

Financial Services

Policy Document on *Hajah* and *Darurah*

Bank Negara Malaysia (“BNM”) has on 3 January 2024 released the [Policy Document on Hajah and Darurah](#) and its corresponding [FAQ](#) which will take effect on the 2 January 2025. The policy document is applicable to licensed Islamic banks; licensed *takaful* operators and professional *retakaful* operators; licensed banks and licensed investment banks approved to carry on Islamic banking business; and prescribed development financial institutions approved to carry on Islamic financial business. The policy document sets out the requirements and expectations on the application of *hajah* (needs) and *darurah* (dire necessity) by Islamic financial institutions in carrying out Islamic banking and *takaful* business, as follows:

- outline the definition, preconditions, the scope of prohibited application and parameters of different categories of *hajah* and *darurah*;
- clarify and strengthen the accountability of individuals responsible for the assessment, deduction as well as implementation of *hajah* and *darurah*; and
- outline the operational requirements and guidance in facilitating *Shariah* deliberation and decision-making on the application of *hajah* and *darurah*.

Finance (No. 2) Act 2023

The **Finance (No. 2) Act 2023** [Act 851] was gazetted on the 29 December 2023 and its amendments to the **Stamp Act 1949** [Act 378], amongst others, commences on 1 January 2024.

Pursuant to the **Finance (No. 2) Act 2023**, multiple editorial amendments were made to the **Stamp Act 1949** including in Schedule 1 subparagraph 27(a)(ii), in the column “*Proper Stamp Duty*” by deleting the words “*but the total duty payable shall not exceed RM2,000*”. With the amendment, Schedule 1 subparagraph 27(a)(ii) of the Stamp Act 1949 now reads as follows:

Legal Updates

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<i>Item</i>	<i>Description of Instrument</i>	<i>Proper Stamp Duty</i>
27	<i>CHARGE OR MORTGAGE, AGREEMENT FOR A CHARGE OR MORTGAGE (including that under the Syariah), BOND, COVENANT, DEBENTURE (not being a marketable security) BILL OF SALE by way of security and WARRANT OF ATTORNEY to confess and enter up judgment:</i> <i>(a) Being the only or principal or primary security (other than an equitable mortgage or an assignment of receivables or the kind mentioned in paragraph (d)) for the payment or repayment of money—</i> <i>(ii) where the loans is a foreign currency loan</i>	<i>RM5.00 for every RM1000 or part thereof.</i>

Exposure Draft on *Skim Pembiayaan Mikro*

BNM invites written feedback on the proposals in its [Exposure Draft on Skim Pembiayaan Mikro](#) (“SPM”) issued on 8 January 2024. Responses must be submitted to BNM by 5 April 2024 electronically to microfinance@bnm.gov.my.

The Exposure Draft outlines the revised requirements and guidance on SPM, Micro Enterprises Facility (“MEF”) and other microfinance-related policies. These include an enhanced SPM framework with strategic enablers, policy requirements to provide a more enabling and fit-for-purpose regulatory framework for the implementation of SPM and revised operational requirements to be undertaken by financial institutions before and during their participation in SPM and for the utilisation of MEF.

CONTACT US FOR FURTHER INFORMATION REGARDING FINANCIAL SERVICES MATTERS.

Tax & Revenue

Update on Capital Gains Tax

With effect from 1 January 2024, a new capital gains tax (“CGT”) was implemented in Malaysia vide section 4(aa) of the **Income Tax Act 1967** (“ITA”) to tax gains or profits from the disposal of capital assets by a company, limited liability partnership, trust body or cooperative society. Disposers who are individuals are not subject to CGT. Section 4B(b) of the ITA further provides that such gains do not constitute business gains or profits for purposes of the ITA.

Assets that are subject to CGT are:

- shares of a company incorporated in Malaysia not listed on the stock exchange;
- shares of a controlled company incorporated outside Malaysia which owns: (a) real property situated in Malaysia; or (b) shares of another controlled company, as defined; or (c) both; above the specified threshold(s); and
- all types of capital assets situated outside Malaysia.

In light of CGT, with effect from 1 January 2024, any disposal of shares in a real property company (i.e. RPC shares) by a company, limited liability partnership, trust body or cooperative society, would no longer be subject to RPGT but would fall within the scope of CGT.

An interim exemption has been introduced vide Income Tax (Exemption) (No. 7) Order 2023 [P.U.(A) 410/2023] so that disposals on capital account by a company, limited liability partnership, trust body or cooperative society, of the shares of a company incorporated in Malaysia that are not listed on the stock exchange, are tax-exempt for disposals made on or after 1 January 2024 to 29 February 2024. However, this exemption does not apply if the gain constitutes business income under section 4(a) of the ITA.

Gains from the disposal of capital assets situated outside Malaysia are taxable upon receipt in Malaysia at the prevailing income tax rate. The said exemption also does not apply to such assets.

CONTACT US FOR FURTHER INFORMATION REGARDING TAX & REVENUE MATTERS.

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