KDN No: PP12857/8/2005

THE ZRp BRIEF

Words & Phrases

de minimis non curat lex :
The law does not concern itself with trifles

Brief: 3/05 Folder: 1/ January – March

BRIEFING...

LEGAL PROFESSION

BEARING THE BURDEN... The recent amendments to the Anti-Money Laundering Act 2001 created a ripple among those in the legal profession as it now imposes an obligation on an advocate and solicitor to report transactions that are suspected to involve the proceeds of an unlawful authority.

In this article we examine the scope and implications of such amendments.

INTRODUCTION TO THE ANTI-MONEY LAUNDERING ACT 2001 (AMLA) The Anti-Money Laundering Act 2001 ('the AMLA') creates the offence of money-laundering in section 4 to include that which involves:

- engaging, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
- acquiring, receiving, possessing, disguising, transferring, converting, exchanging, carrying, disposing, using, removing from or bringing into Malaysia proceeds of any unlawful activity;
- concealing, disguising or impeding the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity.

Apart from defining the offence, the framework of the AMLA is centred around the following:

- defining and prescribing the functions, responsibilities and powers of the 'competent authority';
- imposing the burden on the complying parties;
- prescribing the powers, functions and duties of the enforcement agencies.

Bank Negara Malaysia was appointed the 'competent authority' under section 7(1) of the AMLA vide PU(A)19/2002 with effect from 15 January 2002.

THE RECENTLY-ISSUED ORDERS By virtue of the Anti-Money Laundering (Amendment of the First Schedule) Order 2004 ('the Order'), the First Schedule to the AMLA was amended to re-define a 'reporting institution' to include an 'advocate and solicitor'.

GENERAL EFFECTS OF THE INVOKED SECTIONS The Order amending the First Schedule of the AMLA and invoking certain provisions of the same in respect of an advocate and solicitor have the effect of extending the scope of reporting obligations under the AMLA to an advocate and solicitor with effect from 30 September 2004. In addition to the reporting obligations, an advocate and solicitor's duty in respect of confidentiality of information and the legal professional privilege are overridden and immunity is accorded from civil, criminal and disciplinary proceedings. The question that arises is what exactly do these provisions entail for lawyers?

Each advocate and solicitor is now a 'reporting institution' It is worth noting that the invocation of the provisions of Part IV of the AMLA has the effect of making each and every advocate and solicitor a reporting institution. Thus there is an obligation on the part of an individual advocate and solicitor to promptly report transactions (vide a Suspicious Transaction Report form provided by the competent authority) that are suspected to involve the proceeds of an unlawful activity, which he encounters in the course of preparing or carrying out the activities.

The failure of a reporting institution to report a suspicious transaction is an offence for which a maximum penalty of RM250,000 is imposed and this is provided for in section 86 of the AMLA.

Confidentiality and Legal Professional Privilege Overridden Section 20 of the AMLA provides that the obligations of an advocate and solicitor with respect to secrecy or other restrictions on the disclosure of information imposed by written law or otherwise are overridden in respect of the reporting obligation. Hence an advocate and solicitor is required to make a suspicious transaction report notwithstanding the legal professional privilege and his duty to maintain confidentiality of information. In connection thereto, section 24 of the AMLA protects an advocate and solicitor unless the information was disclosed or supplied in bad faith. It is stated in that section:

> (1) No civil, criminal or disciplinary proceedings shall be brought against a person who -
>
> (a) discloses or supplies any information in any report made under this Part…*unless the information was disclosed or supplied in bad faith.*

In relation to confidentiality and the legal professional privilege, an advocate and solicitor should also be mindful of the implications of section 47 of the AMLA which empowers a judge to order such advocate to disclose information in respect of a transaction or dealing relating to any property liable to seizure under the AMLA. There is a saving provision in the same section which appears to preserve (to a limited extent) privileged information or communication coming to the knowledge of an advocate and solicitor for the purpose of any pending proceedings.

The question that arises is what happens after the information is disclosed by the advocate and solicitor to the competent authority? Section 79 prohibits the disclosure of information obtained by any person in the performance of his duties or the exercise of his functions under the AMLA except for the purpose of the performance of his duties or the exercise of his functions under the AMLA or when lawfully required to do so by any court or under the provisions of any written law. This section attempts to preserve the secrecy of information disclosed by the advocate and solicitor at a fine of RM1 million or a year's imprisonment or to both.

Vicarious liability In respect of the reporting obligation, section 87(1) of the AMLA appears to impose vicarious liability on, inter alia, a partner of a legal firm for a failure (either by an act or omission) by his legal firm (i.e. collectively, his partners) to report a suspicious transaction unless it can be shown that the offence was committed without his consent or connivance and that he had exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his function in that capacity and to the circumstances.

13. Section 87(4) of the AMLA attempts to impose vicarious liability on an advocate and solicitor for the act or omission of his agent or officer in the context of the reporting obligation.

What lawyers need to do As each advocate and solicitor is now a reporting institution, he would have an additional burden to monitor the affairs of his clients and scrutinise each and every transaction that comes his way. In addition, there is the vicarious liability apparently imposed by sections 87 and 88. Thus it is important to establish a strong foundation for the compliance structure to ensure that no advocate and solicitor is in danger of non-compliance with the reporting obligation.

In this regard the Bar Council has prepared a compliance framework for reference and adoption as well as some recommended compliance guidelines to assist the advocate and solicitor in complying with the reporting obligation - **ZR*p***

CORPORATE

RISE OF THE REITS... A REIT or Real Estate Investment Trust is a new type of investment vehicle gaining popularity in Asia. In fact in Hong Kong, on 30 July 2003, the Securities and Futures Commission issued its final Code on the Establishment and Marketing of REITs and in Malaysia, the Securities Commission issued its guidelines on REITs on 3 January 2005.

Why is 'REIT' the latest word to become part of corporate jargon? In this article, certain aspects of a REIT are examined as well as the reasons for the preference of such investment vehicle.

WHAT IS A REIT A REIT is an investment trust that owns and manages a pool of commercial properties, mortgages and other real estate assets. It is typically a passive investment vehicle that buys and operates apartment buildings, shopping centres and offices.

TYPES OF REITS There are various types of REITs:

- *Equity REITs* These are REITs that invest in and own properties. The revenue is generated principally from the rent of such properties;

- *Mortgage REITs* These REITs loan money to owners of real estate, to invest in or purchase existing mortgages or mortgage-backed securities. The revenue is generated primarily from the interests that they earn on mortgage loans;

- *Hybrid REITs* Hybrid REITs combine the investment strategies of Equity REITs and Mortgage REITs by investing in both properties and mortgages.

WHY REITS? Dividends are the primary reason for investing. REITs are required to distribute the majority of net income annually to its investors. Another attractive feature of a REIT is that it receives special tax considerations. For instance under Malaysia's Budget 2005, one of the measures is to exempt REITs from tax on income distributed to unit holders whereas the undistributed income will be taxed at 28%.

Such incentives may be seen in other jurisdictions such as the United States, Europe and Singapore.

