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# Legal TAPS

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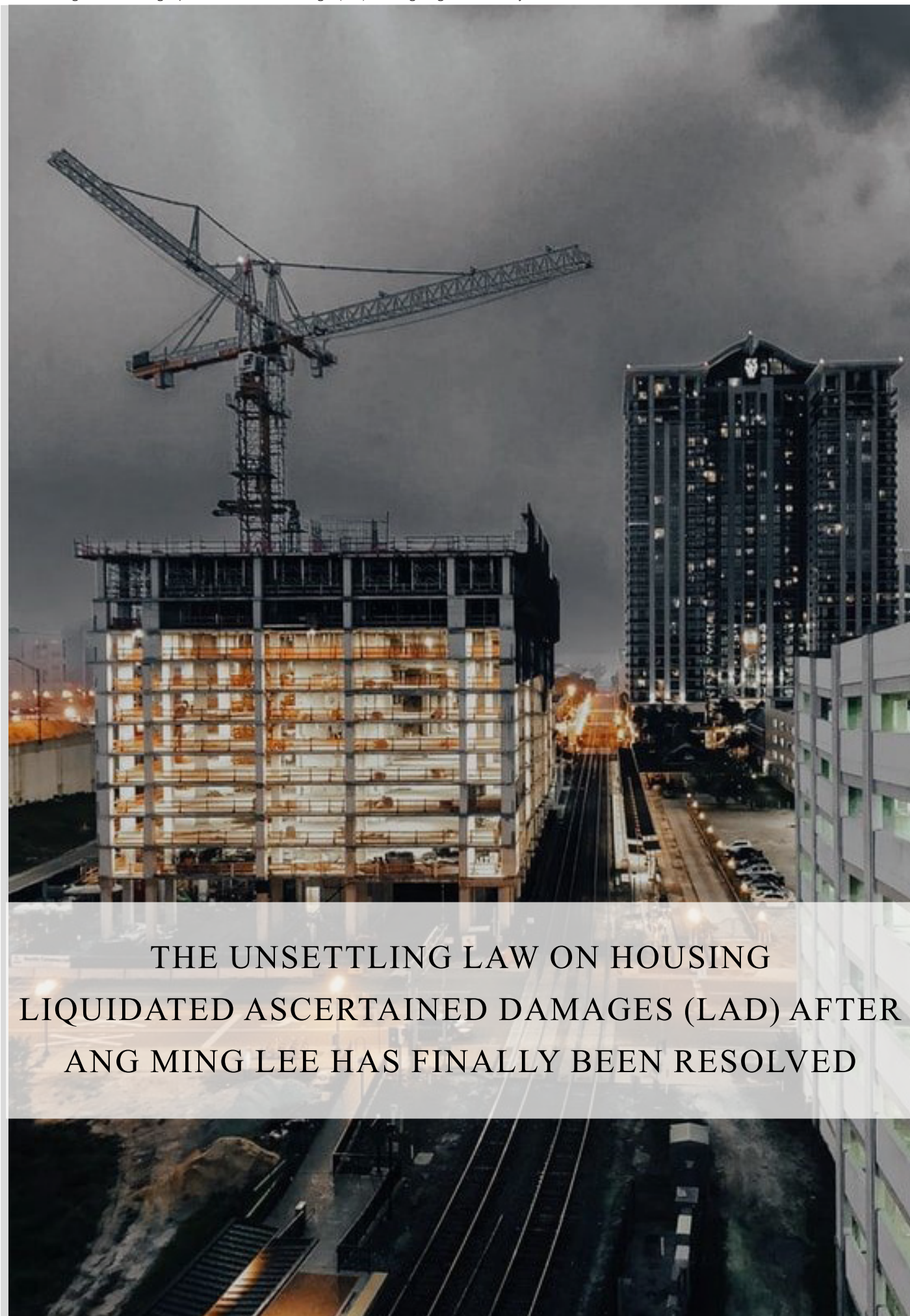
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by Wong Mei Ying & Ariadne Ng



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THE UNSETTLING LAW ON HOUSING  
LIQUIDATED ASCERTAINED DAMAGES (LAD) AFTER  
ANG MING LEE HAS FINALLY BEEN RESOLVED

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## Introduction

In November 2019, when *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor* and other appeals [2020] 1 MLJ 281 (“**Ang Ming Lee**”) was first delivered by the apex court, the decision caused ripples in the housing industry. The decision of the Federal Court effectively nullified and rendered void earlier decisions of the Controller of Housing in granting an extension of time to housing developers pursuant to Regulation 11(3) of the Housing Development (Control and Licensing) Regulations 1989 (“**HDR**”). The Federal Court in *Ang Ming Lee*, having ruled that Regulation 11(3) of the HDR was *ultra vires*, did not address or discuss the issue of whether such a ruling would be applied prospectively. In the absence of a ruling that the decision in *Ang Ming Lee* would apply prospectively, the default position is that *Ang Ming Lee* would apply retrospectively.

