

COVID-19 PANDEMIC: LEGAL UPDATE FOR BORROWERS/CUSTOMERS AND BANKING AND FINANCIAL INSTITUTIONS IN MALAYSIA

Introduction

In the first quarter of 2020, we have witnessed an unprecedented catastrophe that strikes the global economy. The whole nation is now suffering from COVID-19 pandemic which has taken lives of thousands across the world. This great trepidation that is afflicting all of humankind has simply caused an economic downturn for businesses specifically on small and medium-sized enterprises (“**SMEs**”) and micro businesses/entrepreneurs. Due to this pandemic attack, the Malaysian government via Bank Negara Malaysia (“**BNM**”) has introduced some bold measures to help, among others, the SMEs and individuals to cushion the aftermath impact of COVID-19 outbreak and in the light of Movement Control Order (“**MCO**”) that has been imposed from 18 March 2020 until 14 April 2020.

Moratorium on Payment/Repayment of Financing/Loan

BNM through its public announcement on 24 March 2020 (“**BNM Announcement**”), has instructed all licensed banks, licensed Islamic banks, licensed investment banks and prescribed development financial institutions in Malaysia to grant individuals and SME borrowers/customers an automatic moratorium on all loans/financings (except for credit cards) repayments/payments. It will begin from 1 April 2020 for a period of 6 months. This moratorium is only applicable for performing loans/financings, denominated in Malaysian Ringgit, which have not been in arrears for more than 90 days as at 1 April 2020. The automatic moratorium is not applicable to the corporate borrowers/customers but the corporate borrowers/customers may apply to their respective banks and financial institutions for the moratorium. As stated in the BNM Announcement, banks and financial institutions are strongly encouraged to facilitate the request or application for the moratorium by corporate borrowers/customers.

During the moratorium period, BNM allows the interest for conventional loan to be charged on the outstanding principal amount. Whereas for Islamic financing, only the profit will accrue on the outstanding principal amount in compliant with the Shariah principle which forbids “*profit charges on profit*”.

Nevertheless, in mitigating the economic impact caused by the ongoing COVID-19, majority of the banks have announced that they will not compound interest accrued during the moratorium period and have decided to waive it for the benefits of their customers. This is indeed a laudable gesture by the banks to further assist their customers.

Additional Measures to Support SMEs Business During the Outbreak^[1]

Besides moratorium, in ensuring the survival of businesses impacted by COVID-19, the government has also introduced additional measures to enhance the existing financing facilities available for the SMEs. The measures are part of the RM250.0 billion Prihatin Rakyat Economic Stimulus Package (“**PRIHATIN**”), announced by the Honorable Prime Minister YAB Tan Sri Dato’ Haji Muhyiddin bin Haji Mohd Yassin on 27 March 2020. The stimulus package provides some relief to SMEs in sustaining businesses and preserving jobs. The slogan “no one will be left behind” depicts that everyone which includes SMEs are not neglected. SMEs are critical segment considering that this segment is capable to fuel local economies and will play an important role in the economic recovery after the outbreak. Therefore, PRIHATIN package provides additional funds worth RM4.0 billion and RM500 million to support SMEs and micro-entrepreneurs, respectively.

The assistance for SMEs covers few incentives as follows:

1. An increase of funds to the Special Relief Facility (“**SRF**”) for SMEs by RM3.0 billion bringing the total to RM5.0 billion. The maximum financing rate for the entire fund also has been reduced to 3.50% per annum from 3.75% per annum. With these changes, the SRF is expected to alleviate short-term cash flow problems faced by SMEs affected by Covid-19 outbreak.
2. An increase in the size of the All Economic Sector Facility (“**AES**”) fund by RM1.0 billion to RM6.8 billion to enhance access to financing for SMEs. Any interested SME is eligible to apply for financing facilities of up to the maximum amount of RM5.0 million per SME for the purpose of capital expenditures and/or working capital. The maximum financing rate for the entire fund is reduced from 8% per annum to 7% per annum.
3. SMEs with business records of less than 4 years can also avail themselves to BizMula-i and BizWanita-i schemes for financing of up to RM300,000.00 under the Credit Guarantee Malaysia Berhad (“**CGC**”).
4. Syarikat Jaminan Pembiayaan Perniagaan (“**SJPP**”) will provide RM5.0 billion worth of guarantees and increase the guarantee coverage from 70% to 80% for SMEs that face difficulties in obtaining loans/financings.

All of the above incentives are offered to all SMEs, with at least 51% held by Malaysians, as defined by National Entrepreneur and SME Development Council (“**NESDC**”). These incentives will help the SMEs to boost their financial stability and assist the government in escalating and sustaining the economic growth in Malaysia, especially during this outbreak and beyond.