THE FOREIGN POSITION Four REITs have been created in Singapore and Japan has 12. In Hong Kong, the fast growing popularity of REITs has led to the issuance by the Securities and Futures Commission of a final Code on the Establishment and Marketing of Real Estate Investment Trusts.

THE MALAYSIAN POSITION To this date, there are no REITs in Malaysia although the Securities Commission had, on 3 January 2005, released it guidelines on REITs in an effort to accelerate the growth of and establish a vibrant REIT industry in Malaysia. These guidelines supersede those on property trust funds that were issued in November 2002. The key features of the new guidelines include liberalisation of the borrowing limits for a REIT, relaxation of rules on acquisition of leasehold properties and flexibility in the acquisition of real estate.

'There's no question that what Kuala Lumpur needs is a very successful REIT launch', says Jeffrey Ng, President of the Real Estate & Housing Developers Association (REHDA). Analysts however say that a wide 'expectation gap' in Malaysia between the price landlords want for their buildings and the yields investors want, could stall the REIT market.

Malaysian developers are waiting and if what they say about Malaysian culture is true, all it takes is for someone to set a precedent - **ZR*p***

CORPORATE

THE 'RIGHT' RELATIONSHIP?
Though some argue that public-private partnerships (PPPs or 3Ps) bring out the best in both the public as well as the private sectors, others differ, citing that the loss of public control may be detrimental.

We address the question of whether a public-private partnership is in fact the right relationship.

WHAT IS A PPP The term 'Public Private Partnership' or 'PPP' defines projects that entail a contractual relationship between the public and private sectors to produce an asset or deliver a service. In fact various forms of cooperation between the private sector and the local/ national governments are used frequently to develop and expand energy and utility networks and services, extend telecommunications and transportation systems, construct and operate water, sewer and waste treatment facilities and provide health, education and other services.

Malaysia pioneered PPPs in the early 1990s – the common form being Build-Operate-and-Transfer (BOT) used mainly for toll roads.

TYPES OF PPPS There are various forms of partnerships between the private and public sector, the more common ones being:

Build-Operate-and-Transfer (BOT) A BOT scheme involves the private sector constructing a facility using its own funds, operating it for a period known as a concession period and transferring it to the government at the end of that period. During the concession period, the private sector is allowed to collect revenue directly from the users of the facility or indirectly through an intermediary, usually a government institution.

Public-private joint ventures These are joint ventures between the two entities or where the government retains some share of the stock in profitable or politically strategic companies.

Voluntary/informal public-private cooperation This venture involves voluntary cooperation among private corporations in addressing important social issues and in providing public services.

Private Finance Initiatives (PFIs) These are relatively new concepts and a good understanding of how it functions could be obtained from studying the UK system. First launched in the UK in 1992, PFIs have grown into one of the government's most significant means to fund infrastructure developments. The gist of these procurements is that the private sector provides the financing for the project, including the purchase of any major assets to be used in carrying it out. One good example is the building of highways by the private sector and the collection of revenue by charging the road users through toll. Also there are many instances where the government itself pays the private firm for the use of the asset or for the goods or services that it generates. However, due to the large sums of money, assets and risks involved with such projects that are borne by the contractor, it would not always be practicable or possibly feasible for a developing country to have many PFIs.

WHY PPPS? Whilst some argue that a PPP is not the answer, the advantages of the same are apparent. A partnership which involves the private sector will necessarily enhance managerial capacity and enable access to new technology. Furthermore, having the government as a partner may assist in avoiding bureaucratic problems that are usually the bane of project developers.

There are no specific guidelines regulating PPPs in Malaysia but if she wants to be a fully developed nation by 2020, Malaysia may want to adopt some of the models of other countries who are leaders in PPPs, such as the UK and Australia – **ZR*p***

COMMERCIAL

CULTIVATING HEALTHY COMPETITION? With the US Sherman Antitrust Act 1890 and the Australian Industries Preservation Act 1906, we know that competition laws have existed for more than a 100 years.

We now recognize a growing need for competition laws in Asian countries and in this article we examine the extent of such need in Malaysia.

COMPETITION, COMPETITION POLICY AND COMPETITION LAW The United Nations Conference on Trade and Development (UNCTAD) has defined 'competition' as 'the process of rivalry among firms and to market structures conducive to such rivalry' whereas 'competition policy' according to UNCTAD, is 'policy aimed at preserving and promoting competition, both by enforcing competition law against restrictive business practices by firms and by influencing the design and implementation of other governmental policies or measures affecting competition.' Competition law on the other hand is part of competition policy.

THE LEGAL FRAMEWORK Competition has always been regulated at the sectoral level in the country. The Malaysian method of monitoring competition has been to deal directly with the specific industries, with emphasis on the protection of consumers in general. This can be seen from the Trade Descriptions Act 1972, Direct Sales Act 1993, Price Control Act 1946 and many others including the relatively recent Consumer Protection Act 1999.

Although one of its main aims is to protect the consumers, competition law is generally intended to encourage healthy competition among enterprises. The Communications and Multimedia Act 1998 ('the CMA') was therefore enacted and took effect from 1 April 1999. The CMA has a complete set of regulations encompassing the communications and information sector in the country. It identifies more specific anti-competitive conducts such as collusion, rate-fixing, market sharing and other activities deemed illegal.

It must be noted however that to this date, there is no comprehensive law formulated to regulate competition although, since 1992, there have been whispers of a Fair Trade Practices Bill that is based primarily on the Australian Trade Practices Act 1974 and the New Zealand Commerce Act 1986. In 1999 a Working Committee on Competition Policy and Law was also set up at the national level. In addition, continuous studies are being conducted for a comprehensive national competition policy and law.

THE SINGAPORE EXPERIENCE There had been a flurry of excitement recently in the South East Asian legal fraternity with the enforcement of the Singapore Competition Act ('the Act') which took effect from 19 October 2004. The Act will come into force in three stages, namely (a) 1 January 2005, the provisions on the Competition Commission; (b) 1 January 2006, the substantive provisions dealing with anti-competitive behaviour and dominance; and (c) 1 January 2007, the provisions on mergers and acquisitions.

A NEED FOR REGULATION? The main aim of competition laws is to ensure that consumers pay the lowest possible price for the highest quality goods and services. Competition laws also prevent abuse of dominant positions of market power and mergers and acquisitions and indicate fair trade culture and competition ethics. According to a report by the Consumer International Asia Pacific, it is estimated that almost two thirds of the World Trade Organisation members have implemented some form of competition policy. Perhaps it is time for Malaysia to follow suit – **ZR*p***

BRIEF-CASE...

CONSTITUTIONAL LAW

DATO SERI ANWAR IBRAHIM v PUBLIC PROSECUTOR September 2004, Federal Court

FACTS The appellant was convicted by the High Court on four counts of corrupt practice under section 2 of the Emergency (Essential Powers) Ordinance No 22 of 1970 and was sentenced to 6 years' imprisonment on each charge. The applicant's appeal was dismissed by the Court of Appeal and the Federal Court. The applicant then applied to the Federal Court to review the judgment under rule 137 of the Rules of the Federal Court 1995 ('the RFC').

