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Malaysia: Trends & Developments

Gilbert Gan, Chua Wei Min, Ahmad Zulkharnain Musa and Nadarashnaraj a/l Sargunaraj
Zaid Ibrahim & Co

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Trends and Developments

Contributed by:
Gilbert Gan, Chua Wei Min, Ahmad Zulkharnain Musa and Nadarashnaraj a/l Sargunaraj
Zaid Ibrahim & Co ***see p.7***

Trends

Introduction

Malaysia saw a major regime change in May 2018 when the ruling Barisan Nasional coalition (BN) that had been the ruling government for more than 60 years lost at the 14th General Election. The opposition Pakatan Harapan coalition (PH) led by Tun Mahathir Mohamad (Tun Mahathir) won with a majority and formed the new government. This change of government was made more dramatic by the comeback of Tun Mahathir – he was appointed as Malaysia's seventh prime minister, 15 years after he resigned as Malaysia's fourth prime minister, a position that he held for more than 20 years with the BN government.

On 24 February 2020, the political situation in Malaysia took a surprising turn when the new PH government collapsed after less than 22 months in power and a new Perikatan Nasional coalition (PN) government was formed with Tan Sri Muhyiddin Yassin as Malaysia's eighth prime minister. The question on everyone's minds then was obvious – how will Malaysia, from a political, economic and social standpoint – be under the PN Government?

On 11 March 2020, the World Health Organization declared COVID-19 a pandemic.In Malaysia, the Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020 was issued to prevent movement of any person from one place to another except for very limited exceptions which includes travelling for purposes of purchasing food or daily necessities, and seeking healthcare services. As a result, substantial economic activities in Malaysia have come to a halt.

The government has been quick to announce and implement various economic incentives to help the country cope with the disastrous impact of the pandemic. On 27 February 2020, the PH Government announced the MYR20 billion Economic Stimulus Package which contains a total of 32 measures aimed at a three-pronged strategy of mitigating the impact of COVID-19, spurring people-centric economic growth and promoting quality investments. On 16 March 2020 the government set up the Economic Action Council to address the country's financial issues, which also committed to implement this Economic Stimulus Package. On 23 March 2020, the Ministry of Finance announced the establishment of a Unit for the Implementation and Coordination of National Agencies on the Economic Stimulus Package to ensure that stimulus initiatives are implemented. Such initiatives include a soft loan fund of MYR3.3 billion provided by the Central Bank of Malaysia through domestic financial institutions. Bursa Malaysia (the Malaysian stock exchange), the Securities Commission of Malaysia and the Central Bank have implemented various stimulus incentives and stated that they will ensure the continuing operations of the Malaysian financial markets. A second Prihatin Rakyat Economic Stimulus Package worth MYR250 billion was announced by the government on 27 March 2020 which aims to protect the welfare of the people and support small and medium-sized enterprises.

Against this exceptional backdrop at the start of 2020, the business trends in Malaysia in various industry sectors and recent key legal developments are hereby discussed.

Government and government-linked investment disposals and restructurings

In May 2018, Tun Mahathir declared that the nation's debts and liabilities stood at MYR1 trillion, equivalent to a staggering 65% of the nation's GDP. Among the measures that the previous government looked at to pare down the country's debts include aborting/reviewing certain infrastructure projects, monetising assets and pruning stakes in non-strategic assets. Such measures fuelled the M&A activities by government-linked companies and government-linked investment companies such as Khazanah Nasional Berhad (Khazanah), which is Malaysia's sovereign wealth fund, where there have been substantial disposals or talks of substantial disposals. These include Khazanah's MYR8.42 billion sale of a 16% stake in IHH Healthcare Berhad (IHH) to Mitsui & Co Ltd (November 2018) and the disposal of Prince Court Medical Centre Sdn Bhd to IHH group for MYR1.02 billion on a locked-box basis (September 2019).

