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Latest News on Law, Tax and Business in Malaysia

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→ Short Term Economic Recovery Plan

The Short Term Economic Recovery Plan has been on 5 June 2020 and takes an inclusive and holistic approach to Malaysia's economic recovery. The Economic Recovery Plan, valued at MYR 35 billion, focuses on empowering people, propelling businesses and stimulating the economy.

EMPOWERING PEOPLE

- The wage subsidy program will be extended for a further three months with a subsidy of MYR 600 per employee for all eligible employers;
- The current wage subsidy program will also be enhanced to allow employers receiving the wage subsidy to implement a reduced work week and a reduced pay up to 30 per cent; and to allow employers (in the tourism sector and businesses prohibited from operating during the Conditional Movement Control Order) to receive wage subsidy for employees on unpaid leave subject to the employees receiving the subsidy directly;
- MYR 600 per month for apprenticeships for school leavers and graduates for up to 6 months;
- MYR 800 per month for up to 6 months for employment of unemployed workers below 40 years old. MYR 1,000 per month for up to 6 months for unemployed workers above 40 years old;
- Training allowance of MYR 4,000 per individual will be extended to those retrenched but not covered under the Employment Insurance System ("EIS");
- To support the growth of the gig economy and the welfare of gig economy workers, a matching grant of up to MYR 50 million for gig economy platforms contributing for their gig workers towards PERKESO's employment injury scheme of up to MYR 162 and EPF's i-Saraan contribution of up to MYR 250 yearly;
- Further tax deduction for employers which implement Flexible Work Arrangements ("FWAs") or undertake enhancements of their existing FWAs (effective 1 July 2020);
- Individual income tax exemption of up to MYR 5,000 to employees who receive a mobile phone, notebook or tablet from their employer (effective 1 July 2020);
- Special individual income tax relief of up to MYR 2,500 on the purchase of mobile phone, notebook or tablet (effective 1 June 2020);
- Increase in income tax relief for parents on childcare service expenses from MYR 2,000 to MYR 3,000 for Year of Assessment ("YA") 2020 and 2021;

- Introduction of an unlimited monthly travel pass costing MYR 30 for use on all rail services (MRT, LRT, and Monorail), BRT, RapidKL buses and MRT feeder buses;
- One off financial assistance of MYR 300 to vulnerable groups, i.e. disabled, single mothers with income below the poverty line, and volunteer Home Help Services;
- Grant for relevant registered Non-Governmental Organizations ("NGOs") to support vulnerable groups.

PROPELLING BUSINESSES

- The banking sector will offer an additional MYR 2 billion of funding with a maximum loan size of MYR 500,000 to assist SMEs adversely impacted by COVID-19 to sustain business operations at a concessionary rate of 3.5 per cent;
- To aid the tourism sector, a MYR 1 billion PENJANA Tourism Financing ("PTF") facility will be made available to finance transformation initiatives by SMEs in the tourism sector;
- New funding program for SMEs and micro enterprises at a subsidized interest rate of 3.5 per cent capped at MYR 50,000 per enterprise;
- To provide relief to SME's cash flows, the Malaysian government is encouraging Government Linked Companies ("GLCs") and large corporations to accelerate their vendors' payment terms;
- Eligible Micro enterprises and SMEs will be on-boarded to shift towards business digitalization through a co-funded program with MDeC and e-commerce platforms. Participating e-commerce platforms will provide on-boarding training, seller subsidy and sales support to eligible Micro SMEs;
- The Malaysian government will collaborate with e-commerce platforms to co-fund digital discount vouchers to encourage online spending on products from local retailers;
- Grants and loans to eligible enterprises for adoption or subscription of digitalization services under the SME Digitalization Matching Grant totaling MYR 100 million; SME Technology Transformation Fund totaling MYR 500 million loan; and Smart Automation Grant totaling MYR 100 million, capped at MYR 1 million per company.;
- Extension of period and scope of expenses allowed as tax deduction or capital allowance for COVID-19 testing; and purchase of PPE and thermal scanners;

- 50 per cent remission of penalty for late payment of Sales and Service Tax (“SST”) due and payable from 1 July 2020 to 30 September 2020;
- Extension of special tax deduction for renovation and refurbishment of business premises to 31 December 2021;
- Extension of Accelerated Capital Allowance on eligible capital expenses including ICT equipment to 31 December 2021;
- Extension of special deduction equivalent to 30 per cent deduction in rental for SMEs until 30 September 2020;
- To encourage the role of social enterprises in promoting responsible business, the Malaysian government will provide a matching grant through Malaysian Global Innovation & Creativity Centre (“MaGIC”) totaling MYR 10 million to social enterprises who are able to crowd-source contributions and donations to undertake social projects that will address the challenges faced by targeted communities through innovative ways;
- Income tax rebate up to MYR 20,000 per year for 3 YA’s for newly established SME between 1 July 2020 to 31 December 2021;
- Stamp duty exemption for SMEs on any instruments executed for Mergers and Acquisitions (“M&A”) for the period from 1 July 2020 to 30 June 2021.
- Real Property Gains Tax (“RPGT”) exemption for disposal of residential homes from 1 June 2020 to 31 December 2021, limited to the disposal of three units of residential homes per individual;
- The current 70 per cent margin of financing limit applicable for the third housing loan onwards for property valued at MYR 600,000 and above will be uplifted during the period of the HOC subject to internal risk management practices of financial institutions;
- Full sales tax exemption on locally assembled cars; and 50 per cent sales tax exemption on imported cars.;
- To attract foreign companies to relocate their business to Malaysia:
 - 0 per cent tax rate for 10 years for new investment in manufacturing sectors with capital investment between MYR 300 – 500 million;
 - 0 per cent tax rate for 15 years for new investment in manufacturing sectors with capital investment above MYR 500 million;
 - 100 per cent Investment Tax Allowance (“ITA”) for 5 years for existing companies in Malaysia relocating overseas facilities into Malaysia with capital investment above MYR 300 million;
 - Special Reinvestment Allowance (“RA”) for manufacturing and selected agriculture activity from YA 2020 to 2021;
 - Approval of manufacturing license for non-sensitive industry within 2 working days.
- To support the tourism sector, the Malaysian government will provide:
 - Tourism tax exemption from 1 July 2020 to 30 June 2021;
 - Extension of service tax exemption for hotels to 30 June 2021;
 - Extension of period for income tax relief of MYR 1,000 for tourism expenses to 31 December 2021;
 - Extension of period for deferment of tax instalment payment for tourism industry to 31 December 2020;
 - MYR 100 million in soft loans with interest rate of 3.5 per cent and MYR 30 million in grants for the creative, events and exhibitions industries under MyCreative Ventures and MYR 10 million for CENDANA;
 - MYR 50 million worth of digital marketing obtained from MYR 10 million Digital Marketing and Promotions Grant under MyCreative Ventures with a cap of MYR 5,000 per event;
 - MYR 35 million under MDeC for projects in the creative sector with a focus on animation and visual effects;