Rule 137 of the RFC that provides for the inherent powers of the court states that '…nothing in these Rules shall be deemed to limit or affect the inherent powers of the court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court.'

ISSUE The issue for consideration was whether the Federal Court had the jurisdiction to hear such an application and whether rule 137 of the RFC contradicted the Federal Constitution and Courts of Judicature Act 1964.

HELD It was held by the Federal Court that it has jurisdiction to hear an application brought before it under rule 137 of the RFC and that it has the power to reopen, rehear or review its own decision if there are allegations of injustice or abuse of the powers of the court. However the facts and circumstances of the case did not warrant an exercise of inherent powers under the rule - **ZR*p***

ARBITRATION

THYE HIN ENTERPRISES SDN BHD v DAILMER CHRYSLER MALAYSIA SDN BHD July 2004, Court of Appeal

FACTS The plaintiff/appellant (Thye Hin Enterprises Sdn Bhd) and the defendant/respondent (Daimler Chrysler Malaysia Sdn Bhd) entered into a dealership agreement which provided that any dispute arising therefrom as between the parties shall be referred to arbitration at the Regional Centre for Arbitration at Kuala Lumpur ('the RCAKL'). A dispute arose and pending the resolution of the same the plaintiff applied for an interim injunction to maintain the status quo of the parties.

ISSUE The defendant raised an objection, stating that the plaintiff should be denied the injunction on the basis of section 34 of the Arbitration Act 1952 ('the AA') where it is stated that 'notwithstanding anything to the contrary in the Act or any other written law… the provisions of this Act or other written law shall not apply to any arbitration held under the Convention on the Settlement of Investment Disputes Between States and Nationals of the other States 1965 or under the United Nations Commission on International Trade Law Arbitration Rules 1976 and the *Rules of the Regional Centre for Arbitration at Kuala Lumpur*.'

HELD It was held that section 34 of the AA only excluded interference with the arbitration itself and has no application to cases where interim relief is urgently required, the basis of this proposition being article 26 of the UNICITRAL Arbitration Rules of 1976 which provides that 'a request for interim measures addressed by any party to judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement' – **ZR*p***

CONVEYANCING

WESTCOURT CORPORATION SDN BHD v TRIBUNAL TUNTUTAN PEMBELI RUMAH September 2004, Federal Court

FACTS On 27 March 2003, the Tribunal for Housebuyers' claims ('the tribunal') decided that the appellant (Westcourt Corporation Sdn Bhd) was liable to pay one Tan Geok Moi (a claimant) a sum of RM13,926.74. On 4 September 2003, the High Court decided that the tribunal did not have the jurisdiction to hear claims where the sale and purchase agreement was entered into before 1 December 2002 bearing in mind that the tribunal was constituted under the Housing Developers (Control and Licensing) Amendment Act 2002 ('the Act') which took effect only from 1 December 2002. The tribunal appealed against that decision to the Court of Appeal. The Court of Appeal allowed the appeal of the tribunal, hence this appeal to the Federal Court.

ISSUE Whether the tribunal has jurisdiction to hear and adjudicate cases where the sale and purchase agreement was entered into before 1 December 2002, and, if so, to what extent.

HELD The tribunal has jurisdiction to hear a claim that arose from an agreement that was entered into before 1 December 2002. The provisions of the Act are loosely prescribed and this reflects Parliament's intention to provide a simple forum for homebuyers to file their claims.

Furthermore the choice of forum is a matter of procedure and not a substantive right. In this case the Act provides for a change of forum from the courts to the tribunal. This relates to the realm of procedure and is not a substantive right. It therefore operates retrospectively – **ZR*p***

WONG SIEW CHOONG v ANVEST CORPORATION September 2004, Federal Court

FACTS The appellant (Wong Siew Choong) and the respondent (Anvest Corporation) entered into a sale and purchase agreement of land. Disputes arose and it was eventually decided by the Federal Court that there was a valid and binding contract and that the respondent was entitled to specific performance of the agreement. The respondent then applied to the High Court for specific performance. In the meantime, part of the land was acquired and compensation in the amount of RM5 million was awarded.

ISSUE The issue was who was entitled to the RM5 million. There was no doubt that legal ownership vested in the appellant. What was significant was whether the respondent could be deemed to be the beneficial owner at the time of the acquisition as it was the beneficial owner who would be entitled to the RM5 million award.

HELD The 1996 Federal Court case of *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* was followed where it was stated by Edgar Joseph Jr FCJ that a purchaser in a sale and purchase agreement becomes the beneficial owner '…on completion, that is to say, upon receipt by the vendor of the full purchase price, timeously paid and when the vendor has given the purchaser a duly executed, valid and registrable transfer of the land in due form in favour of the purchaser, for it is then that the vendor divests himself of his interest in the land.' On the facts of the present case, since there was no duly executed valid and registrable transfer of the land in favour of the respondent, it could not be said that the respondent was the beneficial owner of the land and the

compensation therefore belonged to the appellant – **ZR*p***

CONSTITUTIONAL LAW/ INDUSTRIAL RELATIONS

BEATRICE FERNANDEZ V SISTEM PENERBANGAN MALAYSIA & ANOR October 2004, Court of Appeal

FACTS The appellant (Beatrice Fernandez) was a flight attendant whose collective agreement provided that the appellant was to resign upon becoming pregnant, failing which the first respondent (Sistem Penerbangan Malaysia) would have the right to terminate her employment. The appellant who became pregnant had her contract terminated as she had refused to resign. She brought an action against the respondent on the basis that the termination of her contract of employment was void as it had contradicted article 8 of the Federal Constitution.

It is stated in article 8 of the Federal Constitution that '...there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or *gender* in any law or in the appointment to any office or employment under a public authority or in the administration of any law…' It is to be noted that article 8 of the Federal Constitution was amended on 28 September 2001 to include the word *gender*.

HELD In dismissing the appeal, it was held that article 8 of the Federal Constitution is not applicable in this case as a collective agreement is not law and therefore does not fall within such context. Furthermore the amendment took effect from 28 September 2001 whilst the agreement was dated 3 May 1998. In any event, even if article 8 of the Federal Constitution did apply, the collective agreement could not be said to have been discriminatory on the basis that it would be just as unreasonable to say that the provision of law giving maternity leave to women only is discriminatory as against men – **ZR*p***

LEGAL PROFESSION

THREE RIVERS DISTRICT COUNCIL & ORS V GOVERNOR AND COMPANY OF THE BANK OF ENGLAND November 2004, House of Lords (UK)

FACTS The Bingham Inquiry ('the Inquiry') was established to inquire into the supervisory/regulatory role of the Bank of England in relation to the collapse of the then Bank of Credit & Commerce International (BCCI). After the Inquiry had been completed, suits were filed by the creditors of BCCI against the Bank of England claiming that the latter in its role as regulator had been negligent in carrying its supervisory and regulatory role and as a result, the irregularities within BCCI were left unchecked. To strengthen their case, the creditors sought discovery of documents that had been presented by the Bank of England to the Inquiry. The Bank of England resisted the discovery application and claimed that those documents were covered by legal advice privilege. The documents were prepared by the employees of the Bank of England, with the assistance and the advice of the latter's solicitors for presentation to the Inquiry. Both the High Court and the Court of Appeal ruled that the documents were not covered by privilege.

