

MALAYSIA

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I INTRODUCTION

Malaysia's capital market plays a fundamental role in financing and supporting the sustainability of the domestic economy. As such, it must continuously innovate to remain relevant, and better serve the economy and investors. Malaysia was one of the first few countries in the region to introduce new fundraising alternatives to cater to businesses at various stages of growth.

i Structure of the Malaysia courts

In Malaysia, there is a dual judicial system consisting of secular laws (criminal and civil) and religious laws (shariah), each with its own court system. However, cases involving Islamic finance business disputes would still fall within the jurisdiction of the civil courts and not the shariah courts. Alternatively, the contracting parties can opt to resolve their disputes by arbitration.

ii Primary legislation and regulation

Malaysia's primary capital market legislation is the Capital Markets and Services Act 2007 (CMSA) and the Companies Act 2016 (CA 2016). This chapter will not be discussing the Labuan International Business and Financial Centre framework.

CMSA

The cornerstone of the legal and regulatory framework governing the Malaysian capital markets is the CMSA, which came into force on 28 September 2007, and which was formed through the consolidation of the Securities Industry Act 1983 (SIA)² and the Futures Industry Act 1993 (FIA)³ as well as the fundraising provisions that were previously contained in Part IV of the Securities Commission Malaysia Act 1993.⁴ The CMSA sets out the law relating to the regulations of markets, the licensing and conduct of intermediaries, the regulation of market misconduct, fundraising and takeovers. The CMSA is intended to accord greater investor protection through, inter alia:

- a the enhancement of the Securities Commission Malaysia's (SC's) power in taking civil and administrative actions;

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2 Act 280.

3 Act 499.

4 Act 498.

- b the requirement for application monies of sophisticated investors to be held on trust in fundraising exercises; and
- c the enhancement of the standards of trustees for debenture holders and the extension of investor protection provisions to clients of financial institutions.⁵

CA 2016

The CA 2016, which took effect on 31 January 2017, repealed and replaced the Companies Act 1965 and is a significant legislative framework that governs the formation, regulation, operation and dissolution of corporate entities in Malaysia. The CA 2016, encompassing 620 sections comprising 13 schedules, introduced reforms and updates with the aim of simplifying administrative and compliance procedures, foster a more conducive business environment in Malaysia and, more importantly, enhance corporate governance and transparency, which translates to better investor protection. The introduction of a no-par-value regime, solvency requirements and corporate rescue mechanisms are among the enhancements made to the legislation from the previous 1965 Companies Act.

Debt capital market

The lodge and launch framework

On 9 March 2015, the SC issued the Guidelines on unlisted capital market products under the Lodge and Launch Framework (Framework). Since 1 June 2015, under the Lodge and Launch Framework, the issuance process of corporate bonds and *sukuk* (unlisted capital market products) to sophisticated investors⁶ only requires an issuer to lodge with the SC the required information and documents prior to the launch of the unlisted capital market product.

Lodge refers to the submission of information and documents as may be specified by the SC, and such information and documents must be true, complete and accurate.⁷ A principal adviser who is registered with the SC is required to be appointed by an issuer for purposes of the lodgement unless the issuer qualifies as a multilateral development bank, a multilateral financial institution or a principal adviser where it would be able to make a lodgement with the SC on its own.⁸

Launch, on the other hand, means making available, offering for subscription or purchase, or issuing of an invitation to subscribe for or purchase an unlisted capital market product, and includes any issuance, publication or release of any information, notice or advertisement in respect of any of the acts specified.⁹

There is no longer a requirement for an issuer to seek the authorisation, approval or recognition of the SC under Section 212 of the CMSA prior to the issuance of such unlisted capital market product to sophisticated investors.

5 <https://www.sc.com.my/resources/media/media-release/capital-markets-and-services-act-2007-comes-into-force-28-sept>.

6 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section A, Paragraph 1.02.

7 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section A, Paragraph 1.12.

8 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraph 4.04.

9 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section A, Paragraph 1.16.

