

Some updates on Foreign Exchange Notice on financial guarantee

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Updates on FE Notice on financial guarantees given by non-bank residents to secure borrowing obtained by non-residents

The Central Bank of Malaysia (Bank Negara Malaysia) (BNM) regulates the flow of currencies in and out of the country via rules issued in the form of Foreign Exchange Notices (FE Notices). On 30 April 2020, BNM revised the FE Notices with the view of improving business efficiency and providing flexibility to businesses and corporations to better manage their foreign exchange risk exposure.

There are no major changes to the rules governing borrowings (whether in Ringgit Malaysia or foreign currency) by residents and non-residents. The increased flexibility is reflected in the relaxation of the rules in relation to provision of financial guarantees¹ which financial guarantees include but are not limited to securities provided to secure repayment of financing.

The FE Notices applicable prior to 30 April 2020 had imposed restrictions on residents in relation to the giving or obtaining of financial guarantees (whether in Ringgit Malaysia or foreign currency) on behalf of or in favour of or from a non-resident. These restrictions had presented certain obstructions to multinational corporations which have subsidiary or associate companies in Malaysia when such corporations obtain a loan which exceeds a stipulated threshold and the lender requires securities to be provided by its Malaysian subsidiary or associate companies.

With the FE Notices as revised on 30 April 2020, BNM has provided that a non-bank resident guarantor is allowed to give a financial guarantee **in any amount** (whether in Ringgit Malaysia or foreign currency) to secure a Borrowing (whether in Ringgit Malaysia or foreign currency) obtained by a non-resident save for a financial guarantee given to secure a Borrowing:

- a. Obtained by a non-resident borrower which is a Special Purpose Vehicle.² Such financial guarantee shall not be considered to be a financial guarantee but shall be deemed to be a Borrowing by the resident guarantor; or
- b. Where the resident guarantor has entered into an arrangement (whether formal or informal) to make repayment of the Borrowing in foreign currency other than for an event of default. Such arrangement to repay shall be deemed as an investment under the FE Notices.

On the other hand, a resident lender is allowed to obtain a financial guarantee in any amount (whether in Ringgit Malaysia or foreign currency) from a non-resident guarantor to secure a Borrowing obtained by a resident or non-resident borrower.

The FE Notices prior to 30 April 2020 dictate that where a financial guarantee in foreign currency of a stipulated

amount is required to be obtained by a resident from a non-resident financial institution, a first right of refusal should be to a Labuan entity which undertakes Labuan banking business. Such restriction no longer applies under the FE Notices as revised on 30 April 2020.

The revisions in relation to financial guarantees under the FE Notices as revised on 30 April 2020 has made it easier for corporations to manage their finances within their group of companies without having to account for the same to BNM. This would provide international corporations with a reason to consider Malaysia as suitable location to expand their businesses.

Zain & Co. acknowledges Associate **Lee Chea Shinh** for her contributions to this article. For further information or any related inquiries, please contact our Managing Partner, Zainal Azlan Abdul Kadir.

1. Financial guarantee is defined as “any guarantee, indemnity or undertaking to secure repayment of a Borrowing”. An exhaustive definition of Borrowing can be found here.↔
2. Special purpose vehicle is defined as “an Entity set up solely for the purpose of Borrowing and is not an operating business unit”. ↔

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