ISSUE The issue was whether the rule concerning solicitor-client privilege applied to these documents.

HELD The House of Lords highlighted the absolute nature of privilege and premised its decision upon the need of a client to be able to seek legal advice from his legal adviser with complete candor, which could only be satisfied if the client was guaranteed absolute confidentiality. As a result, it was held that such documents that were prepared for presentation to the Inquiry, were indeed protected by legal advice privilege – **ZR*p***

BANKING

COMMISSIONERS OF CUSTOMS & EXCISE V BARCLAYS BANK PLC ENGLAND November 2004, Court of Appeal (UK)

FACTS In this case the claimants/ plaintiffs had obtained a freezing order (also known as an injunction) in relation to, inter alia, certain accounts maintained with the bank. A few hours after receiving notice of this order, the bank acting on instructions of the customer (who had given those instructions directly to the bank's payment centre, instead of the account holding branch) transferred large sums of money from the account. The claimants subsequently claimed damages against the bank on the grounds of the bank's negligence to comply with the freezing order.

ISSUE The issue for consideration was whether a bank that had notice of a freezing order, was under a duty of care to ensure that the injunction is not breached.

HELD In holding the bank liable for damages, the Court of Appeal ruled that a bank has a duty to ensure that funds in an account subject to a freezing injunction should not be dissipated in breach of that injunction. The court held that the necessary elements of foreseeability and proximity were present, and as such the bank owed a duty of care towards the claimants who had obtained the injunction.

Lord Justice Peter Gibson elucidated that:

> …practical justice requires the recognition of such a duty and that *banks should take proper steps to ensure compliance with court orders once it is notified of it* [emphasis ours].

ANALYSIS This decision has serious implications for bankers as they may be liable not only for contempt of court, if they negligently permit the disposition of assets that are subject to a freezing order, but also being separately liable for damages for breaching the duty of care owed to the party who had obtained the injunction. It was also observed by the Court of Appeal that a freezing order would have no practical effect unless banks are imposed with a corresponding duty to ensure that monies in the accounts that have been frozen would not be dissipated until the principal action is concluded, or as directed by a further order of the court.

To avoid bankers from being cited with contempt of court, whilst also avoiding the bank from being the defendant in a negligence suit, it is imperative that banks should immediately freeze all accounts that belong to parties who are named in a freezing order. If the branch of a bank is served with a copy of such an order, the branch must immediately transmit the contents of the order to the head office of the bank so that instructions could be given to all branches of the bank to freeze any account that may be affected by the order.

Similarly, if a central payment centre or a branch that is not the account holding branch were to receive instructions to transfer out sums of monies, enquiries should be made with the account holding branch on whether a copy of an injunction has been received or not. It is also advisable that if a banker is in doubt on whether to freeze a particular account or not, the banker should apply to the court which had originally issued the freezing order for a ruling to clarify the scope of the injunction.

In 1973, a young deputy district attorney in Kern County, California was trying a consumer fraud case before Judge Walter Conley. The judge who rapidly grew exasperated with the rookie lawyer's line of questioning warned, "If you keep on asking these idiotic questions, I am going to send you to some place you have never been."

'You mean jail, your honour?" the attorney asked. "No," replied the judge. "Law school !"

BRIEF-UP...

SECURITIES COMMISSION (SC)

SC GUIDELINES ON THE ESTABLISHMENT OF ELECTRONIC ACCESS FACILITIES BY UNIVERSAL BROKERS AND ELIGIBLE NON-UNIVERSAL BROKERS

Date of coming into operation
5 November 2004

Notes
These Guidelines provide that any eligible stock-broking company (a collective reference to Universal Brokers and Eligible Non-Universal Brokers) is permitted to establish four additional branches, or electronic access facilities, or electronic access facilities with permitted activities or a combination thereof, which should not exceed four in total – ZR*p*

PRACTICE NOTE 1 TO THE SC GUIDELINES ON THE ESTABLISHMENT OF ELECTRONIC ACCESS FACILITIES BY UNIVERSAL BROKERS AND ELIGIBLE NON-UNIVERSAL BROKERS

Date of coming into operation
5 November 2004

Notes
This Practice Note clarifies the additional activities allowed to be undertaken at the electronic access facilities established by eligible stockbroking companies under the *Guidelines on the Establishment of Electronic Access Facilities by Universal Brokers and Non-Universal Brokers* – ZR*p*

SC GUIDELINES FOR A UNIVERSAL BROKER

Date of coming into operation
23 November 2004

Notes
The minimum qualifying criteria to become a Universal Broker have been amended to the effect that the minimum paid-up capital required of the merged stock-broking company has been reduced to RM100 million and it must now have a minimum shareholders' funds unimpaired by losses of RM100 million as opposed to the previous requirement of a minimum core capital of RM250 million – ZR*p*

SC GUIDELINES ON THE ESTABLISHMENT AND LOCATION OF A BRANCH OFFICE BY A UNIVERSAL BROKER AND A NON-UNIVERSAL BROKER

Date of coming into operation
5 November 2004

Notes
The amendments to these Guidelines ('the amended Guidelines') were effected to reflect the changes in terminology and provisions that any eligible stock-broking company is now permitted to establish four additional branches, or electronic access facilities, or electronic access facilities with permitted activities or a combination thereof, which should not exceed four in total. The amended Guidelines also set out the criteria on the location of the branch office and the procedures to be undertaken in establishing the additional branch office – ZR*p*

GUIDANCE NOTE 4 TO THE SC GUIDELINES ON ONLINE TRANSACTIONS OF AND ONLINE ACTIVITIES IN RELATION TO UNIT TRUSTS

Date issued
10 November 2004

Notes
Guidance Note 4 was issued to notify the public of a policy amendment in relation to the provisions applicable to a unit trust management company intending to undertake online transactions of unit trusts stipulated under Chapter 4 of the *SC Guidelines on Advertisement and Promotional Material under the Guidelines on Unit Trust Funds*.

Clause 4.09(1) of the *Guidelines on Online Transactions of and Online Activities in Relation to Unit Trusts* ('the Guidelines') was amended to include a proviso that the prohibition of transactions conducted via electronic transmission does not apply to parties that are approved by the SC to carry out online transactions under the Guidelines – ZR*p*

PRACTICE NOTE 1 TO THE SC GUIDELINES ON MINIMUM CONTENTS REQUIREMENTS FOR TRUST DEEDS

Date issued
10 November 2004

Notes
This Practice Note was issued to clarify the interpretation of certain terms in the *Guidelines on the Minimum Contents Requirements for Trust Deeds* in relation to the issue, offer or invitation of Islamic securities under the *Guidelines on the Offering of Islamic Securities* – ZR*p*

PRACTICE NOTE 1 TO SC GUIDELINES ON THE OFFERING OF ISLAMIC SECURITIES

Date issued
10 November 2004

Notes
This Practice Note was issued to dis-apply, vary or clarify the application of the *Guidelines on the Offering of Islamic Securities* ('the Guidelines') to the issue, offer or invitation of foreign currency denominated Islamic securities of a Malaysian company made exclusively to persons outside of Malaysia. In such circumstances, exemptions from certain provisions of the Guidelines have been accorded, among others, in relation to offering of Islamic securities under a shelf registration scheme, rating requirement, underwriting and mode of issue - ZR*p*

PRACTICE NOTE 2 TO THE SC GUIDELINES ON THE OFFERING OF ISLAMIC SECURITIES

Date issued
10 November 2004

Notes
This Practice Note was issued to dis-apply, vary or clarify the application of the *Guidelines on the Offering of Islamic Securities* ('the Guidelines') to the issue, offer or invitation of Ringgit-denominated Islamic securities by a Multinational Development Bank (MDB) or Multilateral Financial Institution (MFI) in Malaysia.