The decision of *Ang Ming Lee* led to a surge of claims filed by purchasers against developers for late delivery of vacant possession for sale of property as far back as 2012.

The decision of *Ang Ming Lee* also triggered a series of conflicting decisions in the lower courts. As each case presents a different set of facts to be determined by the courts, some courts sought to distinguish *Ang Ming Lee*, while others adhered strictly to the principles in *Ang Ming Lee*. Despite compliance with the laws at that time, developers were faced with multiple claims for liquidated damages for late delivery of vacant possession.

The retrospective application of *Ang Ming Lee* left developers feeling unjustified and without recourse to defend themselves against lawsuits from purchasers as they were held liable for late delivery of vacant possessions.

Approximately five years later, on 26 July 2024, the Federal Court addressed the ramifications of *Ang Ming Lee* in the case of *Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd* and other appeals [2024] 5 MLJ 897 (“**Obata-Ambak**”). The apex court’s decision in *Obata-Ambak* finally put to rest the legal turmoil for the past five years.

In *Obata-Ambak*, the Federal Court considered the four main issues:

(a) Whether the cause of action for the late delivery liquidated damages shall accrue to the purchaser only upon expiry of three-year period as provided in a Schedule H agreement?

(b) Whether the Second Actor Theory would be applicable to the approval of the extension of time by the Controller of Housing?

(c) Whether *Ang Ming Lee* would apply prospectively?

(d) Whether the purchasers are not entitled to the claim for liquidated ascertained damages due to inequitable conduct?

## Limitation Period

The Federal Court held that the purchasers were effectively challenging the validity of the clauses in the sale and purchase agreements as they have agreed to the terms when they signed the sale and purchase agreements in 2012. The developer in that instance, has obtained an approval to extend the time period for delivery of vacant possession before the sale and purchase agreements were executed. The purchasers were fully aware of the extended time period for delivery of vacant possession. Upon analysing the law on limitation, the Federal Court found that time begins to run at the earliest point i.e. at the signing of the sale and purchase agreements. The claim for liquidated ascertained damages that was filed outside of six years is thus time barred and the claim for liquidated ascertained damages must necessarily fail.

## The Second Actor Theory

The apex court held that the Second Actor Theory is applicable to curb the negative repercussions that were caused by the decision in *Ang Ming Lee*. The Second Actor Theory states that a legally defective act does not necessarily result in the act having no legal effect at all. The Second Actor Theory would apply where an innocent party had relied on an earlier decision made by a public authority that was subsequently declared *ultra vires*.

Applying it to the current scenario, the first act was the approval of the extension of time by the Controller of Housing while the second act was the developer’s reliance on the approval. As there would be substantial injustice if the developer’s reliance is found to be void, the Federal Court held that the Second Actor Theory applies.



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## Prospectivity of Ang Ming Lee

The Federal Court having ruled in Ang Ming Lee that Regulation 11(3) of the HDR was ultra vires, did not clarify whether the decision would apply prospectively or whether all extensions granted before Ang Ming Lee were invalid.

In Obata-Ambak, the Federal Court clarified that if Ang Ming Lee was to have retrospective effect, this would have serious ramifications to the housing developers who had placed reliance on the existing laws and complied with the laws which were at that time valid. Therefore, the Federal Court held that the decision of Ang Ming Lee should apply prospectively and would not apply to extensions granted by the Controller of Housing before Ang Ming Lee.

## Unjust Enrichment

On the factual matrix of the appeals, the Federal Court found that when the purchasers signed the sale and purchase agreements, they were fully aware of the terms of the sale and purchase agreements and the extended period to deliver vacant possession. The purchasers did not object to the extension and had benefited as vacant possession has been delivered. It was only after Ang Ming Lee that the claims were filed years after vacant possession was delivered.

The Federal Court held that the purchasers are thus not entitled to the claim for liquidated ascertained damages due to inequitable conduct of unconscionability, unjust enrichment and estoppel. The Federal Court emphasised that Ang Ming Lee is not a carte blanche for purchasers to claim liquidated ascertained damages retrospectively to enjoy a financial windfall.