Talks on the proposed restructuring of Malaysia Airlines Berhad (Khazanah's wholly-owned subsidiary) – which is still recovering from the twin tragedies of 2014 when flight MH370 mysteriously disappeared and flight MH17 was shot down over eastern Ukraine – continues. According to news reports in January 2020, Khazanah's board was considering four proposals from local and foreign parties, including from AirAsia Group Berhad and Japan Airlines Co Ltd, who were said to be the two frontrunners for the future plans for Malaysia's national airline. However, with the COVID-19 pandemic crippling airline business around the world, it remains to be seen whether this proposal will materialise anytime soon.

Infrastructure

PH's election manifesto stated that it would review all highway concession agreements with the ultimate view of gradually abolishing tolls. By the end of 2019, the then Tun Mahathir's government received four proposals to buy over PLUS, the largest tolled highway concession owned by Khazanah (51%) and Employees Provident Fund (49%). Tan Sri Halim Saad and his associate became the front-runner for the deal with his MYR5.2 billion offer, and they later upped their offer by more than 30%, according to sources. Among other bidders were Widad Business Group Sdn Bhd, Maju Holdings Bhd and RRJ Capital. Eventually, the cabinet decided to not dispose of PLUS but promised an 18% discount to the toll rates from 1 February 2020 and extended the highway concession for another 20 years.

Malaysia revived the East Coast Railway Link (ECRL) Project with a new project cost of MYR44 billion. Malaysia Rail Link Sdn Bhd, a wholly-owned subsidiary of the Minister of Finance Incorporated, is the project and asset owner of the ECRL while China Communications Construction Company Ltd (CCCC) is the main contractor. Scheduled for completion by December 2026, the 640 km ECRL will traverse the East Coast states of Kelantan, Terengganu, and Pahang as well as Negeri Sembilan, Putrajaya, and Selangor on the West Coast of Peninsular Malaysia. The Economic Action Council has stated that all projects allocated in the 2020 Budget, including the ECRL project, will continue to be implemented.

Depending on the outcome of the country's political situation, the year 2020 may also see some development on the proposed Kuala Lumpur-Singapore High Speed Rail project (HSR) and the Singapore-Johor Rapid Transit System project (RTS Link), these being projects aiming at better connections between the two neighbouring countries.

On 31 October 2019, Tun Mahathir announced that the RTS Link, a planned cross-border rapid transit system that would connect Singapore and Malaysia, will proceed with a 36% cost cut from the original MYR4.93 billion to MYR3.16 billion. Both stations will have co-located Singaporean and Malaysian customs, immigration and quarantine facilities. The signing of this agreement has been extended until 30 April 2020. On the HSR, both countries formally agreed in September 2018 to postpone its construction to the end of May 2020, with Malaysia paying Singapore SGD15 million in abortive costs on 31 January 2019 in relation to suspension of the project.

Telcos

It has been the policy of the Ministry of Communications and Multimedia to reduce prices and make broadband more affordable to the general public. To this end, the Malaysian Communications and Multimedia Commission (MCMC) implemented the Mandatory Standard on Access Pricing that stipulates the ceiling wholesale prices chargeable by service providers for facilities and services used by retail telco players, which was expected to translate into lower retail prices for consumers. This resulted in a substantial drop in the share price of Telekom Malaysia Berhad, Malaysia's largest fixed broadband market player, which stabilised to just below MYR4 by the end of December 2019. This translated to a market capitalisation loss of about MYR7.5 billion.

Against the backdrop of the utilitarian *rakyat* (people)-friendly government policy on broadband and declining share prices, another telco player, Axiata Group Berhad (Axiata) – 37%-owned by Khazanah – and Telenor ASA (Telenor), a Norwegian multinational telecommunications company and one of the world's largest mobile telecommunications companies with worldwide operations, announced on 6 May 2019 a proposed merger of their ASEAN and South Asia operations to create a Malaysia-headquartered global player in the telecommunication industry. This merger will also create the largest mobile operator in Malaysia.