The Framework is applicable to corporations within the meaning of Section 2(1) of the CMSA, which includes body corporates incorporated or existing within or outside Malaysia. This means that both resident issuers and foreign issuers can issue unlisted capital market products under the Framework. However, any issuance of ringgit denominated unlisted capital market products by a foreign entity would be subject to the prior approval of Bank Negara Malaysia (BNM).¹⁰ Any issuance of foreign currency denominated unlisted capital market products by a resident entity to any foreign entity would likewise require the prior approval of BNM.¹¹ The issuance of corporate bonds or *sukuk* or the first issuance under a corporate bond or *sukuk* programme must be undertaken within 90 business days from the date of the lodgement,¹² failing which, the lodgement will be null and void.¹³

Islamic Capital Market Products and Services Guidelines

In addition to complying with the requirements under the Framework, any proposals for the issuance of ringgit denominated and foreign currency denominated *sukuk* would require compliance with the Guidelines on Islamic Capital Market Products and Services (ICMPS Guidelines).¹⁴ Under the ICMPS Guidelines, the Shariah Advisory Council (SAC) of the SC's prior endorsement is required for the purposes of making available, offering or issuing ringgit denominated *sukuk*. The prior endorsement is obtained by submitting information and documents as specified in the ICMPS Guidelines at least 10 business days prior to the date of lodgement under the Framework.¹⁵ An issuer seeking to issue or offer *sukuk* must appoint a shariah adviser registered with the SC.¹⁶ The role of the shariah adviser includes ensuring that the applicable shariah rulings, principles and concepts endorsed by the SAC are complied with,¹⁷ and the issuance of shariah pronouncements, which include, among other things, the shariah justification for the structure and mechanism of the ringgit denominated *sukuk*.

Other relevant guidelines in respect of sukuk and corporate bonds

Sustainable and responsible investment sukuk

A sustainable and responsible investment (SRI) *sukuk* refers to *sukuk* in which its proceeds will be applied exclusively for funding of any activities or transactions relating to eligible SRI projects.¹⁸ eligible SRI projects may include green projects that relate to, among other things, renewable energy, energy efficiency, green buildings that meet regional, national or

10 Bank Negara Malaysia's Foreign Exchange Policy Notices (updated as at 1 June 2022), Notice 2.

11 Bank Negara Malaysia's Foreign Exchange Policy Notices (updated as at 1 June 2022), Notice 2.

12 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraphs 4.05 and 4.06.

13 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section A, Paragraph 1.17.

14 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B., Part 3., Paragraph 1.11.

15 Guidelines on Islamic Capital Market Products and Services (issued date 28 November 2022, effective date 28 November 2022), Paragraph 26.01.

16 Guidelines on Islamic Capital Market Products and Services (issued date 28 November 2022, effective date 28 November 2022), Paragraph 23.02

17 Guidelines on Islamic Capital Market Products and Services (issued date 28 November 2022, effective date 28 November 2022), Paragraph 6.01(b). However, this is only in the case of ringgit denominated *sukuk*.

18 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraph 7.02.

internationally recognised standards or certification, and social projects that relate to, among other things, affordable basic infrastructure, affordable housing, food security and access to essential services.¹⁹

The SRI *sukuk* framework consists of four core components, namely,:

- a utilisation of proceeds;
- b process for project evaluation and selection;
- c management of proceeds; and
- d reporting.²⁰

Proceeds raised from the issuance of SRI *sukuk* must be utilised towards purposes relating to eligible SRI projects and there must be internal processes established for the evaluation and selection of the eligible SRI project. In respect to management of proceeds, this requirement is satisfied by ensuring that proceeds allocated for such eligible SRI project are placed in a designated account or otherwise tracked in an appropriate manner. The reporting requirement is complied with by providing certain required information as required under the Framework to the *sukuk* holders on an annual basis through a designated website. An issuer intending to issue SRI *sukuk* should make details of the issuer and the issuer's SRI *sukuk* framework publicly accessible on a designated website disclosed by the issuer. The assessment and report on the eligible SRI project or the issuer's compliance with the requirements under the Framework by an external reviewer, if appointed by the issuer, should also be made available on such designated website.

SRI-linked sukuk

Sukuk where the financial or structural characteristics or both the financial and structural characteristics of the *sukuk* vary depending on whether the issuer meets the predefined sustainability targets, and its issuance complies with the requirements under the Framework, are referred to as SRI-linked *sukuk*.²¹

The additional requirements under the Framework for an issuance of SRI-linked *sukuk* includes adhering to the core components of the SRI-linked *sukuk*, which are:

- a SRI-linked *sukuk* characteristics;
- b selection of key performance indicators (KPIs);
- c calibration of sustainability performance targets (SPTs);
- d external review; and
- e reporting.²²

Unlike the SRI *sukuk* where it is not compulsory for an external reviewer to be appointed, the Framework requires an external reviewer to be appointed by the issuer during pre-issuance to assess and provide a report on the issuer's compliance with the Framework. An independent

19 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraph 7.08.