## The Aftermath of Obata-Ambak

In a recent decision of the High Court in Mazmimala bt Mashur & Ors v Symphony Hills Sdn Bhd [2024] MLJU 2709, the High Court of Shah Alam on 21 October 2024 dismissed a claim for liquidated ascertained damages by purchasers pursuant to an Order 14A application.

In this action, 48 purchasers claimed against Symphony Hills Sdn Bhd for liquidated ascertained damages pursuant to Ang Ming Lee. The sale and purchase agreement between the purchasers and the developer stipulated that vacant possession would be delivered within 36 months. Prior to the execution of the sale and purchase agreements, the developer obtained an extension of time to extend the time period for delivery of vacant possession by 12 months.

The properties involved in this case were landed properties, governed by Schedule G, which stipulates a time period for delivery of vacant possession of 24 months.

The High Court categorised the legal issues into 4 categories:

- (a) Validity of extension of time;
- (b) Justification for extension of time;
- (c) Estoppel; and
- (d) Mode of challenge.



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The High Court followed the principles established by the Federal Court in *Obata-Ambak* and found that the extension of time, which was granted before Ang Ming Lee, is not ultra vires of the Housing Development (Control and Licensing) Act 1966.

The High Court further held that in the absence of any order of court in direct proceedings against the relevant parties on the invalidity of the approval granted by the Controller of Housing, the approval granted by the Controller of Housing is valid and was made in accordance with the law and procedures at that material time. The High Court did not answer the remaining 2 categories as these would have no effect on the determination of the earlier categories. The Plaintiffs' claim was subsequently dismissed with cost of RM42,000 awarded to the Defendant.

Our senior partner and head of litigation, Mr Leonard Yeoh, senior associate, Caleb Sio and associate, Chen Mei Yan, represented the developer at the High Court.

With the decision of *Obata-Ambak*, purchasers who purchased their property before November 2019 may no longer leverage on the decision of *Obata-Ambak* to claim for liquidated ascertained damages. For developers and purchasers, it is important to

stay updated on the current position of law and any regulatory changes to ensure that your rights remain protected.

*This article is authored by our Partner, Mr Leonard Yeoh and Senior Associate, Mr Caleb Sio. The information in this article is intended only to provide general information and does not constitute any legal opinion or professional advice.*



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## Introduction

The Personal Data Protection (Amendment) Act 2024 (“**Amendment Act**”), which represents the first legislative update to the Personal Data Protection Act 2010 (“**PDPA**”) since it became effective on 15 November 2013, will be implemented in three phases during the first half of 2025, beginning on 1 January 2025, followed by 1 April 2025 and 1 June 2025. The Amendment Act received Royal Assent on 9 October 2024 and was published in the Federal Gazette on 17 October 2024, following its passage by the House of Representatives and the Senate of Malaysian Parliament on 16 and 31 July 2024, respectively.

### First phase: 1 January 2025

The first phase of the amendments, which is poised to take effect on 1 January 2025, is generally administrative in nature. These amendments are amongst others as follows:

- a. that the procedure for opening, operating and maintaining any bank accounts for the personal data protection fund established under the PDPA, is to be carried out in the manner authorized by the Personal Data Protection Commissioner (“**Commissioner**”) (rather than by the Minister of Digital);
- b. that a service of a notice or any other document upon any person may also be effected by electronic means (in addition to the existing methods of hand

delivery, leaving it at the last-known address or sending it by A.R. registered post);

- c. that any order, directions, circular, notice or code of practice issued by the Commissioner before the commencement of the Amendment Act will remain valid; and
- d. that any investigation, trial, proceedings or action that is ongoing before 1 January 2025 will continue under the original provisions of the PDPA and will not be affected by the amendments under the Amendment Act.

### Second phase: 1 April 2025

The second batch comprises the following key amendments, set to come into force on 1 April 2025:

- a. global change of the term “data user(s)” to the term “data controller(s)”;
- b. expansion of the definition of “sensitive personal data” to include “biometric data”, which means any personal data resulting from technical processing relating to the physical, physiological or behavioural characteristics of a person;
- c. a new definition for “personal data breach” which means any breach of personal data, loss of personal data, misuse of personal data or unauthorized access

of personal data;

d. exclusion of personal data of a deceased individual from the scope of the PDPA;

e. expansion of the definition of “requestor” to include an individual who makes a data portability request;

f. empowering the Commissioner to designate not only a body but also a data controller as a data controller forum in respect of a specific class of data controllers;