Preparation of Legal Documents and Drawdown of Banking Facilities

Despite of the MCO that has restricted movements and business activities, the Malaysian banking and financial institutions continue to play a vital role in meeting their customers’ financial needs. The banks may consider to provide some leeway or exceptions for their customers (subject to banks’ credit and risk assessments of each customer) to enable them to continue utilizing the banking facilities for their business operations to remain afloat. The banks may consider allowing an early release for drawdown of the banking facilities pending the perfection of security documents subject to certain specific early drawdown conditions. The early drawdown of the banking facilities may be allowed in full or partial drawdown depending on the customers’ requirements and subject to the discretion and internal approval of the banks.

To safeguard the banks’ position, among the specific early drawdown conditions that can be imposed are:

(i) Execution of documents

Once the application of a particular customer has been approved, a letter of offer detailing an offer to provide banking facilities will be issued by the bank to the customer. The letter of offer must be accepted and executed by the authorized signatory of the customer to signify the acceptance of banking facilities by the customer.

With regards to other security documents, the bank shall ensure that the security documents have been properly executed by the customer and/or the security party(ies). During the MCO period, the bank may allow the acceptance and execution of the letter of offer and the security documents to be made in counterparts whereby each party to the agreement will execute a separate identical or duplicate copy of the same agreement and exchange the same (for example in pdf format) via electronic media. The executed copies of the agreement when read together will form a legally binding agreement between the bank and the customer. This will avoid or minimise physical contact so as to contain any potential spread of COVID-19. As a prudent practice, banks may want to inform the customers of the effect of the execution in counterparts vis-à-vis Evidence Act, 1950.

(ii) Stamping of Documents/ Registration at the Relevant Registry.

For the purpose of the early drawdown of the banking facilities, the solicitors shall undertake to stamp, register and perfect all the security documents (including to register them at the relevant registries such as Companies Commission of Malaysia (CCM), High Court, the land registry or such other registry/authority, where applicable) immediately after the MCO period has ended and the relevant registries/offices resume their operations and businesses. The solicitors shall also provide confirmation to the bank upon completion and perfection of the same.

For stamping of security documents, Lembaga Hasil Dalam Negeri (LHDN) has recently issued an explanatory note on their services whereby the stamping of instruments/documents can be made online and the stamp certificate will be generated once the online payment has been made.

(iii) Other Conditions

Banks may also require a separate letter of indemnity and undertaking from the customers to indemnify the banks against any loss that the banks may suffer for allowing the early drawdown of the banking facilities pending perfection of the security documents. The customers must also undertake to procure the perfection of the security documents immediately after the MCO period has ended and the relevant registries/offices resume their operations.

Apart from the above conditions, the banks shall also ensure that all standard terms and conditions for early drawdown of the banking facilities have been complied with by the customers.

Conclusion

With the PRIHATIN package, BNM moratorium measure and various financial assistance/incentives granted to soften the economic impact of COVID-19, it is our hope that the financial constraints caused by the outbreak that have affected businesses and individuals alike will be eased and at the same time, the banking and financial institutions will continue their role in sustaining the country's economy.

Important Information

Azmi & Associates has set up Azmilaw Covid Task Force to look into all issues arising from COVID-19 and MCO. Clients are welcomed to contact their usual Partner who will bring their issues to Azmilaw Covid Task Force for our further action.

1 Prihatin Rakyat Economic Stimulus Package ("**PRIHATIN**"), 27 March 2020 & Press Releases by BNM on Additional Measures to Further Support SMEs and Individuals Affected by the COVID-19 Outbreak, 27 March 2020

Contributed by:

Ahmad Syahir Yahya (*Partner*)

Nurul Syazwani Azman (*Associate*)

Khairul Fikry Jamaludin (*Pupil-in-Chambers*)

OUR SERVICES

Azmi & Associates' Global Financial Services and Islamic Banking practice group advises and handles various corporate banking and financing transactions. We provide legal advisory and services to banking and financial institutions and cooperative societies in structuring transactions, product development apart from drafting legal documentation and attending to the registration and perfection of the same.

If you have any enquiries, please contact our Partners below:



Ahmad Lutfi Abdull Mutalip
Head
Global Financial Services and Islamic
Banking
DL: 603 2118 5002
E: alam@azmilaw.com



Farhah Hayati Mamat
Partner
Global Financial Services and Islamic
Banking
DL: 603 2118 5012
E: farhah@azmilaw.com



Ahmad Syahir Yahya
Partner
Global Financial Services and Islamic
Banking
DL: 603 2118 5020
E: syahir@azmilaw.com

Corporate Communication

Azmi & Associates

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