20 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraph 7.09.

21 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraph 9.02.

22 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraph 9.07.

verifier must also be appointed to provide a verification report on the issuer's performance level against each of the SPTs and KPIs post-issuance. Such reports are to be made available on the issuer's designated website. Other than meeting the core components of SRI-linked *sukuk*, there are also disclosure requirements to be met under the Framework.

ASEAN bonds and sukuk

The Framework recognises the prescribed standards issued by the ASEAN Capital Markets Forum, namely, the ASEAN Green Bond Standards,²³ the ASEAN Social Bond Standards,²⁴ the ASEAN Sustainability Bond Standards²⁵ and the ASEAN Sustainability-Linked Bond Standards (ASEAN green bonds).²⁶ Any issuance of these ASEAN green bonds will require compliance as prescribed under the respective standards. An issuer must not use or adopt the terms 'ASEAN Green', 'ASEAN Social', 'ASEAN Sustainability' or 'ASEAN Sustainability-Linked', as the case may be, in relation to the name of its corporate bonds or *sukuk*, or hold itself as an issuer of such corporate bonds or *sukuk* unless the issuance has complied with the requirements of the relevant standards.²⁷

Equity capital market

The relevant legislation includes:

- a for companies listed on the Main Market, the Access, Certainty, Efficiency (ACE) Market and the Leading Entrepreneur Accelerator Platform (LEAP) Market (being the three markets in Malaysia), the following:
 - Main Market Listing Requirements of Bursa Malaysia Securities Berhad (Bursa Securities);
 - ACE Market Listing Requirements of Bursa Securities; and
 - LEAP Market Listing Requirements of Bursa Securities; and
- b for corporate exercises involving equity capital markets falling under the SC's purview, the following issued by the SC:
 - Equity Guidelines (which are not applicable for exercises on the ACE Market and the LEAP Market) (Equity Guidelines);
 - Prospectus Guidelines;
 - Guidelines on Submission of Corporate and Capital Market Product Proposals;
 - Malaysian Code on Take-Overs and Mergers 2016 together with the Rules on Take-Overs, Mergers and Compulsory Acquisitions;
 - Guidelines on Disclosure Documents; and
 - Guidelines on Offer of Shares by Unlisted Public Companies to Sophisticated Investors.

23 ASEAN Green Bond Standards (first issued November 2017, revised October 2018) issued by the ASEAN Capital Markets Forum.

24 ASEAN Social Bond Standards (issued October 2018) issued by the ASEAN Capital Markets Forum.

25 ASEAN Sustainability Bond Standards (issued October 2018) issued by the ASEAN Capital Markets Forum.

26 ASEAN Sustainability-Linked Bond Standards (issued October 2022) issued by the ASEAN Capital Markets Forum.

27 Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (first issued 9 March 2015, revised 29 August 2023), Section B, Part 3, Paragraphs 8.03 and 10.03.

iii Regulatory bodies and central bank

The SC

The SC is the main regulator in respect of securities laws in Malaysia. It was established in 1993 by way of an act of Parliament, namely the Securities Commission Act 1993, which was later renamed the Securities Commission Malaysia Act 1993 in 2015. It has a broad range of functions including to regulate, monitor and supervise the conduct of participants in the market to ensure compliance with securities laws and also to promote the development of the securities and derivatives markets in Malaysia.

Bursa Malaysia

Bursa Malaysia Securities Berhad (Bursa Securities) is the approved stock exchange in Malaysia and regulates listed companies and other stakeholders. Bursa Malaysia Berhad (Bursa) operates a fully integrated exchange under Section 15 of the CMSA providing a complete range of exchange-related services such as trading, clearing, settlement and depository services as well as various Islamic market products, namely equities, derivatives, commodities and debt securities across all sectors and industries. To illustrate further, to perform its tasks and duties assigned under the CMSA, Bursa has set up a range of subsidiaries to handle some of its principal activities and it acts as the holding company for these various subsidiaries, namely the central depository, Bursa Malaysia Depository Sdn Bhd, the clearing houses, Bursa Malaysia Securities Clearing Sdn Bhd and Bursa Malaysia Derivatives Clearing Bhd, the stock exchange, Bursa Malaysia Securities Berhad, the future exchange, Bursa Derivatives Berhad and the offshore financial exchange, the Labuan International Financial Exchange.