g. a direct obligation on data processor to comply with the Security Principle when processing personal data on behalf of a data controller, including imposition of penalties on the data processor for breaching the Security Principle, with a fine of up to RM1 million and/or imprisonment for up to 3 years;

h. an increased penalty rate for the offence committed by a data controller for breaching the Personal Data Protection Principles, to a fine of up to RM1 million (previously RM300,000) and/or a term of imprisonment of up to 3 years (previously 2 years); and

i. allowing the transfer of personal data to a place outside Malaysia if there is in that place in force any law which is substantially similar to the PDPA, or that place ensures an adequate level of protection in relation to the processing of personal data which is at least equivalent to the level of protection afforded by the PDPA. There is no longer a white-list regime for cross-border data transfer.

### Third phase: 1 June 2025

The third phase of amendments will become effective on 1 June 2025 and includes the following:

a. a new obligation on both data controller and data processor to appoint one or more data protection officers (“**DPO**”), with the data controller required to notify the Commissioner of the appointment;

b. a new obligation on data controller to notify the Commissioner of a personal data breach as soon as practicable, and if the breach causes or likely to cause any significant harm to the data subject, to notify the data subject, failing which may result in a fine of up to RM250,000 and/or imprisonment for up to 2 years; and

c. a new right of data portability for data subject who may request that his personal data be transmitted

to another data controller of his choice, subject to technical feasibility and compatibility of the data format.

### New regulations and guidelines

The Commissioner is formulating new regulations and guidelines to complement the amendments to the PDPA, which are expected to be issued in tandem with the implementation of the Amendment Act. The Commissioner has previously released public consultation papers to gather feedback on these supplementary regulations and guidelines:

a. Personal Data Protection (Personal Data Breach Notification) Regulations and Data Breach Notification Guideline (see [Public Consultation Paper No. 01/2024](#)), which seek to address:

i. notification thresholds for data breach notification (“**DBN**”) to the Commissioner (with proposals to clarify that the DBN requirement applies only in cases where the breach is likely to cause or have caused significant harm and/or where the breach is likely to be or is of a significant scale, taking into account certain factors);

ii. notification thresholds for DBN to affected data subjects (with proposals to clarify what constitutes “significant harm”);

iii. manner and form of DBN to the Commissioner (with proposals to adopt the current template for voluntary notification, with appropriate modifications



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to simplify the content and presentation style and standardize the required response);

iv. manner and form of DBN to affected data subjects (with proposals mandating the minimum information to be provided in the notification);

v. timeframe for DBN to the Commissioner (with proposals requiring notification within 72 hours of becoming aware of the breach);

vi. timeframe for DBN to affected data subjects (with proposals to clarify that “without unnecessary delay” means at the same time as the notification to the Commissioner or as soon as practicable thereafter);

vii. exemptions from providing DBN to affected data subjects (with proposals to exclude the DBN requirement in cases where a data controller has implemented appropriate technological and organizational protection measures that renders it unlikely that the breach will result in significant harm to affected data subjects, or where the personal data compromised or affected by the breach is protected by security measures that make the information unintelligible or meaningless to unauthorized individuals);

viii. data processor’s obligation to comply with the DBN requirement (with proposals to contractually obligate the data processor to promptly notify the data controller of any personal data breach and provide all reasonable and necessary assistance);

ix. concurrent application of the DBN regime under the PDPA with other laws or sector-specific breach notification regimes (with proposals for the PDPA’s DBN regime to operate separately and concurrently with other relevant DBN requirements imposed under other laws, without overriding such requirements or laws); and

x. management of personal data breaches and record-keeping obligation (with proposals to provide guidance on best practices for a data controller to effectively respond to the breaches, investigate and contain them, and implement measures to prevent the recurrence of similar breaches in the future).

b. Personal Data Protection (Data Protection Officer) Regulations and Data Protection Officer Guideline (see [Public Consultation Paper No. 02/2024](#)), which seek to address:

i. threshold requirement for mandatory

appointment of DPO (with proposals for this requirement to apply only to a data controller or data processor who carries out data processing activities of a large scale, taking into account certain factors);

ii. consistency with other legal requirements for roles similar to a DPO (with proposals allowing the DPO to undertake additional job functions beyond data-specific roles);

iii. sector-specific risks for DPO when carrying out his functions (with proposals outlining the minimum responsibilities of the DPO);

iv. reporting line for DPO (with proposals requiring that the DPO has a direct reporting line or access to senior management team of the data controller or data processor, or to the personnel in an equivalent position);

v. regional appointment of DPO and local residency requirement (with proposals allowing a single DPO to serve multiple entities within the same group of companies for a data controller or data processor, and requiring the DPO to be ordinarily resident in Malaysia);

vi. minimum expertise and qualifications of DPO and certification requirements (with proposals for the appointed DPO to meet a prescribed minimum set of expertise and qualifications, and to complete the required training or certification programmes); and

vii. factors the Commissioner may consider in exercising discretion to mandate appointment of DPO (with proposals for the Commissioner to be empowered to direct certain classes or specific data controller or data processor to appoint a DPO on a case-by-case basis, taking into account certain factors).