Exemptions from various requirements of the Guidelines have been accorded in such circumstances - ZR*p*

PRACTICE NOTE 1 TO THE SC GUIDELINES ON THE ESTABLISHMENT AND LOCATION OF BRANCH OFFICE BY A UNIVERSAL BROKER AND A NON-UNIVERSAL BROKER

Date of coming into operation
5 November 2004

Notes
This Practice Note was amended to reflect the terminology changes as well as criteria in relation to eligible stock-broking companies that intend to set up branch offices pursuant to the *Guidelines on the Establishment and Location of a Branch Office by Eligible Stockbroking Companies* amended as at 5 November 2004 - **ZR*p***

SC CIRCULAR ON THE GUIDELINES ON UNIT TRUST FUNDS (PUBLICATION OF SELLING AND REPURCHASE PRICE)

Date of coming into operation
5 November 2004

Notes
This Circular clarifies that the proviso to Clause 14.06(1) of the *Guidelines on Unit Trust Funds* that applies to sales and repurchases applies also to sales and repurchase charges. The Circular further states that where sales and/or repurchases are allowed after the offer period but on a periodic basis, the selling price, repurchase price, sales charge and repurchase charge must be published in at least one national Bahasa Malaysia and one national English newspaper on the selling and repurchase day and the immediate day thereafter - **ZR*p***

SC GUIDELINES ON ONLINE TRANSACTIONS OF AND ONLINE ACTIVITIES IN RELATION TO UNIT TRUSTS

Date of coming into operation
24 November 2004

Notes
These Guidelines were issued to facilitate the establishment of online services by unit trust management companies. It incorporates elements to ensure that the rights of Malaysian investors are upheld in the posting of e-prospectuses and e-application forms and provision of internet facilities including online transactions - **ZR*p***

SC INVESTOR'S GUIDE TO ONLINE INVESTING IN UNIT TRUSTS

Date issued
24 November 2004

Notes
This Guide was issued in conjunction with the release of the *Guidelines on Online Transactions of and Online Activities in relation to Unit Trusts* on 24 November 2004 - **ZR*p***

No law is equally convenient for everyone; the only question is whether it is beneficial on the whole and good for the majority – Livy (59BC – AD17)

GUIDANCE NOTE 2 TO THE POLICIES AND GUIDELINES ON THE ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 2 (Definitions and Interpretation) of the Policies and Guidelines on Issue/Offer of Securities* ('the Guidelines') to clarify the definition of 'KLSE' in Chapter 2 and throughout the Guidelines as meaning Bursa Malaysia Securities Berhad, as a consequence of the demutualisation of the KLSE - ZR*p*

GUIDANCE NOTE 11 TO THE POLICIES AND GUIDELINES ON THE ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 11 (Acquisitions of Foreign Assets) of the Policies and Guidelines on Issue/Offer of Securities* in order to clarify the requirements relating to the acquisition of foreign assets as stated in Chapter 11 and to replace paragraph 11.03 thereof.

Public companies intending to acquire substantial foreign assets (other than by way of cash) are no longer required to finance the acquisition entirely through issuance of securities. However, the said assets to be acquired should be of acceptable quality and must comply with the criteria set out in this Guidance Note – ZR*p*

GUIDANCE NOTE 6C TO THE POLICIES AND GUIDELINES ON THE ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 6 (Public Offerings and Listings on the Exchange) of the Policies and Guidelines on Issue/Offer of Securities* ('the Guidelines') to clarify the requirements relating to the minimum public offer size requirement for companies seeking listing on the Bursa Malaysia and the criteria for re-listing of de-listed Practice Note (PN) 4 companies – ZR*p*

GUIDANCE NOTE 7C TO THE POLICIES AND GUIDELINES ON THE ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 7 (Special Requirements for the Listing of Specific Companies) of the Policies and Guidelines on Issue/Offer of Securities* to clarify the requirements relating to the listing of property-investment companies on the Bursa Malaysia and the requirements relating to property development and construction companies.

The Guidance Note sets out additional criteria for compliance in relation to the listing of property-investment companies and the factors which will be considered by the SC in its evaluation of the prospects of such companies to be listed – ZR*p*

GUIDANCE NOTE 12B TO THE POLICIES AND GUIDELINES ON THE ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 12 (Significant Changes in Business Direction) of the Policies and Guidelines on Issue/Offer of Securities* ('the Guidelines') in order to clarify the requirements relating to the acquisition of specific companies, property-development, property-investment and construction companies/assets and foreign assets by listed companies resulting in a significant change in business direction.

Definition and scope were given to the terms 'specific companies' and 'financial services companies' respectively whilst paragraph 12.10(a) of Chapter 12 is no longer made applicable. The provisions of Guidance Note 12A have also been replaced completely.

In relation to the acquisition of property-development, property-investment, construction and specific companies (foreign-based or otherwise) resulting in a significant change in business direction, these can only be undertaken by Main Board companies or Second Board companies together with a simultaneous transfer to the Main Board. The proposal for such a transfer must comply with the requirements for transfer set out in Guidance Note 15A.

Specific companies (except infrastructure project companies) and property-investment companies to be acquired must comply with paragraphs 6.13(a)(i), (iii) and (iv) of Chapter 6 of these Guidelines. In addition, such specific companies must also comply with the relevant provisions of Chapter 7 of the Guidelines while property-investment companies to be acquired must comply with paragraphs 3(a) to (c) of Guidance Note 7C.

The acquisition of foreign assets (apart from those which are property-development, property-investment, construction or specific companies) resulting in a significant change in business direction must comply with paragraph 12.07 of Chapter 12 of the Guidelines and may be undertaken by Main Board companies or Second Board companies without a transfer to the Main Board. For all acquisitions of foreign assets resulting in a change in dominant shareholder (irrespective of type of asset), the new dominant shareholder must be Malaysian - ZR*p*

GUIDANCE NOTE 13A TO THE POLICIES AND GUIDELINES ON THE ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 13 (Proposals by Distressed Listed Companies) of the Policies and Guidelines on Issue/Offer of Securities* ('the Guidelines') in order to clarify the requirements that are applicable for proposals by distressed listed companies.

The definition of 'distressed listed companies' under paragraph 13.01 of Chapter 13 of the Guidelines also includes a listed company falling under PN 17 of the BMSB Listing Requirements.