Bank Negara Malaysia

The Central Bank of Malaysia, Bank Negara Malaysia (or BNM), is a statutory body corporate established by an act of Parliament,²⁸ called the Central Bank of Malaya,²⁹ and came into operation on 26 January 1959. In 1963, the Bank's name was changed to Bank Negara Malaysia or the Central Bank of Malaysia. Today, it continues to operate under the Central Bank of Malaysia Act 2009 (CBMA)³⁰ with its role being to promote monetary and financial stability. This is aimed at providing a conducive environment for the sustainable growth of the Malaysian economy, and it has all the powers necessary, incidental or ancillary, to give effect to its objectives and carry out its functions having regard to the national interest.³¹ BNM reports to the Minister of Finance and keeps the Minister informed of policies governing the monetary and financial sector, and acts as financial adviser, banker and financial agent of the government.

28 Central Bank of Malaysia Ordinance 1958 (FM 161/1958) (repealed) (later known as the Central Bank of Malaysia Act 1958 (Act 519), which has now been repealed by the Central Bank of Malaysia Act 2009 (Act 701) (which came into effect on 25 November 2009 (except Section 23(8)(b) and Sections (61–66) vide PU (B) 533/2009). Notwithstanding the repeal of the Central Bank of Malaysia Act 1958 by the Central Bank of Malaysia Act 2009 Section 99, the body corporate established under the repealed Act under the name Bank Negara Malaysia or, in English, 'Central Bank of Malaysia' is subject to the provisions of the Central Bank of Malaysia Act 2009: Section 3(1).

29 Central Bank of Malaysia Ordinance 1958 (repealed).

30 Act 701.

31 Central Bank of Malaysia Act 2009s 5(3), (4).

Furthermore, BNM is empowered to act as the regulator of financial institutions under the CMBA, the Financial Services Act 2013 (FSA)³² and the Islamic Financial Services Act 2013 (IFSA).³³ The CMBA confers the necessary powers and instruments on BNM to achieve its mandates effectively and legitimises the duality of both the conventional and Islamic financial systems in Malaysia, and in doing so establishes the legal foundation for development of an Islamic financial system within the overall Malaysian financial system. The FSA and IFSA are designed in line with BNM's Financial Sector Blueprint 2011–2020³⁴ and the Economic Transformation Programme.³⁵

iv Enforcement

Under the regulatory framework of the capital markets in Malaysia, enforcement stipulated by the SC against market players who behave irresponsibly, are ignorant or bypass the law include claims and actions that cover criminal prosecution, civil actions and regulatory settlements,³⁶ administrative actions and compounding cases.³⁷ Under the CMSA, the common market misconducts or prohibited conducts observed in the capital markets include, inter alia:

- a making false or misleading statements in a disclosure document or prospectus;³⁸
- b submitting false or misleading statements to the SC or Bursa Securities;³⁹
- c insider trading;⁴⁰
- d causing wrongful loss to the listed corporation or any of its related corporations;⁴¹ and

32 Act 758. The FSA and IFSA incorporate strengthened provisions to regulate payment system operators and payment instrument issuers in order to promote safe, efficient and reliable payment systems and instruments. They are unique inventions – a blend of six pieces of legislation, namely the Banking and Financial Institutions Act 1989, the Insurance Act 1996, the Payment Systems Act 2003 and the Exchange Control Act 1953 – into the FSA, and the Islamic Banking Act 1983 and the Takaful Act 1984 into the IFSA, which the Parliament has breathed new life into with exceptional finesse and without dampening any of their legislative efficaciousness. Both Acts were given Royal Assent on 18 March 2013 and were gazetted on 22 March 2013. Both Acts came into force on 30 June 2013 (with the exception of certain provisions relating to insurance and *takaful* matters).

33 Act 759.

34 BNM's Financial Sector Blueprint 2011–2020: https://www.bnm.gov.my/documents/20124/5800313/FSB_2011_en.pdf.

35 BNM's Economic Transformation Programme, Executive Summary: https://www.bnm.gov.my/documents/20124/830190/cp00_003b_exec_summary.pdf.