c. Personal Data Protection (Right to Data Portability) Regulations and Data Portability Guidelines (see [Public Consultation Paper No. 03/2024](#)), which seek to address:

i. readiness for the right to data portability (with proposals for this requirement to apply when there is technical feasibility between the data controller and receiving data controller);

ii. types of personal data subject to the right to data portability (with proposals to limit the types of personal data to those directly provided by the data

subject, processed based on consent (or explicit consent) or based on a contract to which the data subject is a party, processed by automated means, and excluding inferred or derived data);

iii. timeline for complying with a data portability request (with proposals to comply with the request within 21 days, with a possible extension of 14 days, similar to the timelines for data access and correction requests);

iv. historical data (with proposals that no time limit be imposed on data portability requests for personal data previously collected and retained by a data controller);

v. fees (with proposals allowing a data controller to charge a capped fee, similar to that for data access requests); and

vi. transmission of personal data arising from a data portability request (with proposals allowing a data controller to determine the best method for transmitting the requested data, provided that it complies with any common standards or formats specified by the Commissioner or relevant data controller forum, or that there are appropriate security measures to ensure the data is securely transmitted to the correct destination or receiving data controller).

d. Updated Personal Data Protection Standards (“**Standards**”) (see [Public Consultation Paper No. 04/2024](#)), which seek to:

i. replace the prescriptive “black and white” rules in the Standards with “outcome-based” requirements;

ii. replace the specific security standards for electronically and non-electronically processed personal data, respectively, with general security standards which are applicable to both;

iii. expand the retention standards to cover the retention period, documentation and records for the retention and disposal of personal data, methods for destruction or deletion of personal data and third-party retention of personal data;

iv. expand the data integrity standards to include measures for data validation and verification, data quality monitoring, data consistency and data lifecycle management; and

v. recognize industry certifications as a



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means for a data controller or data processor to demonstrate compliance with the Standards (for instance, ISO 27001 certification for information security management system, ISO 27017 certification on information security controls for the provision and use of cloud services, and ISO 27701 certification for privacy information management system).

e. Cross-Border Personal Data Transfer Guidelines (see [Public Consultation Paper No. 05/2024](#)), which seek to address the following, including the prescribed conditions for transferring personal data to a place outside Malaysia (“**that place**”):

i. new conditions that there is in that place in force any law which is substantially similar to the PDPA, or that place ensures an adequate level of protection in relation to the processing of personal data which is at least equivalent to the level of protection afforded by the PDPA (with proposals requiring a data controller to conduct a transfer impact assessment to determine whether that place has such a law or protection level);

ii. consent as the basis for the transfer (with

proposals requiring a data controller to notify data subjects in writing about the cross-border data transfer and to obtain their consent);

iii. necessity for performance of contract or protection of vital interests of data subjects as the basis for the transfer (with proposals requiring a data controller to consider certain factors to determine whether the transfer is necessary for these purposes);

iv. use of binding corporate rules (with proposals to recognize this as proof that the data controller has taken all reasonable precautions and exercised all due diligence to justify the transfer);

v. use of standard contractual clauses (with proposals to recognize this as proof that the data controller has taken all reasonable precautions and exercised all due diligence to justify the transfer);

vi. use of certification mechanism (with proposals to recognize this as proof that the data controller has taken all reasonable precautions and exercised all due diligence to justify the transfer); and

vii. record-keeping obligation (with proposals requiring a data controller to keep and maintain relevant records that sufficiently demonstrate that the transfer complies with the applicable condition(s) under the PDPA).

## Next steps

The Amendment Act marks a pivotal step forward in strengthening Malaysia's data protection framework, aligning it more closely with global practices and international standards. These amendments ensure that personal data protection remains a central priority in an increasingly digital world. With the Amendment Act coming into force, it is essential for organizations to proactively familiarize themselves with the new obligations and take necessary steps to adequately prepare for the upcoming amendments. These include:

a. reviewing and updating internal data protection policies, practices and procedures to align them with the new requirements;

b. developing a data breach crisis plan that establishes clear protocols for addressing personal data protection breaches; and

c. revisiting contracts with third-party data

processors to ensure they include appropriate indemnities and warranties to safeguard the organization in the event of a data breach.