STIMULATING THE ECONOMY

- An investment fund will be established, which will match institutional private capital investment with selected venture capital and early stage tech-fund managers for seed stage/co-creation funds, series A/B funds, growth stage tech funds, venture debt funds, and opportunistic funds (e.g. sports and healthcare);
- To encourage contact free payment, Malaysians 18 years and above, earning less than MYR 100,000 annually, will be provided MYR 50 worth of e-wallet credits, and additional MYR 50 in value through vouchers, cashback and discounts by e-wallets;
- Home Ownership Campaign (“HOC”) to be reintroduced with stamp duty exemption on instruments of transfer and loan agreements for the purchase of residential homes priced between MYR 300,000 and MYR 2.5 million subject to at least 10 per cent discounts provided by the developers. The exemption on the instrument of transfer is limited to the first MYR 1 million of the home price while full stamp duty exemption is given on loan agreement effective for sales and purchase agreements signed between 1 June 2020 to 31 May 2021;

- 100 per cent export duty exemption from 1 July 2020 to 31 December 2020 for crude palm oil, crude palm kernel oil, and refined bleached deodorized palm kernel oil;
- Introduction of COVID-19 Temporary Measures Act to minimize disruption to social and economic well-being, and designed to provide sufficient runway for businesses to recover their operations. This Bill will provide relief from certain contractual obligations and financial distress for the revival of the economy.

We hope that this comprehensive review has provided you with a more thorough insight on what is

to come, and its implications on you and your business in Malaysia.

CONTACT FOR FURTHER INFORMATION



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→ Anti-Corruption: MACC Act 2009, Implementation of section 17A

Despite a suspension of the scheduled implementation of section 17A of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) being originally proposed, the Malaysian Prime Minister's Office decided to go ahead with the implementation as scheduled. The said provision of the MACC Act was gazetted on 27. May 2020 and is in force as of 1 June 2020.

WHAT IS NEW ?

Section 17A of the MACC Act introduces a new corporate and personal offence based on the concept of corporate and personal liability for acts of bribery.

A commercial organization and/or the individuals managing such a commercial organization now commit a criminal offence, if a person associated with the organization commits an act of bribery to secure an advantage for the organization. Contrary to Common Law provisions in force up to 1 June 2020, which required a degree of criminal intent, the new provision does not even require knowledge of the bribery committed in respect of the directors and/or managers of a company.

It also seems clear that the definition of the "associated person" will be interpreted widely, i.e. not just include officers and employees of the company, but also agents, business partners or even joint venture partners.

Upon conviction, the commercial organization may be liable to a penalty up to ten times the bribe paid

or offered or 1million MYR, whichever is higher. Against individuals managing the commercial organization convicted, a prison sentence of up to 20 years may be imposed.

DEFENCES

Once it is shown in court that an act of bribery has been committed by an associated person, only two defences are available to avoid conviction. In case of a commercial organization, the organization has to show that at the time the act of bribery was committed, it had **adequate procedures** in place to prevent such acts. In case of individuals managing a business, such individuals have to show that the offence was committed without their knowledge and that they exercised sufficient due diligence to prevent the offence from being committed. This effectively amounts to a reversal of the burden of proof as known in most parts of criminal law: the defendant has to show that he or she can rely on one of the defences.

ADEQUATE PROCEDURES

The mechanism of the new anti-bribery and corruption provisions clearly shows that the adequate procedures are not a "nice to have" compliance tool, but essential to protect the company and its officers from criminal liability in the future.

Guidelines on Adequate Procedures ("GAP") have been issued to assist companies to determine and understand what kind of proce-

dures may be deemed adequate in their particular case. Although, the content of adequate procedures will depend on the size, business model and risk profile of each individual organization, there are some common features identified by GAP as the five main principles of procedures:

- Top level commitment;
- Ongoing risk assessment;
- Control measures;
- Ongoing review, monitoring and enforcement;
- Training and communication.

Furthermore, it seems clear that companies should consider incorporating at least the following items into their procedures:

- Establish relevant policies and compliance programmes
- Appoint a risk management officer and create a risk register
- Conduct internal and external audits
- Conduct due diligence on third parties
- Adapt their documentation such as employment contracts, employee handbooks and also contracts with relevant third parties.

CONCLUSION

Senior personnel of commercial organizations should act now in their own interest to manage the risk of corporate and individual criminal liability. They should also keep in mind that a “one size fits all” procedure without an individual risk assessment and an ongoing programme supporting it will probably not be adequate for the purpose of the MACC Act.

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