36 The settlement will be reached following a letter of demand sent by the SC pursuant to its civil enforcement powers under the securities laws.

37 <https://www.sc.com.my/regulation/enforcement>.

38 Pursuant to Section 246 of the CMSA, a person guilty of an offence relating to issuance of a prospectus containing false or misleading statements or material omission may be subjected to a fine not exceeding 3 million ringgit or imprisonment for a term not exceeding 10 years, or both.

39 Pursuant to Section 215 of the CMSA, a person guilty of an offence relating to submission of false or misleading statements to the SC may be subjected to imprisonment for a term not exceeding 10 years and a fine not exceeding 3 million ringgit Malaysia.

40 Pursuant to Section 188 of the CMSA, a person guilty of an offence relating to insider trading may be subjected to imprisonment for a term not exceeding 10 years and a fine of not less than 1 million ringgit.

41 Pursuant to Section 317A of the CMSA, a person guilty of an offence relating to causing wrongful loss to the listed corporation or any of its related corporations may be subjected to imprisonment for a term that shall not be less than two years but not exceeding 10 years and a fine not exceeding 10 million ringgit. See also the case of *Securities Commission v. Chan Chui Mei* [2019] MLJU 1539.

e other prohibited conducts that are subject to legal consequences under Sections 182 and 200 of the CMSA,⁴² inter alia, false trading,⁴³ market rigging transactions⁴⁴ and stock market manipulation,⁴⁵ fraudulently inducing persons to deal in securities,⁴⁶ use of manipulative and deceptive devices⁴⁷ and dissemination of information about illegal transactions.⁴⁸

II THE YEAR IN REVIEW

Despite the evermore pessimistic global economic outlook and tighter global financial conditions, Malaysia's capital market remained resilient in 2022. Its robust domestic corporate bond and equity markets recorded a high of 179.4 billion ringgit of total fundraising value in 2022 (2021: 131.3 billion ringgit), of which 26.0 billion ringgit was raised via the equity market, while 153.3 billion was issued through the corporate bond market.⁴⁹ The equity market saw 3.5 billion ringgit raised via 35 initial public offerings (IPOs) and 22.6 billion ringgit through secondary fundraising.⁵⁰ Alternative fundraising avenues of equity crowdfunding and peer-to-peer financing continued to support the funding requirements of micro, small and medium-sized enterprises, and such alternative fundraising avenues saw an increase in the funds raised in 2022 by 0.3 billion ringgit to 1.7 billion ringgit.⁵¹ Meanwhile, pursuant to the challenging market conditions, the fund management industry experienced weaker market valuation and net redemptions in 2022. The industry's total assets under management (AUM) decreased to 906.5 billion ringgit in 2022 (2021: 951.1 billion ringgit).⁵² The unit trust segment is the main source of funds for AUM, contributing 487.9 billion ringgit in 2022 (2021: 526.9 billion ringgit) of the total net asset value (NAV).⁵³

Overall, the size of the capital market increased by 2.2 per cent to 3.6 trillion ringgit in 2022 (2021: 3.5 trillion ringgit), notwithstanding the decrease in equity market capitalisation, which was offset by higher bonds and *sukuk* outstanding.

However, at the end of the first quarter of 2023 (Q1 2023), the Malaysian bond and *sukuk* market size increased by 9 per cent to 1.91 trillion ringgit compared to the same

42 Pursuant to Section 182 of the CMSA, a person who contravenes Sections 175, 176, 177, 178, 179 or 181 commits an offence and shall be punished on conviction to imprisonment for a term not exceeding 10 years and to a fine of not less than 1,000,000 ringgit. Furthermore, from the civil action perspective, Section 200 of the CMSA further empowers the SC to institute civil proceedings in the court against that person who has contravened Sections 175, 176, 177, 178, 179 or 181, whether or not that person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution.