This potential merger likely prompted the MCMC to issue new guidelines on 17 May 2019, the Guidelines on Mergers and Acquisitions (GMA) and the Guidelines on Authorisation of Conduct (GAC), which sets out the process where parties may apply to the MCMC for an assessment of whether a proposed transaction is anti-competitive. After four months of negotiations, Axiata and Telenor announced on 6 September 2019 that the merger has been called off. It is generally believed that regulatory constraints at the domestic and regional levels played a dominant part in scuppering what would otherwise have created one of the largest mobile operators in the world. While there were subsequent reports of Telenor considering taking a stake in Axiata, the COVID-19 pandemic and the sudden change of government will likely put a hold on any development in this area for some time.

Banking and financial institutions

The Central Bank of Malaysia (Bank Negara Malaysia, BNM) initiated a merger program in 1999 for banks to consolidate and merge to become more competitive and resilient. Merger exercises have occurred since then in the banking and financial institutions sector with the last merger being the MYR645 million acquisition of Asian Finance Bank Bhd by Malaysian Building Society Bhd in early 2018. Some exercises have not come into fruition – for example, the proposed three-way merger between CIMB Group Holdings Bhd, RHB Bank Bhd and Malaysia Building Society Bhd in 2015 and the proposed two-way merger between RHB Bank Bhd and AMMB Holdings Bhd in 2017.

Bank merger activity started again in 2019 and announcements have been made on the proposed merger between Al Rajhi Banking & Investment Corp (Malaysia) Bhd (a wholly-owned subsidiary of Saudi Arabia-headquartered Al Rajhi Banking & Investment Corp which is the world's largest Islamic bank) and Malaysian Industrial Development Finance Bhd (a wholly-owned subsidiary of Permodalan Nasional Berhad). This merger is expected to be implemented via a share swap deal, whereby PNB would emerge as the majority shareholder with a 70% stake in the merged entities and Al Rajhi Saudi would hold the balance stake. There is also a proposed merger of Bank Pembangunan Malaysia Bhd (BPMB), Danajamin Nasional Bhd (Danajamin), Small Medium Enterprise Development Bank Malaysia Bhd and the Export-Import Bank of Malaysia Bhd. In December 2019, BNM gave the green light to BPMB and Danajamin to commence negotiations for the merger, which is expected to be completed within six months.

Insurance

M&A activities in the insurance industry was expected to be active two years ago, pursuant to the 70% foreign ownership limit imposed by BNM on licensed insurance companies. Historically, this policy had not been strictly enforced. The top three life insurers in Malaysia, Great Eastern, Prudential and AIA are 100% foreign owned. In mid-2017, BNM initiated a soft approach in implementing the policy by issuing letters to certain foreign-owned insurers requesting their foreign owners to reduce their stakes. From that point onwards, foreign insurers had been pursuing an initial public offering and/or private sale to pare down their foreign ownership to meet BNM's expectation.

After GE14 and a change of BNM's governor, it has been reported there is no more specific broad deadline for meeting the requirement and BNM will look at the matter on a case-by-case basis as well as discuss on a bilateral basis. In early 2019, Singapore-owned Great Eastern contributed MYR2 billion to mySalam scheme as an alternative to meet the foreign shareholding requirement. MySalam is a health insurance scheme aimed at providing coverage to the poorest 40% Malaysians. This flexibility is seen as a positive development for insurance M&A activities. BNM appears to have acknowledged the practical reality that sellers need to explore a range of divestment options at a more pragmatic timeline in tandem with market demand.

The apparent relaxation of foreign ownership did not freeze M&A activities in the insurance industry. RHB Bank paved the way for a dynamic insurance M&A post-GE14 when it received the green light from BNM at the end of July 2019 to sell up to 94.7% of its insurance unit, RHB Insurance, to Tokio Marine. However, RHB Bank announced in December 2019 that they were not proceeding with the disposal as the parties failed to reach a consensus on terms.