Paragraphs 13.01(e)(ii), 13.04, 13.05, 13.06 and 13.07 which previously accorded flexibilities in relation to injection of assets as part of a restructuring scheme no longer apply to proposals by distressed listed companies.

Guidance Note 13 issued pursuant to Chapter 13 is no longer applicable but distressed listed companies must still comply with all the other requirements of Chapter 13 and any other relevant chapters of the Guidelines – ZR*p*

GUIDANCE NOTE 15A TO THE POLICIES AND GUIDELINES ON ISSUE/OFFER OF SECURITIES

Date of coming into operation
1 January 2005

Notes
This Guidance Note was issued pursuant to *Chapter 15 (Miscellaneous) of the Policies and Guidelines on Issue/Offer of Securities* ('the Guidelines') in order to clarify certain aspects of the provisions in Chapter 15 and to replace paragraphs 15.01 to 15.03 of Chapter 15. The provisions apply to companies listed on the Second Board or the MESDAQ Market intending to transfer to the Main Board.

In relation to fulfilling the Main Board historical profit track record test, if the applicant is seeking to transfer based on its original core business, it does not need to comply with the uninterrupted profit record test set out in paragraph 6.13(a)(i) of Chapter 6 of the Guidelines. If it has undertaken an acquisition resulting in a significant change in business direction within five years prior to the proposed transfer exercise, the relevant requirements are to be met by either the new injected assets or the original core business.

In relation to fulfilling the Market Capitalisation test, the average daily market capitalisation of the ordinary shares of the applicant in the one year ending on the last business day of the calendar month immediately preceding the date of the announcement and the date of the submission must be at least RM250 million based on the daily volume-weighted average price.

In fulfilling certain elements of both tests, compliance with the relevant requirements should be based on the latest available annual audited financial results at the point of submission to the SC (and not on the proposed date of transfer to the Main Board)

- ZR*p*

BURSA MALAYSIA SECURITIES BERHAD (BMSB)

AMENDMENTS TO THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD AND SECOND BOARD RELATING TO CONTINUING EDUCATION PROGRAMME

Date of coming into operation
1 January 2005

Amendments
Appendix 9C Part A Paragraph 15.09;
PN 5/2001 (Paragraphs 1.3, 3.0, 3.1, 3.2, 4.1, 5.1)

Introduction
Paragraph 3.3 (PN 5/2001)

Deletion
PN 15/2003

Notes
The Continuing Education Programme (CEP) for directors, which was prescribed by Bursa Malaysia as being compulsory for the years 2003 and 2004, has been repealed with effect from 1 January 2005 as a result of the amendments to paragraph 15.09 of the listing requirements and PN 5/2001 and the repeal of PN 15/2003. Instead, the boards of directors for the respective public listed companies are now made responsible for determining the training needs of their directors.

The amendments also include a requirement for disclosure in the Annual Report on whether the directors have attended training for the financial year, and in the absence of such training, reasons thereof are required to be stated. To this effect, a new provision was also inserted in Appendix 9C of Part A (Contents of Annual Report).

Directors who are required to comply with their obligations under PN 15 prior to its repeal, must, however, continue to fulfil the

accumulation of such CEP points. Details on the minimum number of CEP points to be accumulated by the directors for the calendar year are stipulated in the amended provisions. These directors have up to 31 December 2005 to do the same, having been accorded an extension from the initial deadline of 31 December 2004 by virtue of the amendments. Further, these directors must also attend such training as may be determined by their board of directors from 1 January 2005 onwards - ZR*p*

AMENDMENTS TO CHAPTER 16 OF THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD AND SECOND BOARD

Date of coming into operation
3 November 2004

Amendments
Paragraphs 16.01, 16.02, 16.04, 16.09, 16.16, 16.17

Notes
Chapter 16 of the BMSB Listing Requirements ('the Listing Requirements') has been amended to reflect the current arrangements with the SC in relation to enforcement actions taken by Bursa Malaysia pursuant to the Listing Requirements. Further, the powers of Bursa Malaysia in relation to the suspension and de-listing of a listed issuer have been extended to 'any class of its listed securities'.

The amendments have imposed obligations on Bursa Malaysia to notify the SC of any decision to (i) suspend the trading of any class of the listed securities of a listed issuer; (ii) approve a request for withdrawal from the Official List; and (iii) take or impose any action or penalty referred to in paragraph 16.17 in respect of a breach of the requirements. Bursa Malaysia may also de-list a listed issuer or any class of its listed securities in circumstances provided under paragraph 8.15(5) - ZR*p*

AMENDMENTS TO THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD AND SECOND BOARD RELATING TO THE DEFINITION OF 'RULES OF DEPOSITORY'

Date of coming into operation
8 October 2004

Amendment
Paragraph 1.01

Notes
Reference is now made directly to the definition contained in the Securities Industry (Central Depositories) Act 1991 instead of the Securities Industries Act 1983. The Securities Industries Act 1983 also refers to the definition assigned in the Securities Industry (Central Depositories) Act 1991 - ZR*p*

AMENDMENTS TO CHAPTER 3 OF THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD & SECOND BOARD

Date of coming into operation
14 December 2004

Amendment
Paragraph 3.16

Introduction
Paragraph 3.15A

Notes
This amendment relates to initial listing applications by companies. New paragraph 3.15A requires applicants seeking listing on the Main Board, Second Board or MESDAQ Market to submit a written confirmation to Bursa Malaysia stating that the information set out in the applicant's register of members is updated and accurate. Such written confirmation must be submitted prior to the issuance of the company's prospectus or

introductory document or proposed books closing date, as the case may be.

As such, the prescription notice that the securities of an applicant must be deposited with Bursa Malaysia Depository Berhad (as required by section 14(2) of the Securities Industry (Central Depositories) Act 1991) would no longer be advertised in the local newspapers, unless the applicant is unable to provide such written confirmation in which event the prescription notice will be advertised. The amendment also provides that the applicant is to pay Bursa Malaysia the advertisement charges as may be incurred by the latter in such a case – **ZR*p***

AMENDMENTS TO THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD AND SECOND BOARD RELATING TO MAINTENANCE OF MINIMUM CAPITAL REQUIREMENTS AS A CONTINUING LISTING OBLIGATION

Date of coming into operation
28 October 2004

Introduction
Paragraph 8.16A

Notes
The insertion of paragraph 8.16A in the BMSB Listing Requirements ('the Listing Requirements') makes it mandatory for a listed issuer to ensure that its minimum issued and paid-up capital comply with the provisions of paragraphs 3.04(1) and (2) as a continuing listing obligation. Paragraphs 3.04(1) and (2) of the Listing Requirements provide that applicants seeking listing on the Main and Second Board must have a minimum issued and paid-up capital of RM60 million and RM40 million respectively. In the event there is non-compliance with the said provisions, Bursa Malaysia may suspend trading in the securities of the listed issuer and de-list the same – **ZR*p***

AMENDMENTS TO THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD AND SECOND BOARD RELATING TO FINANCIAL CONDITION & LEVEL OF OPERATIONS

Date of coming into operation
3 January 2005

Introduction
Paragraphs 8.14A, 8.14B and 8.14C
PN 16/2005
PN 17/2005

Deletion
PN 4/2001
PN 10/2001

Notes
The BMSB Listing Requirements and Practice Notes have been amended with a view to expedite the time taken by listed companies with unsatisfactory financial condition and level of operations to regularise their condition.