43 CMSA Section 175(1).

44 CMSA Section 175(2).

45 CMSA Section 176.

46 CMSA Section 178.

47 CMSA Section 179.

48 CMSA, Section 181.

49 Securities Commission Malaysia's Annual Report 2022.

50 Securities Commission Malaysia's Annual Report 2022.

51 Securities Commission Malaysia's Annual Report 2022.

52 Securities Commission Malaysia's Annual Report 2022.

53 Securities Commission Malaysia's Annual Report 2022.

corresponding period in 2022.⁵⁴ In Q1 2023, 20.4 billion ringgit of corporate bonds were issued, out of which 78 per cent or 15.9 billion ringgit were *sukuk* issuances, while the remaining 22 per cent or 4.5 billion ringgit were conventional bonds issuances.⁵⁵ Meanwhile, in Q1 2023, the NAV of unit trust funds increased to 489.02 billion ringgit as at 31 March 2023.⁵⁶

i Developments affecting equity offerings

There have been various developments affecting equity offerings in Malaysia. The more notable ones are set out below.

Enhanced IPO framework for the Main Market of Bursa Securities

The SC introduced an enhanced IPO framework for the Main Market of Bursa Securities, which took effect on 1 January 2021, to promote greater shared responsibility among key stakeholders involved in the submission of an IPO for listing on the Main Market of Bursa Securities.⁵⁷ The key features introduced include:

- a mandatory pre-submission holistic consultation between the SC and all key stakeholders including the issuer, principal advisers, lawyers, reporting accountants and valuers. Under the Equity Guidelines, the issuer and its advisers must consult the SC prior to making an application for the following proposals:
 - equity offering and primary listing of a corporation on the Main Market;⁵⁸ and
 - proposals that result in a significant change in the business direction or policy of a listed corporation on the Main Market;⁵⁹
- b extending the exposure period of the draft prospectus published on the SC's website until the date of registration of the prospectus from the previous 15 market day exposure period. The extended time will enable greater public participation to provide feedback on the draft prospectus;⁶⁰ and
- c liberalising the principal adviser regime allowing for a larger pool of qualified professionals to be involved in the submission of applications for the proposals to the SC.

Trading of fractional shares

The Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives issued by the SC were revised, effective from 7 September 2023, to allow stockbroking companies to provide fractional share trading services on shares listed on

54 The Malaysian Capital Markets by Capital Markets Malaysia (CMM) (<https://www.capitalmarketsmalaysia.com/why-malaysia/>).

55 Securities Commission Malaysia's Quarterly Report (1st Quarter 2023).

56 Securities Commission Malaysia's Quarterly Report (1st Quarter 2023).

57 Securities Commission Malaysia's Quarterly Report (1st Quarter 2023).

58 <https://www.sc.com.my/resources/media/media-release/sc-introduces-enhanced-ipo-framework-for-main-market>.

59 Equity Guidelines (first issued 8 May 2009, revised 16 December 2021, effective date 1 January 2022), Part I, Paragraph 1.10.

60 <https://www.sc.com.my/resources/media/media-release/sc-introduces-enhanced-ipo-framework-for-main-market>.

Bursa Securities. According to the SC, a fractional share is a portion of a stock that is less than one standard board lot.⁶¹ A normal board lot is 100 shares.⁶² The trading of fractional shares was not permitted prior to this.

Stamp duty on contract notes for listed shares or stocks trading on the exchange

Prior to 1 January 2022, the stamp duty on contract notes for the trading of listed shares or stocks was 0.1 per cent and capped at 200 ringgit. Effective from 1 January 2022, the stamp duty was increased from 0.1 to 0.15 per cent and capped at 1,000 ringgit.⁶³ However, the stamp duty was revised downwards to 0.1 per cent and capped at 1,000 ringgit for all contract notes executed on or after 13 July 2023 but not later than 12 July 2028.⁶⁴

ii Developments affecting debt offerings

Corporate bond and sukuk issuances

The SC revised the Guidelines on Credit Rating Agencies on 10 January 2023 with the objective of enhancing and strengthening the role, independence and objectivity of credit rating agencies in providing credible credit rating opinions. The main amendments were as follows:

- a* enhancing governance requirements by requiring the establishment of board committees for matters on the nomination of candidates to a board of directors and board committees, review of financial matters, and risk management and remuneration framework and policies; and a majority of independent directors for the composition of the board of directors and all board committees as well as a quorum of meeting for the board of directors and board committees. Additionally, the chair of the board of directors and board committees is required to be an independent director.
- b* enhancing independence requirements by limiting the tenure of an independent director of a credit rating agency (CRA) and rating holding company, and external members of a CRA's rating committee to a cumulative term of nine years from the date of first appointment.
- c* improving the integrity of the rating process of a CRA by requiring majority external members for the composition of the CRA's rating committee and quorum of meeting.
- d* incorporating new registration criteria on minimum paid-up capital of 10 million ringgit to ensure the financial stability of the CRA; and
- e* introducing a new requirement on the SC's prior approval for the proposed appointment of the CRA's compliance officer.

