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Bank Negara Malaysia Issues Revised Foreign Exchange Policy Notices

Contact Persons:

Annabel Kok Keng Yen
Partner

+603 6209 5400
annabel@rdslawpartners.com

Chia Loong Thye
Partner

+04 370 1122
ltchia@rdslawpartners.com

Mohd Farizal Farhan
Partner

+603 6209 5400
farizal@rdslawpartners.com

Ong Eu Jin
Partner

+603 6209 5488
eujin@rdslawpartners.com

Ooi Bee Hong
Partner

+603 6209 5401
beehong@rdslawpartners.com

Tan Gek Im
Partner

+04 370 1122
gekim@rdslawpartners.com

Foreign Exchange Policy Notices (FEP Notices) are a set of rules administered by Bank Negara Malaysia (BNM) under the Financial Services Act 2013 and Islamic Financial Services Act 2013 to safeguard the value of Ringgit Malaysia.

On 1 June 2022, BNM issued the revised Foreign Exchange Policy Notices (Revised FEP Notices) which came into force on the same date. The Revised FEP Notices revoked the previous FEP Notices issued by BNM on 15 April 2021.

This alert summarises the key amendments introduced by BNM through the Revised FEP Notices.

Notice 1: Dealings In Currency, Gold And Other Precious Metals

Pursuant to paragraph 6(1)(a) of Notice 1 of the Revised FEP Notices, the buying or selling of foreign currency against Ringgit by a non-resident for its own account on spot-basis with an appointed overseas office (AOO) of a licensed onshore bank's banking group is no longer subject to any restrictions.

Previously, under the same paragraph of the revoked FEP Notices, such transactions were only permitted for (i) settlement of international trade in goods or services on firm commitment or anticipatory basis; or (ii) other purposes on firm commitment basis.

Similar restrictions are imposed under the revoked FEP Notices in relation to the buying or selling of foreign currency against Ringgit by a non-resident with an AOO (i) on a forward basis (paragraph 6(1)(c) of Notice 1); and (ii) by a non-resident entity on behalf of an entity within its group (paragraph 8(b) of Notice 1) were also removed under the Revised FEP Notices and are now subject to the same restrictions applicable to such transactions with a licensed onshore bank under paragraphs 6(1)(b) and 8 of Notice 1 of the Revised FEP Notices respectively.

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Notice 2: Borrowing, Lending And Guarantee

Paragraph 21 of Notice 2 of the FEP Notices sets out circumstances where a non-bank resident guarantor is allowed to give a financial guarantee. Paragraph 21 has been revised in the following respects:

1. A non-bank resident guarantor is now permitted to provide financial guarantee in any amount to secure a borrowing in foreign currency obtained by a non-resident from a non-resident financial institution (NRFI) subject to the exceptions specified under sub-paragraphs (a) and (b) therein.
2. A non-bank resident guarantor is now prohibited from giving a financial guarantee to secure a borrowing which is being utilised by a resident guarantor. Such financial guarantee will instead be deemed as a borrowing by the resident guarantor and is subject to Part A or B of Notice 2 of the FEP Notices.
3. A non-bank resident guarantor is now prohibited from giving a financial guarantee to secure borrowing obtained by a non-resident borrower where the resident guarantor has entered into a formal or informal arrangement to make repayment of a borrowing in foreign currency “other than under a call-upon by the lender” in the event of default.

The Revised FEP Notices further clarified that a “call upon” of a financial guarantee is to be initiated by the lender in writing to the guarantor. A resident guarantor may not initiate a “call-upon” of a financial guarantee. In the event a financial guarantee is liquidated at the instruction of the guarantor, the guarantor must obtain prior approval from BNM in accordance with Notice 3 (Investment in Foreign Currency Asset) of the FEP Notices.

Notice 4: Payment And Receipt

1. The Revised FEP Notices introduced a new paragraph 4(d)(iii) under Notice 4 of the FEP Notices which allows a resident to make or receive payment in foreign currency to or from another resident for the settlement of

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a miscellaneous expense incurred outside Malaysia between a resident individual residing in Malaysia and a resident individual residing outside Malaysia.

“Miscellaneous expense” includes a current account transaction that is of reasonable amount and infrequent in nature, including but not limited to holiday expenses abroad, medical expenses abroad and advance or reimbursement for purchase of goods and services abroad on behalf of a resident individual residing in Malaysia.

2. Paragraph 14 of Notice 4 of the Revised FEP Notices allows a resident individual to open and maintain a foreign currency account (FCA) with a licensed onshore bank or a NRFI, individually or jointly with a non-resident individual. Previously, under paragraph 14(b) of Notice 4 of the revoked FEP Notices, the permission is only limited to where the non-resident individual is an immediate family member of the resident individual.
3. Paragraph 18 of Notice 4 of the Revised FEP Notices allows a non-resident to open and maintain a FCA with a licensed onshore bank, individually or jointly with a resident individual. Previously, under paragraph 18(b) of Notice 4 of the revoked FEP Notices, the permission is only limited to where the resident individual is an immediate family member of the non-resident.

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Notice 7: Export Of Goods

1. Pursuant to paragraph 4 of Notice 7 of the Revised FEP Notices, a resident exporter whose annual gross export of goods exceeds RM250 million equivalent in the preceding year is now only required to submit a report on export of goods to BNM as and when required by BNM. Previously, there was a requirement to submit a quarterly report to BNM.

The Frequently Asked Questions (FAQ) to Notice 7 of the Revised FEP Notices issued by BNM on 1 June 2022 clarify that if a resident exporter is required to submit a report on export of goods under paragraph 4 of Notice 7 of the FEP Notices, such requirement will be

Contact Persons:

Annabel Kok Keng Yen
Partner

+603 6209 5400
annabel@rdslawpartners.com

Chia Loong Thye
Partner

+04 370 1122
ltchia@rdslawpartners.com

Mohd Farizal Farhan
Partner

+603 6209 5400
farizal@rdslawpartners.com

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Partner

+603 6209 5488
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Partner

+603 6209 5401
beehong@rdslawpartners.com

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communicated to the resident exporter via a letter from BNM.

2. The Revised FEP Notices further introduced a new requirement under paragraph 5 of Notice 7 whereby in the event a resident exporter has not received any proceeds from the export of goods within 24 months from the date of shipment, the resident reporter shall notify BNM on the outstanding proceeds from the export of goods within 21 days from after the end of each calendar year.

Conclusion

In summary, aside from the clarification provided, BNM has introduced further liberalisation to the FEP Notices which provides greater flexibility to businesses to support the growing economy in line with its objective to promote competitiveness of the economy through facilitation of a more conducive environment for domestic and cross-border economic activities in attracting foreign direct investment into Malaysia.

Authored by an associate, Christin Wong from the firm's Capital Markets and M&A Practice

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