Further, with effect from 3 January 2005, the PN 4 sector classification will be removed and existing PN 4 companies will be placed into their respective sectors prior to the triggering of the PN 4 requirements – **ZR*p***

PRACTICE NOTE 16/2005 OF THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD & SECOND BOARD

Date of coming into operation
3 January 2005

Notes
This new practice note sets out the requirements that must be complied with by a listed issuer that is considered a cash company. Under the new framework, cash companies are subject to requirements similar

to that provided under PN 10/2001. However, they now have 12 months to submit their regularisation plans to the authorities for approval, failing which they may be suspended and de-listed - ZR*p*

PRACTICE NOTE 17/2005 OF THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD & SECOND BOARD

Date of coming into operation
3 January 2005

Notes
This Practice Note sets out, among others, the triggering criteria in relation to the financial condition and level of operations of a listed issuer, the fulfilment of one or more of which will require a listed issuer ('the affected listed issuer') to comply with the provisions of this Practice Note and the disclosure and regularisation obligations on the part of an affected listed issuer.

The triggering criteria under this new Practice Note comprise a combination of three existing criteria in respect of financial condition (under PN 4) and two existing criteria in respect of level of operations (under PN 10).

The affected listed issuer is required to comply with the following disclosure obligations, namely to: (i) make an announcement within seven days of the triggering criteria; (ii) make monthly announcements including a statement on the number of months to the end of the time given for compliance with obligations; and (iii) make an announcement of compliance or non-compliance with the obligations.

This Practice Note provides that the affected listed issuer must submit their regularisation plan within eight months from the date of the mandatory announcement which must be made within seven market days of the triggering of the prescribed criteria – ZR*p*

AMENDMENTS TO THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD AND SECOND BOARD RELATING TO PERUSAL OF DRAFT CIRCULARS AND OTHER DOCUMENTS

Date of coming into operation
3 January 2005

Amendments
Paragraphs 3.21, 6.07, 8.09, 10.05, 12.06 and 12.07

Introduction
Paragraph 8.22A

Notes
Under the amended paragraph 8.09, the perusal of certain circulars ('Exempt Circulars') by Bursa Malaysia is no longer required and the new paragraph 8.22A requires shareholders' approval in respect of any material amendment, modification or variation to a proposal previously approved by shareholders - ZR*p*

PRACTICE NOTE 18/2005 OF THE BMSB LISTING REQUIREMENTS FOR MAIN BOARD & SECOND BOARD

Date of coming into operation
3 January 2005

Notes
This Practice Note sets out the documents which are not required to be submitted to Bursa Malaysia for perusal under paragraph 8.09 of the BMSB Listing Requirements ('Exempt Circulars'), documents which are subject to a limited review by Bursa Malaysia ('Limited Review Circulars') and documents which are subject to normal review ('Non-Routine Circulars') and the obligations in relation to each of the above categories of documents– ZR*p*

List of Provisions/Rules of the BMSB Listing Requirements for the MESDAQ Market to be Applied by the SC on 1 January 2005

Date of coming into operation
1 January 2005

Notes
With effect from 1 January 2005, the SC will apply relevant sections of the Mesdaq Market Listing Requirements (MMLR) (enumerated in the List) in considering and approving corporate proposals for the MESDAQ Market under section 32 of the Securities Commission Act 1993, as the sole approving authority. The new approval functions of the SC are intended to enhance the efficiency of the listing process on the MESDAQ Market.

Under the new approval process, all new submissions or appeals in relation to such applications after 31 December 2004 are to be made to the SC only whilst applications, as well as appeals in relation to such applications, which have been submitted to Bursa Malaysia but for which decisions have yet to be made by 31 December 2004, will be considered by the SC.

Meanwhile, Bursa Malaysia continues to approve admission to the Official List and quotation for trading of securities on the MESDAQ Market as well as proposals for bonus issues, employees share option schemes, share buybacks and other exercises for the MESDAQ Market.

Submissions to the SC must comply with the MMLR and the relevant sections of the MMLR which apply to listings and corporate proposals (except the proposals to be approved by Bursa Malaysia), will be adopted by the SC as its own guidelines and requirements – ZR*p*

Amendments to the Rules of BMSB Pertaining to Capital Adequacy Requirements

Date of coming into operation
1 November 2004

Amendments
Paragraphs 1101.1, 1105.4(5)(b), 1105.5(3), 1105.6(16), 1105.8(5)(a), 1105.8(5)(c), 1105.8(5)(d);
Schedules 8B, 8C, 8J and 8K.

Notes
The amended provisions of the Rules of BMSB now take into account the minimum shareholders' funds unimpaired by losses in addition to the paid-up capital of every participating organisation in computing its minimum capital adequacy requirements of RM20 million. In addition, paragraph 1105.4(5)(b) now provides that assets charged to third parties for the sole purpose of raising funds from a third party on an arm's length basis for use exclusively in the participating organisation's business are not excluded from the computation of its liquid capital, provided that due notification of details of the same has been given to Bursa Malaysia.

In relation to the minimum operational risk requirement applicable to a participating organisation, this is now determined by whether the participating organisation is a universal broker or non-universal broker, the amounts for which are stipulated under categories A and B of Schedule B respectively.

The amendments have also revised the methodology of calculating the position risk requirement for suspended securities, the percentage of the total issue of equity in relation to large exposure risk, the meaning of 'single equity' and the calculation of a participating organisation's large exposure risk requirement – ZR*p*

BANK NEGARA MALAYSIA (BNM)

INFORMATION NOTE ON ISSUANCE OF RINGGIT-DENOMINATED BONDS IN MALAYSIA BY MULTILATERAL DEVELOPMENT BANKS OR MULTILATERAL FINANCIAL INSTITUTIONS

Date of coming into operation
6 October 2004

Notes
This Information Note serves as a guide on the requirements that are applicable for the issuance of ringgit-denominated bonds in Malaysia by Multilateral Development Banks (MDBs) or Multilateral Financial Institutions (MFIs) and is to be read together with the *SC Guidelines on the Offering of Private Debt Securities* and PN 2 issued in July 2004.

The liberalisation of BNM's foreign exchange administration rules and the SC's issuance of PN 2 were undertaken in an effort to facilitate the raising of ringgit-denominated bonds in Malaysia by MDBs or MFIs.

Flexibilities are now extended to MDBs and MFIs on registration requirements by according them certain exemptions. Ringgit funds raised from the issuance of ringgit-denominated bonds may be used either locally or overseas, where remittance must be in foreign currency. In relation to the maintenance of such funds, there is no restriction for the MDB or MFI issuers and non-resident investors of ringgit-denominated bonds to maintain foreign currency accounts with onshore licensed banks in Malaysia for any purpose, nor is there a restriction to maintain ringgit accounts as External Accounts with onshore licensed banks in Malaysia - **ZR*p***

INFORMATION NOTE ON ISSUANCE OF RINGGIT-DENOMINATED BONDS IN MALAYSIA BY FOREIGN MULTINATIONAL CORPORATIONS

Date of coming into operation
29 October 2004

Notes
This Information Note serves as a guide on the requirements that are applicable for the issuance of ringgit-denominated bonds in Malaysia by foreign multinational corporations and is to be read together with the *SC Guidelines on the Offering of Private Debt Securities* issued in July 2004.

