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### **4. Bank Negara Malaysia issues policy document on credit risk**

On 22 January 2018, Bank Negara Malaysia (“**BNM**”) issued a policy document on credit risk for banking institutions, insurers, takaful operators and financial holding companies. The revised standard is a culmination of BNM’s comprehensive review of the existing regulatory framework on “Best Practices for the Management of Credit Risk”. BNM’s announcement of the launch of the policy document explains that the revised standard aims to further elevate credit risk management practices across the industry, taking into account developments in the size and diversity of product offerings, greater internationalisation of the financial system and the growing role of domestic capital markets as an alternative source of financing.

Key changes to the revised policy document include:

- clarity on governance expectations in respect of the involvement of the board and the risk management function in credit decision-making, management of problem credits and the independent credit review function;
- expanded requirements on the management of exceptional credits and concentration risk;
- strengthened requirements on credit risk measurement to promote greater sophistication in loss estimation approaches; and
- new expectations for the management of country risk, transfer risk and group-wide credit risk oversight.

The policy document will take effect beginning 1 July 2018 for banks on an entity basis and 1 July 2019 on a consolidated basis. Insurers and takaful operators are required to comply with the standard on 1 January 2021 on both an entity and a consolidated basis.

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## **5. Malaysian Inland Revenue Board issues updated Mutual Agreement Procedure Guidelines**

On 11 January 2018, the Malaysian Inland Revenue Board issued amended Mutual Agreement Procedure Guidelines (“**Guidelines**”).

A taxpayer may present a Mutual Agreement Procedure (“**MAP**”) case to its competent authority if the taxpayer alleges that an action undertaken by either Malaysia or a state with which Malaysia has an agreement for the avoidance of double taxation (“**DTA**”) is not in keeping with the provisions of that DTA. The Guidelines provide guidance to taxpayers on the process and procedures to initiate a MAP request with the Malaysian competent authority in such situations.

The Guidelines have been amended to incorporate the minimum standards set out in the OECD BEPS (base erosion and profit shifting) Action 14 final report titled “Making Dispute Resolution Mechanism More Effective”, as Malaysia is a member of the BEPS Inclusive Framework and such incorporation is mandatory.

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## **6. Malaysian Securities Commission initiates aFINity Innovation Lab for Alternative Trading System**

On 21 December 2017, the Securities Commission Malaysia (“**SC**”) announced that parties interested in establishing and operating an Alternative Trading System (“**ATS**”) in Malaysia can apply to participate in regulatory sandbox sessions under the SC’s FinTech Innovation Lab, known as aFINity (“**Lab**”). The Lab allows the SC to discuss and provide feedback to innovative business ideas and concepts, and to explore proof of concept solutions designed to meet specific industry needs. Feedback provided to the SC during the regulatory sandbox sessions at the Lab will be taken into consideration in formulating the SC’s regulatory framework for ATS.

The Lab commenced on 2 January 2018 and ran until 30 March 2018.

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## **7. Malaysian Securities Commission issues new guidelines for SRI Funds**

On 19 December 2017, the Securities Commission Malaysia (“**SC**”) issued Guidelines on Sustainable and Responsible Investment (“**SRI**”) Funds (“**Guidelines**”) to facilitate and encourage greater growth of SRI funds in Malaysia. The Guidelines enable funds to be designated as SRI funds, widening the range of SRI products in the market and attracting more investors in the SRI segment. The Guidelines will apply to fund products within the SC’s oversight, such as unit trust funds, real estate investment trust funds, exchange-traded funds, and venture capital and private equity funds. The Guidelines will also introduce additional disclosure and reporting requirements that aim to encourage greater transparency in investment policies and strategies of SRI funds. The Guidelines will also be applicable for both conventional and Shariah-compliant funds.

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## 8. Bank Negara Malaysia issues exposure draft on Interoperable Credit Transfer Framework

On 7 December 2017, Bank Negara Malaysia (“**BNM**”) issued an exposure draft on the Interoperable Credit Transfer Framework, inviting feedback on the proposed introduction of interoperable credit transfer services (particularly for banks and issuers of electronic money) that leverage on a shared payment infrastructure in Malaysia.

The Interoperable Credit Transfer Framework seeks to achieve the following:

- expand network reach and avoid market fragmentation by enabling interoperability of credit transfer services;
- promote a level playing field and foster collaboration at the infrastructure level by ensuring fair and open access to shared payment infrastructure;
- minimise risk of disruption to system-wide important credit transfer systems through effective oversight of shared payment infrastructure;
- encourage innovation through the establishment of an innovation sandbox and publication of Open APIs;
- safeguard the safety and integrity of credit transfer systems through proportionate risk management measures; and
- foster confidence in the use of credit transfer services via enhanced customer protection measures.

The public consultation closed on 8 January 2018.

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### Further information

Should you have any queries as to how these developments may affect your business, please do not hesitate to get in touch with the following:

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Yours faithfully  
**Rahmat Lim & Partners**



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