This approach will not only ensure compliance with the amended PDPA, but also foster a robust culture of privacy and accountability within the organization. By embracing these changes, businesses can better safeguard individuals' personal data, mitigate potential risks and enhance their reputation as responsible stewards of privacy in a rapidly evolving digital landscape.

*This article is authored by our Partner, Ms Lee Lin Li, Senior Associate, Ms Chong Kah Yee and our pupil, Wong Yun Xin. The information in this article is intended only for general information and is not a legal opinion or professional advice.*



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## Introduction

In today's business landscape, it is no longer possible to ignore the role Environmental, Social, and Governance ("**ESG**") principles play in businesses. To stay relevant and ensure compliance with applicable laws, business leaders and decision-makers must understand the laws and regulations pertaining to ESG practices.

ESG is particularly pertinent for public listed companies as they are subject to scrutiny from regulators, shareholders and the public. Fragmented ESG regulations and the lack of centralised ESG regulations have made it challenging for businesses to effectively integrate ESG into their operations. This article explores the legal framework pertaining to ESG for public listed companies in Malaysia and for companies in Malaysia in general.

## ESG Legal Framework for Public Listed Companies

### Listing Requirements

Bursa Malaysia Securities Berhad ("**Bursa Malaysia**"), which is the stock exchange of Malaysia, has made it mandatory for public companies listed on the Main Market and ACE Market to include a narrative statement of their management of material economic, environmental and social risks and opportunities ("**Sustainability Statement**").<sup>1</sup>

Public companies listed on the Main Market and ACE Market must ensure that the Sustainability Statement contains information that is balanced, comparable and meaningful by referring to the Sustainability Reporting Guide issued by Bursa Malaysia. In identifying the material economic, environmental and social risks and opportunities, public companies listed on the Main Market and ACE Market should consider the themes set out in the Sustainability Reporting Guide.<sup>2</sup>

The Main Market Listing Requirements ("**MMLR**") prescribe the contents of the Sustainability Statement for public companies listed on the Main Market, which include the following:

- (a) the governance structure in place to manage the economic, environmental and social risks and opportunities ("**sustainability matters**");
- (b) material sustainability matters;
- (c)(1) how material sustainability matters are identified; (2) why they are important to the listed companies; and (3) how they are managed including details on indicators relevant to these sustainability matters which demonstrate how the listed companies have performed in managing these sustainability matters, together with the data for the

last 3 financial years, and performance target(s) in relation to the indicators (if such targets are set).<sup>3</sup>

Similar requirements on the contents of the Sustainability Statement as set out above will apply to public companies listed on the ACE Market for financial year ending on or after 31 December 2024.

### Sustainability Reporting Guide

The Sustainability Reporting Guide is published by Bursa Malaysia to assist public listed companies to comply with Bursa Malaysia's Listing Requirements when producing a Sustainability Statement in their annual reports. The Sustainability Reporting Guide also provides case studies from public companies listed on Bursa Malaysia.

The Sustainability Reporting Guide provides disclosure guidance to public listed companies in Malaysia in the following areas:

- (a) putting in place sustainability governance structure;
- (b) setting the scope of the Sustainability Statement and basis of the scope;
- (c) undertaking a robust materiality assessment process for the systematic identification as well as prioritisation of sustainability matters that are most material to the companies and their stakeholders;
- (d) how companies are managing each of the material sustainability matters that they have prioritised via their materiality assessment process;
- (e) measurement methodologies for indicators that are linked to certain material sustainability matters;
- (f) setting and communicating performance targets that gives stakeholders a view of the company's ambition, strategic direction and progress with regards to the management of their material sustainability matters;
- (g) provision of a performance data table that facilitates stakeholder assessment of how companies have performed in managing various material sustainability matters;
- (h) subjecting Sustainability Statements to an assurance process; and
- (i) disclosures aligned with the Task Force on

Climate-Related Financial Disclosures (TCFD) Recommendations.

### Malaysian Code on Corporate Governance

The Malaysian Code on Corporate Governance ("MCCG") is a set of principles and recommendations issued by the Securities Commission Malaysia, aiming to promote good corporate governance practices in companies. The MCCG is based on the following three key principles of good corporate governance:

- (a) board leadership and effectiveness;
- (b) effective audit and risk management; and
- (c) integrity in corporate reporting and meaningful relationship with stakeholders.