Oil and gas

M&A activity in Malaysia's oil and gas (O&G) industry remains scant. This trend may pick up in 2020 and onwards as global companies pursuing expansion plans spot opportunities. According to the Ministry of International Trade and Industry, geographic advantage and large reserves make Malaysia an ideal base for expanding into Asia's oil and gas markets. In September 2018, Sapura Energy Berhad, the largest listed oil and gas service provider in Malaysia, sold a 50% stake in its energy asset to Austrian oil and gas company OMV Aktiengesellschaft to pare down its debt. In March 2019, Murphy Oil Corp announced it was exiting Malaysia with a USD2.13 billion sale of its oil and gas assets in the country to Thailand's PTT Exploration and Production Public Co Ltd.

Since its listing in February 2017, Serba Dinamik Holdings Berhad (Serba) has grown by leaps and bounds. Its global M&A activities – supported by its own organic growth – contributed to its unaudited revenue increasing to MYR3.2 billion in 2019. Notable acquisitions since then include an acquired stake of 40% in Konsortium Amanie JV Sdn Bhd for MYR34 million, a 25% stake in SGX-ST-listed CSE Global Limited and 25% in AIM-listed Green & Smart Holdings plc. The trend continued in 2019 when Serba completed multiple M&A exercises, including its acquisition of 25% in Netherlands-incorporated Psicon BV and 49% in OHP Ventures Incorporated.

All eyes were on Saudi Aramco, the Saudi Arabian national petroleum and natural gas company, when it was successfully listed on Saudi Tadawul stock exchange in December 2019. Questions then arose whether Petronas, Malaysia's national oil company, should follow in Saudi Aramco's footsteps to provide a significant boost to the local stock exchange. A Petronas IPO is probable, given that Malaysia had previously floated some of its national assets such as Tenaga National Berhad and Telekom Malaysia Berhad.

Tun Mahathir also indicated during an interview in December 2019 that his government may consider selling some of Petronas' stake to the country's states (eg, Sabah and Sarawak). A dilution of the government's exclusive equity control over Petronas would provide billions of much-needed cash to the government to pare down the nation's debt. With the COVID-19 pandemic squeezing global stock markets, exacerbated by the plummeting crude oil prices, a Petronas IPO may yet prove to be a dream too far.

The Brent crude price was around USD65 per barrel at the start of January 2020. The oil price tanked towards the end of March

2020 as the Brent crude price dropped to around USD25 per barrel amid continued concerns over the COVID-19 pandemic's impact on energy demand and the ongoing price war between Russia and Saudi Arabia. With a large percentage of the world's population under some form of lockdown to control the pandemic, there is potential the price could go even lower. Although Petronas may be less exposed due to its high degree of vertical integration, other oil and gas industry players may become vulnerable during this challenging time. This could potentially drive M&A activities in the oil and gas industry as the players choose to consolidate to stay afloat.

Developments

Anti-money laundering

After the 1MDB scandal erupted, BNM issued two policy documents: (i) Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Financial Institutions, and (ii) Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses and Professions & Non-Bank Financial Institutions.

These policy documents came into force on 1 January 2020 and set out (i) the obligations with respect to the requirements imposed under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, and (ii) the requirements in implementing a comprehensive risk-based approach in managing money laundering and terrorism financing. The government's seriousness in combating money laundering through regulatory measures and widely reported high-profile prosecutions for money laundering cases may trigger a more extensive due diligence process to address anti-money laundering compliance. Investors must, therefore, ensure that proper due diligence is carried out in any M&A to avoid compliance pitfalls.

Anti-corruption

Section 17A of the Malaysian Anti-Corruption Commission Act 2009 is also set to come into effect on 1 June 2020. This section imposes liability on commercial organisations (such as companies and partnerships) for corruption-related actions by associated persons (such as directors, partners, employees and persons who perform services for the commercial organisation) done for the benefit of the commercial organisation, unless it had in place adequate procedures designed to prevent persons associated with it from undertaking the corruption related actions.