BNM has liberalised its foreign exchange administration rules to facilitate the raising of ringgit-denominated bonds by foreign multinational corporations in the Malaysian capital market.

The information note provides, amongst others, that an application to issue ringgit-denominated bonds should be submitted to BNM prior to any submission to the SC. Ringgit funds raised from the issuance of ringgit-denominated bonds may be used either in Malaysia or overseas in which case such overseas remittance must be in foreign currency- **ZR*p***

ZR*p* ZR*p* ZR*p* ZR*p* ZR*p*

In former days, everyone found the assumption of innocence so easy; today we find fatally easy the assumption of guilt – Amanda Cross

BRIEFLY...

LOCAL

AR-RAHNU V AH LONG

Ar-Rahnu is an Islamic pawn broking facility which is based on the *Ar Rahnu Al Qardhul Hassan* and *Al Wadain Yad Dhananah* principles of Islamic finance. It provides customers with the option of obtaining financing through personal surety or pledge in which the bank will charge a reasonable fee for the safe-keeping service of the customer's jewellery. It is a facility that is customized to meet the financial needs of the middle to lower income group.

In fact it was stated by the Deputy Prime Minister, Datuk Seri Najib Tun Razak that the Ar-Rahnu micro-credit scheme may be seen as a way out for people who borrow money from loan-sharks or *Ah Longs*.

The Ar-Rahnu concept, introduced in 1993, has 1.22 million clients with accumulated loan withdrawals amounting to RM1.17bil - **ZR*p***

LISTING ON THE LFX

SapuraCrest Dana SPV Pte Ltd, a Labuan incorporated offshore company and a wholly-owned subsidiary of SapuraCrest Petroleum Berhad listed its five year 2.5% unsecured guaranteed redeemable convertible bonds (CB) on the LFX on 16 December 2004. This marked the listing of LFX's 24th instrument, which raised the market capitalisation of LFX to USD9.71 billion at that date. The CB, due in 2009, are convertible into new ordinary shares of SapuraCrest and are guaranteed by SapuraCrest – **ZR*p***

NO DISCOUNT !

On 27 March 2004, at its last AGM, the Malaysian Bar passed a resolution calling for an increase in the scale fees prescribed under the schedules to the Solicitors' Remuneration Order 1991 ('the SRO') and reaffirmed that the 'no discount' rule be maintained. Pursuant to the passing of the Solicitors' Remuneration (Enforcement) Rules 2004, members of the Malaysian Bar are required to display a signage in their office premises pertaining to the 'no-discount' rule in the manner prescribed in the said rule.

Issues however have been raised concerning the 'no-discount' rule. The first is that the concern of the public has always been about lawyers overcharging and sometimes even absconding with their money. The giving of discounts has never been an issue. In fact, as stated by Real Estate and Housing Developers' Association (REHDA) President, Datuk Jeffrey Ng, the 'no-discount' ruling to lawyers handling property transactions will compel both buyers and developers to pay more. He added that when discounts are allowed, developers have been able to absorb these legal fees as an incentive and added service to house buyers, particularly when there are economics of scale for larger projects. Some have even questioned the logic of the rules in the SRO. The rules permit legal services to be rendered free but a discount is prohibited. This appears to be a contradiction in terms. A harsher allegation has been made that the introduction of this minimum scale fees is nothing but a price-collusion in the form of a cartel.

The issue of solicitor-client privilege needs to be addressed as well. A lawyer flouting the 'no-discount' rule will be investigated and when this occurs, he may be compelled to disclose, for audit purposes, the details of all legal transactions, thus eroding the confidential relationship between solicitor and client – **ZR*p***

ISSUE OF RM400MILLION FIXED RATE BONDS

The issue of Asian Development Bank's Putra ringgit bonds in Malaysia's domestic capital market on 5 November 2004 represents many firsts in the Malaysian capital market, being the first issue by a foreign entity, the first supranational issue and the first issue rated AAA by Fitch, Moody's and Standard & Poor's.

The issue has a principal amount of RM400 million and a maturity period of five (5) years. The bonds carry a semi-annual coupon of 3.94% per annum and are priced at two basis points below the five-year benchmark Malaysian Government Securities. Offered through a bookbuilding process, the bonds generated strong demand with total bids amounting to more than RM2.6 billion, or 6.5 times the issue amount. According to ADB vice-president Khempeng Polsena, '[t]he bond issue underscores ADB's confidence in the Malaysian capital market. This, together with the new standards created through the issue in respect of regulatory framework and documentation, will facilitate issuance by other foreign borrowers in Malaysia.' – ZR*p*

FIRST OF ITS KIND

Malaysia's capital market has witnessed the issuance of its inaugural residential mortgage-backed securities pioneered by Cagamas MBS Bhd, a wholly-owned subsidiary of Cagamas Bhd. The Cagamas residential mortgage-backed securities is a secured, fixed-rate serial bond comprising a series of maturities on the third, fifth, seventh and tenth anniversaries of the issue date. For the purpose of this issue, the government's housing loan division has sold part of its loans portfolio to Cagamas MBS Bhd - ZR*p*

RM3 BILLION SECURED IN DUAL-CURRENCY FUNDS

On 21 September 2004, the Optimal Group of Companies comprising of Optimal Olefins (Malaysia) Sdn Bhd, Optimal Glycols (Malaysia) Sdn Bhd and Optimal Chemicals (Malaysia) Sdn Bhd secured about RM3 billion in funds comprising RM1,270 million *Al Bai Bithman Ajil* Islamic Debt Securities and USD468mil syndicated loan facilities.

The loans were given to finance the RM5.13bil construction cost of Optimal's integrated petrochemical facility located in the Petronas Petroleum Industry Complex in Kertih, Terengganu. This landmark transaction was the largest dual-currency denominated, project finance-based fund-raising exercise in the Malaysian market in 2004. It also makes history as the largest debt securities to be priced via bookbuilding in the Malaysian market as well as the largest corporate issue to receive the AAA rating by Malaysian Rating Corp Bhd to date – ZR*p*

UN CONVENTION RATIFIED

The United Nations Convention Against Transnational Organised Crime ('the TOC Convention') which includes money laundering, corruption and the obstruction of investigation or prosecution has been ratified by Malaysia in September 2004.

The purpose of the TOC Convention is to promote international co-operation to prevent and combat transnational organised crime. It requires the parties to criminalize offences through domestic legislation and facilitate the establishment and implementation of mutual legal assistance, extradition, law enforcement co-operation, technical assistance and training - ZR*p*

ZR*p* In-Brief...

The ZR*p* Brief is published for the purposes of updating its readers on the latest development in case law as well as legislation.

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