SRI funds

On 17 February 2023, the SC revised the Guidelines on SRI funds to enhance the disclosure and reporting requirements for a fund seeking qualification as an SRI, as well as to incorporate the implementation of the ASEAN Sustainable and Responsible Fund Standards developed by the ASEAN Capital Markets Forum (SFRS) in Malaysia. Some of the key amendments that took effect on 17 February 2023 were the introduction of new requirements to prescribe

61 <https://www.sc.com.my/resources/media/media-release/sc-paves-the-way-for-trading-of-fractional-shares>.

62 Participating Organisation's Trading Manual issued by Bursa Securities, Paragraph 2.2.

63 Stamp Duty (Remission) 2003 (Amendment) Order 2022; Stamp Duty (Remission) Order 2022.

64 Stamp Duty (Remission) (No. 3) Order 2023.

the disclosure of reference benchmarks and indices, sustainability risk considerations as well the enhancement of relevant reporting and notification requirements, and additional requirements to comply with the SFRS.

Digital assets

The SC regulates digital assets in Malaysia via the Capital Markets & Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (Order), which came into force on 15 January 2019. Pursuant to the Order, all digital currencies and digital tokens that satisfy the requirements in the Order are prescribed as securities for the purposes of securities laws. The SC also introduced the following guidelines to regulate offering and trading of digital assets: Guidelines on Recognised Market Operators⁶⁵ and Guidelines on Digital Assets.⁶⁶

A point to note is that notwithstanding the Guidelines on Digital Assets, digital currencies and digital tokens are not recognised in Malaysia as legal tender or as a form of payment instrument regulated by BNM.

Private equity and venture capital

The SC also monitors the development of the private equity (PE) and venture capital (VC) industry in Malaysia. This was achieved via the implementation of registration requirements in 2015 and the setting up of the Malaysian Venture Capital and Private Equity Development Council. Additionally, the LEAP Market was launched on Bursa Malaysia in 2017 to address the funding gap faced by small and medium-sized enterprises and as an alternative exit avenue for PE firms.

In March 2023, in order to encourage the domestic PE and VC industry, the SC, in collaboration with its affiliates, Capital Markets Malaysia (CMM)⁶⁷ and Malaysian Digital Economy Corporation, organised the country's pioneer corporate venture capital (CVC) programme. The CVC programme also aimed to connect the different ecosystem players and enablers with public-listed companies taking on the journey to build CVC programmes. One other CVC programme has been held since then offering practical insight and knowledge on incorporating a corporate innovation mindset, understanding fund structures, legal and strategic considerations of corporate venturing, and corporate venture building.

iv Relevant tax law

Stamp duty

Regarding the latest developments on stamp duty payable on contract notes for the trading of listed shares or stocks, see 'Stamp duty on contract notes for listed shares or stocks trading on the exchange' above for details.

65 Sets out the requirements for the registration of a person as a recognised market operator (RMO) and ongoing requirements applicable to an RMO.

66 Sets out the requirements relating to fundraising activity through digital token offering, operationalisation of initial exchange offering platforms and provision of digital asset custody.

67 Set up by the SC in 2012 as the Capital Markets Promotion Council and rebranded as the CMM in 2014 to spearhead the local and international positioning as well as profiling of the Malaysian capital markets. The CMM supports the advancement of Malaysia's capital market intermediaries through various initiatives and partnerships by focusing on key areas such as sustainable finance and investing, Islamic capital market and capital market funding opportunities through the private market.

Stamp duty exemptions are available for all instruments relating to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures approved by the SC and the transfer of such debentures.⁶⁸ Additionally, all instruments for the purpose of securitisation transactions, including any instrument or document that a special purpose vehicle (SPV) is a party to, are also exempted from stamp duty.⁶⁹

Income tax

Any source and income of a SPV established solely for the purpose of issuing Islamic securities (excluding asset-backed securities) are treated as a source and income of the company or originator,⁷⁰ and any income derived by the SPV on the issuance of Islamic securities is exempted from income tax.⁷¹ Additionally, the company that establishes the SPV is given a deduction on the cost of issuance of the *sukuk* incurred by the SPV, which is established solely for the purpose of complying with the principles of shariah in the issuance of Islamic securities.⁷²