Such principles go beyond the minimum requirements prescribed by statutes, regulations or Bursa Malaysia.

A public listed company listed on Main Market or ACE Market of Bursa Malaysia must ensure its board of directors provides an overview of the application of the principles set out in the MCCG, in its annual reports.<sup>4</sup> It must provide meaningful explanation on how it has applied each practice set out in the MCCG ("Practice"). If the listed company has departed from a Practice, it must provide an explanation for the departure and disclose the alternative practice it has adopted and how such alternative practice achieves the intended outcome as set out in the MCCG.<sup>5</sup>

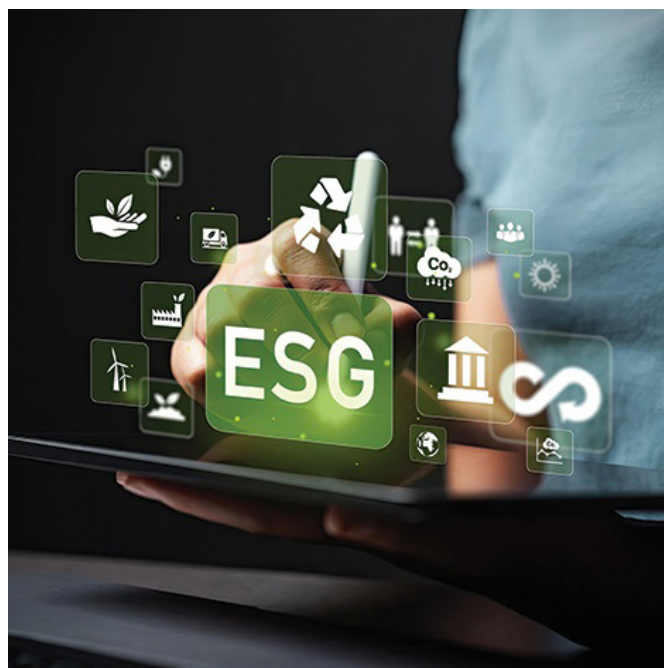


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## Legislations relevant to ESG for Companies in Malaysia

Depending on the business nature of the companies, the following are the legislations which are applicable when considering adoption and enhancement of ESG for companies in Malaysia:

### Environmental

#### (1) Environmental Quality Act 1974 (“**EQA**”)

The EQA, together with its subsidiary legislations, regulate the discharge of pollutants into air, water and land, as well as the emission of noise. The EQA also provides a licensing framework and related offences and penalties to prevent, reduce and control pollution and enhance environmental protection. Companies engaging in activities with significant environmental impacts, classified as prescribed activities under the EQA, must appoint a qualified person to conduct an environmental impact assessment.<sup>6</sup>

### Social

#### (2) Employment Act 1995 (“**EA**”)

The EA sets the minimum standard of terms and conditions of employment for employees who fall under the ambit of the EA. The regulation of minimum standard of terms and conditions of employment under the EA varies depending on the specific categories of employees. For instance, employees earning wages of RM4,000 or less per month are entitled to overtime wages, allowance during shift work, payment at the rates prescribed under the EA for work done on any paid holiday, and benefits relating to termination, lay-offs and retirement.

#### (3) Laws relating to statutory contributions

In Malaysia, employers are required to make statutory contributions to various employee benefit schemes to ensure social security and workforce development. The Employees Provident Fund Act 1991 mandates contributions to the Employees’ Provident Fund (EPF) for retirement savings, while the Employees’ Social Security Act 1969 requires contributions to SOCSO for workplace injury, occupational disease, and invalidity coverage. The Employment Insurance System Act 2017 ensures financial assistance and job placement support through contributions to the Employment Insurance System (EIS). Additionally,



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the Pembangunan Sumber Manusia Berhad Act 2001 obligates employers in certain industries to contribute to the Human Resources Development Fund (HRDF), aimed at promoting training and skills development for employees. Non-compliance with these laws can result in penalties or legal actions.

#### (4) Occupational Safety and Health Act 1994 (“**OSHA**”)

The OSHA provides for securing the safety, health and welfare of individuals at work while also protecting others against safety or health risks in connection with the activities at work.