In December 2018, the Prime Minister's Office issued the Guidelines on Adequate Procedures to give clarity on the adequate procedures that must be in place to prevent corruption. Malaysia is emulating the UK and the USA which have had provision on corporate liability for corruption in their laws – ie, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977 – for some years.

The staggering USD4 billion fines that Airbus agreed to pay at the end of January 2020 in order to settle a lengthy global corruption investigation in the UK, France and the USA was a grim reminder of the seriousness of the offence. The Airbus case also implicated two top executives of Malaysia's low-cost carrier who immediately relinquished their executive positions upon the Airbus case being publicised. These two top executives were subsequently reinstated on 20 March 2020 following completion of an internal probe that cleared the duo from corruption allegations. It may be that pre-acquisition anti-corruption due diligence soon becomes an essential element of certain M&A in Malaysia.

Competition

The Competition Act 2010 has been in force since 1 January 2012. This Act prohibits anti-competitive agreements and abuse of dominance, but it does not provide for merger control. This may soon change as it has been reported that the Act may be amended (or regulations issued under the Act) to include merger control by 2020. The chief executive officer of the Malaysia Competition Commission was quoted as saying that the proposed merger control "would enable it to approve or reject mergers and acquisitions, or impose conditions on potential deals". Once this is implemented, the cost for undertaking M&A in Malaysia can be expected to increase to cater for merger control compliance cost.

Fintech

Fintech has been the buzzword of late, along with cryptocurrency and blockchain. Malaysian regulators are keeping up with the fast-changing world of technology and innovation. The Securities Commission of Malaysia (SC), Malaysia's securities regulator, released the Guidelines on Recognised Markets (GRM) to regulate equity crowdfunding (ECF) in 2015. A year later, the SC updated the GRM to provide for a peer-to-peer (P2P) financing framework. In January 2019, the SC updated the GRM to provide for the much-anticipated framework for crypto-exchanges, also known as digital asset exchange operators (DAX).

As of January 2020, there are ten ECF, 11 P2P and three DAX operators registered with the SC. On 15 January 2020, the SC published its Guidelines of Digital Assets (GDA), which sets out the requirements for an issuer seeking to raise funds through digital token offering and the registration of a platform operator to operate an initial exchange offering (IEO) platform. GDA is expected to come into force in the second half of 2020.

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A recent move by BNM to issue the exposure draft of the Licensing Framework for Digital Bank at the end of December 2019, coupled with the announcement of its plan to issue up to five digital banking licences to qualified applicants to operate such services is also expected to spur M&A activities once digital banking operation takes root in Malaysia.

Labuan International Business and Financial Centre (a tax-efficient financial centre set up by Malaysia in 1990 with its own separate set of laws specific for the financial activities carried out in Labuan) is also introducing new guidelines to push for fintech and digital products and activities. Currently, no special licence is required to operate an IFS (innovative financial service)-related business in Labuan. Interested business owners with IFS-related businesses need merely apply to operate as a Labuan-licensed entity under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.

In 2018, the Labuan Financial Services Authority approved four IFS-related Labuan entities including Algebra, Asia's first robo-adviser to offer Shari'a-compliant investments, and HWG Cash, Asia's first stable and secure licensed cash token which offers cryptocurrency services out of Labuan. Labuan is now in consultation with industry players on introducing new guidelines relating to, amongst others, the licensing of digital financial services, including digital banks, insurtech, robo-advisory, digital asset exchange and regulating the issue of digital utility tokens and digital wallets.