An issuer of SRI *sukuk* approved or authorised by, or lodged with, the SC is also entitled to a tax deduction for the expenditure incurred by it on the issuance thereof for the year of assessment 2016 until the year of assessment 2023.⁷³ For an issuer of *sukuk* or a retail *sukuk* structured pursuant to the principle of *wakalah* approved or authorised by the SC, a tax deduction is available on the expenditure incurred on such issuance from the year of assessment 2021 until the year of assessment 2025.⁷⁴

A registered venture capital company is eligible for a tax exemption for a period of five years or the remaining life of the fund (whichever is shorter) on all sources of statutory income, except for interest income arising from savings or fixed deposits and profits from shariah-based deposits),⁷⁵ and its management company, which, if registered with the SC, is eligible for a tax exemption on management fees, share of profits, carried interest and performance fees derived from the tax-exempt venture capital company for the year of assessment 2018 to the year of assessment 2026.⁷⁶

Real property gains tax

For an issuer or originator under a securitisation transaction, a real property gains tax exemption is available in respect of chargeable gains accruing on the disposal of any chargeable assets to or in favour of an SPV or in connection with the repurchase of such chargeable

68 Stamp Duty (Exemption) (No. 23) Order 2000 as amended by the Stamp Duty (Exemption) (No. 3) (Amendment) Order 2005.

69 Stamp Duty (Exemption) (No. 12) Order 2001.

70 Section 60I of the Income Tax Act 1967.

71 Income Tax (Exemption) (No. 14) Order 2007.

72 Income Tax (Deduction on the Cost of Issuance of the Islamic Securities) Rules 2007.

73 Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021. However, such tax deduction is only applicable where 90 per cent of the proceeds raised from the issuance of SRI *sukuk* is used solely for the purpose of funding SRI projects as specified in the Guidelines by the SC.

74 Income Tax (Deduction for Expenditure on Issuance of Sukuk and Retail Sukuk Structured Pursuant to the Principle of Wakalah) Rules 2021.

75 Income Tax (Exemption) (No. 2) Order 2022.

76 Income Tax (Exemption) (No. 3) Order 2022.

assets, to or in favour of the person from whom those assets were acquired.⁷⁷ Additionally, the issuer or originator is also exempted from the payment of real property gains tax in respect of chargeable gains accruing on the disposal of any chargeable assets in relation to the issuance of private debt securities under Islamic principles.⁷⁸

III OUTLOOK AND CONCLUSIONS

Malaysian economic growth is projected to continue throughout 2023 at a more modest pace pursuant to an increasingly challenging global environment and the normalisation in domestic demand. In line with the domestic economy, it can be expected that the Malaysian capital market will remain resilient due to strong macroeconomic fundamentals, a supportive capital market infrastructure, strong governance and ample liquidity. As of the first six months of 2023, the total funds raised in the equity and corporate bond market had reached 58.9 billion ringgit, signalling that the equity and bond markets have remained a significant source of financing for the private sector.⁷⁹

Additionally, the government intends to boost market vibrancy and enhance investor access to Malaysia's capital market to drive greater economic growth, inclusion and sustainability in line with the aspirations of Malaysia's MADANI Economy,⁸⁰ and the New Industrial Master Plan 2030. Several capital market initiatives have been announced to boost market vibrancy and enhance investor access, such as the reduction of stamp duty and enabling fractional share trading. Further, the SC announced on 26 September 2023 that it has signed a three-year memorandum of understanding with SME Corporation Malaysia to facilitate greater access to capital market financing for micro, small and medium-sized enterprises.⁸¹

77 Real Property Gains Tax (Exemption) Order 2001.

78 Real Property Gains Tax (Exemption) Order 2001.

79 <https://www.sc.com.my/resources/media/media-release/malaysia-to-boost-capital-market-vibrancy-investor-access>.

80 An economic framework announced by Malaysia's Prime Minister Datuk Seri Anwar Ibrahim on 27 July 2023 to address various challenges and issues related to the competitiveness and investment attractions in Malaysia, as well as outlining actions to address current issues that affect the lives of Malaysians.

81 <https://www.sc.com.my/resources/media/media-release/sc-sme-corp-malaysia-sign-mou-on-capital-market-financing-for-msmes>.

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