The amendments to the OSHA which come into force on 1 June 2024 have introduced the following key changes:

(i) expansion of the scope and applicability of OSHA to all places of work throughout Malaysia, including the public service and statutory authorities but excluding domestic employment, armed forces and work on board ships;<sup>7</sup>

(ii) expansion of the principal’s duty to ensure the safety and health of any contractor engaged by the principal, any subcontractor or indirect subcontractor when at work, and any employee employed by such contractor or subcontractor when at work;<sup>8</sup> and

(iii) appointment of an employee as an occupational safety and health coordinator by an employer with five or more employees.<sup>9</sup>

### (5) National Wages Consultative Council Act 2011

The National Wages Consultative Council was established in Malaysia under this Act to recommend minimum wages orders to the government according to sectors, types of employment and regional areas.

The Minimum Wages Order 2022 ("**Order 2022**"), made under this Act, sets the minimum wage employers must pay their employees. The Order 2022 is implemented with the aim of providing basic standard of living for employees by means of a minimum earnings threshold.

The 2025 Malaysian Budget introduced a new Minimum Wages Order 2024 ("**Order 2024**"), which provides for a revised minimum wage rate of RM1,700, an increase from the existing rate of RM1,500. This revised minimum wages will come into effect on 1 February 2025 for employers who have five employees or more and employers categorised as conducting professional activities under the Malaysia Standard Classification of Occupation 2020 regardless of the number of employees. Employers with fewer than five employees have until 1 August 2025 to comply with the revised minimum wages of RM1,700 in Order 2024. The Order 2024 does not apply to domestic servants.



Image by Pinterest

### (6) Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

The Act aims to prevent and combat human trafficking and smuggling of migrants, specifying related offences and penalties.

### (7) Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990

Where an employer provides housing, accommodation and amenities to employees, this Act, together with its subsidiary legislations, prescribe the minimum standards which must be complied with. It requires an employer to obtain a certificate for accommodation from the Department of Labour which certifies that the accommodation meets the prescribed minimum standards.<sup>10</sup> An employer shall inform the Director General of Labour within 30 days from the date an accommodation is occupied by the employees of such occupation.<sup>11</sup>

## Governance

### (8) Companies Act 2016 ("**CA**")

The CA provides for the registration, administration and dissolution of companies. The CA codifies directors' duties. Under section 213(1) of the CA, a director of a company shall at all times exercise his powers in accordance with the CA, for a proper purpose and in good faith in the best interest of the company.

Since ESG practices are gaining more attention globally, a director could be deemed as not acting in the best interest of the company if it fails to make decisions for ESG practices to be exercised in the company.

### (9) Malaysian Anti-Corruption Commission Act 2009 ("**MACCA**")

The MACCA aims to prevent corruption in Malaysia and establishes related offences and penalties.

Companies should be aware of introduction of corporate liability under section 17A of the MACCA. If

a person associated with companies corruptly gives, agrees to give, promises or offers any gratification to any person to obtain or retain business or business advantage, the company commits an offence.

## Conclusion

For companies to remain compliant and competitive, there must be a clear understanding of ESG-related laws and regulations. The evolving and fragmented nature of ESG-related laws and regulations pose significant challenges to companies in integrating ESG into their operations. Companies should assess their operations and identify compliance gaps. The assessment would assist companies to come up with a compliance framework, checklists and procedures to ensure their day to day operations take into account ESG concepts.

*This article is authored by our Partner, Ms Wong Mei Ying and Associate, Ms Ariadne Ng. The information in this article is intended only to provide general information and does not constitute any legal opinion or professional advice.*

## Endnotes

<sup>1</sup>Paragraph 29, Part A of Appendix 9C of Main Market Listing Requirements and Paragraph 30, Part A of Appendix 9C of ACE Market Listing Requirements

<sup>2</sup>Paragraph 6.1, Practice Note 9 of Main Market Listing Requirements and Paragraph 6.0, Guidance Note 11 of ACE Market Listing Requirements

<sup>3</sup>Paragraph 6.2, Practice Note 9 of Main Market Listing Requirements

<sup>4</sup>Paragraph 15.25 of the Main Market Listing Requirements and Rule 15.25 of the Ace Market Listing Requirements

<sup>5</sup>Paragraph 3.2A, Practice Note 9 of the Main Market Listing Requirements and Paragraph 3.2A, Guidance Note 11 of the ACE Market Listing Requirements

<sup>6</sup>Section 34A, Environmental Quality Act 1974

<sup>7</sup>Section 1 and First Schedule of the Occupational Safety and Health Act 1994

<sup>8</sup>Section 18A of the Occupational Safety and Health Act 1994

<sup>9</sup>Section 29A(1) of the Occupational Safety and Health Act 1994

<sup>10</sup>Section 24D of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990

<sup>11</sup>Section 24E(1) of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990



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