Environment, social and corporate governance (ESG)

Malaysia recognises the importance of ESG as a concept that affects all aspects of present and future society. In December 2014, Bursa Malaysia and FTSE launched an ethical stock market index (ie, the FTSE4Good Bursa Malaysia Index), which is designed to highlight companies that demonstrate a leading approach to addressing ESG risks. This led to the launch of ESG-focused funds such as the Malaysian ESG Opportunity Fund launched in July 2015. In July 2019, Bond Pricing Agency Malaysia launched Malaysia's inaugural ESG Bond Index series, which covers Malaysian ringgit-denominated long-term bonds and sukuk that have been classified as ESG.

As of January 2020, there were nine Malaysian entities including Khazanah, KWAP and EPF who became signatories to the United Nations-supported Principles for Responsible Investments (PRI). The PRI comprises voluntary and aspirational investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice. One of the core principles under the 11th Malaysia Plan (2016-2020) is sustainability and development resilience through green growth. This will continue under the 12th Malaysia Plan (2021-2025) that encompasses three dimensions including environmental sustainability.

In December 2019, the Securities Commission of Malaysia released the Sustainable and Responsible Investment (SRI) Roadmap for the Malaysian capital markets, aimed at creating an SRI ecosystem and charting the role of the capital markets in driving sustainable development. With ESG mandates gaining traction in Malaysia, more companies have started embarking on a transformative journey to tackle ESG risks in a bid to retain and attract investors.

Conclusion

With the new PN government still settling in amidst an extremely challenging economic landscape due to the COVID-19 pandemic, it remains to be seen whether the measures being taken and implemented can help the Malaysian business communities weather through. So far, the government has been reacting positively to the problem. Malaysia appears to be on the right track with the making of certain clear policy decisions designed to steer the country away from the worst-case scenario. It will require concerted efforts from everyone to ensure all policy decisions yield the desired outcome.

Zaid Ibrahim & Co (**ZI**) is a founding firm of the ZICO Law network, and a full-service firm with more than 170 lawyers. Always committed to provide high-quality legal service to its clients, ZI has earned a reputation for its ability to devise innovative and workable solutions to satisfy the complex needs of its clients. The firm's impressive track record features engagements by local and multinational corporations on unique and complex commercial transactions, mergers and acquisitions exercises, fundraising on large infrastructure projects in Asian emerging markets as well as strategic law reform initiatives. As a member firm of ZICO Law, the firm provides its clients direct access to a powerhouse of over 300 lawyers in all ten ASEAN countries, putting it in a unique position to provide cross-border legal-related services within its own regional network.

Authors

Gilbert Gan is the managing partner of Zaid Ibrahim & Co. He is consistently recognised as one of Malaysia's top 100 lawyers and is also described as a first-class practitioner. Gilbert has advised on numerous complex and noteworthy transactions. His expertise includes takeovers and mergers, corporate restructurings, listings and other equity capital raising, exchange-traded derivatives such as structured warrants and ETFs, and funds including REITs, PE funds and unit trusts.

Ahmad Zulkharnain Musa heads one of the corporate practices in the firm and has extensive experience in advising corporations including public-listed and government-linked companies, on the whole range of corporate and commercial transactions including mergers and acquisitions as well as equity capital market transactions.

Chua Wei Min specialises in cross-border corporate and commercial transactions, mergers and acquisitions, private equity, funds and regulatory compliance. She has extensive experience in advising on legal and compliance issues in foreign direct investments in all sectors and works closely with clients on practical solutions. She also focuses on Chinese direct investments. She is also experienced in private client work involving trusts and foundations (family and philanthropic) and advises on the use of such structures for commercial and restructuring purposes.

Nadarashnaraj a/l Sargunaraj heads one of the corporate practices in the firm and advises on a wide range of corporate and commercial matters, including competition law, technology, media and communications, anti-bribery compliance, electronic commerce transactions, personal data protection, and mergers and acquisitions.

Zaid Ibrahim & Co

Level 19 Menara Milenium
Jalan Damanlela
Pusat Bandar Damansara
50490
Kuala Lumpur

Tel: +60 3 2087 9999
Fax: +60 3 2094 4666
Web: www.zicolaw.com

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a member of ZICO | law