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2020
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A Guide for Accountants and Small Businesses – Using Data Automation Tools to Manage Your Source Documents

at-mia.my/2020/07/14/a-guide-for-accountants-and-small-businesses-using-data-automation-tools-to-manage-your-source-documents

July 14, 2020

The management of source documents – bills, invoices, receipts or anything substantiating a transaction – is critical for small business compliance. They're also important for accurately and efficiently completing the accounting process, and ultimately, providing informative business insights.

However, there are often a few questions that arise when it comes to source document management best practices. Whether you are an accountant or small business owner, you'll agree that source documents are a lot of administrative effort to collect and manage. It's also estimated that up to 25% of a firm's office space could be used for paper document storage (find out how you can build a paperless practice here).

Accountants are uniquely positioned to help their small business clients better manage source documents. Let's break down some frequently asked questions to better understand why and how.

Who should manage source documents: the accountant or the client?

The nature of every relationship between a business owner and their outsourced accountant is different. However, a simple way to improve your client relationships is by taking more administrative tasks off their hands – tasks such as document management.

Based on conversations with leading accounting professionals, it's evident that outsourced accountants who play a significant role in helping their small business clients collect and manage source documents are more likely to have stronger client relationships.

Beyond helping SMEs better manage their source documents for compliance-related reasons (for example, helping them get through a routine audit), accountants who manage source documents are able to provide more accurate reconciliation. This leads to more meaningful business insights. As a result, the client tends to be happier with the services they receive and are more likely to want to subscribe to more accounting services.

This isn't to say that business owners should neglect their responsibility in keeping track of source documents. Rather, since source documents are important to the compliance process, accountants should take the opportunity to play a leading role in helping their clients better manage their documents.

Why are source documents important for accounting?

Source documents are vital for business compliance and audit preparation. It's important to understand the types of documentation that are required for small businesses to remain compliant in the region(s) you serve. For example, by keeping up-to-date on the statutory requirements in the countries where your clients conduct business.

Source documents are also important for improving accounting data quality. Best-in-class accountants will avoid reconciling directly from a bank statement whenever possible to ensure each transaction can be verified with a source document. Having source documents readily available will not only make the reconciliation process faster, easier, and more accurate, it will also help to gather clean data, which can then be translated into business insights.

Which brings us to our next question. Source documents are traditionally painful to collect, often requiring several low-value client interactions and confusing back-and-forth communications. So how can they be efficiently collected and managed?

What's the best way to collect and manage source documents?

One of the best ways to collect and manage source documents is to do so digitally. That is, to implement a process and technology that will automate and digitise document management for you.

There are a number of benefits to digitising document collection and management. From disaster-proofing, to mitigating physical storage space, to facilitating flexible and remote work. Perhaps best of all, finding a single system for digitising and collecting source documents will allow for one centralised document storage solution. This makes all documents readily available when you need them.

When you activate Hubdoc and Xero for your clients, you can furnish source documents to you simply by snapping a photograph on Hubdoc's mobile app, or send them to Hubdoc via email. When documents are added to Hubdoc, the data is automatically extracted, digitally filed and easily searchable. The end result? You spend less time chasing your clients for documents, and have all the information you need to offer insightful business advice. All the while, you're automating some of the manual processes that are traditionally time-consuming.

Moreover, Hubdoc integrates with cloud storage platforms (Box, Dropbox, ShareFile, SmartVault, and Google Drive). It also provides the option to push documents to Xero Files, providing redundant backup for easy client access. When integrated with cloud accounting platforms such as Xero, you can publish source documents to create and match to transactions in the bank feed, with the source document automatically attached. Request a demo of Hubdoc here.

Digitising document collection might require some change management. You will have to ensure that both your staff and clients see the value, and are trained on their responsibilities in the system. For example, clients will need to get used to taking photos of receipts when they're on the go.

Or, by implementing tools like Hubdoc, clients can continue to submit paper documents and your firm can take care of the digitisation, providing even more value to your clients.

Having a digital and centralised system for document management can also provide peace of mind to clients who might be anxious about keeping track of documents for audit purposes. In the event of an audit, having all documents readily available in one place will help to ensure the audit process goes smoothly.

Accountants who can help their small business clients digitally manage their source documents are able to provide additional value. Better yet, you'll be able to further position yourself as an advisor by helping your clients move into an increasingly digitally-enabled world.

Apart Together: How Do We Engage Our Employees in This Challenging Time?

at-mia.my/2020/07/07/apart-together-how-do-we-engage-our-employees-in-this-challenging-time

July 7, 2020

By Anis Ramli

An engaged workforce is a valuable resource to any organisation. Highly engaged employees are aligned with company's goals, driven and dedicated beyond their work. They are the greatest asset for a business. "In a challenging time like now, highly engaged employees are the ones who will help steer the company out of the crisis and bounce back quickly", said Dato' Hamidah Naziadin, Group Chief People Officer, CIMB, at MIA's webinar on *"Apart Together: How do we engage our employees in this challenging time?"*.

However, as the world stays indoors and working remotely becomes the new norm, engaging our employees becomes more challenging. How then can organisations reset relations with workers to boost morale and preserve productivity?

"It is all about building emotional connection with your employees," said Dato' Hamidah. "getting the caring culture right and communications ongoing is even more critical in these times of crisis. Dialogues need to continue to protect jobs, motivate employees and ensure businesses move forward." During pre-COVID times, employee engagement was in a way easier to execute as people and teams took part in regular meetings, team building, breakout sessions and met up over lunch or coffee. Now, as we are socially distant, how can one be out of sight but remain at the top of mind?

Go back to basics. At the root of it all, we are human beings, and we respond to kindness and empathy. Employees gravitate to employers who care for them and the community. Here are four best practices suggested by Dato' Hamidah that any organisation can adopt:

Put Employee Wellness at the top of mind: LinkedIn and social media feeds today are full of contents on the perils of working under the current circumstance, which can include a fear of their health and safety for those who are in essential services and are required to work in the office like CIMB employees. For those who are working from home, social isolation, and the difficulty of multi-tasking may bring demotivation and depression. To help manage these new challenges facing employees, it is critical that organisations must act quickly to help create psychological safety and a sense of community. “At CIMB, for instance, we acted immediately to address the medical concerns of our staff. In the event any of our staff is tested positive for COVID-19, we will cover the testing and home sanitisation expenses for his/her family members while the employee is being treated. We also provide care packages for those who are required to work in office.” said Dato’ Hamidah. Companies can also set up an internal process to check in on staff when they or their loved ones are sick and empower them with the necessary support and tools needed to stay productive and healthy working remotely.

Maintain communications AND be innovative: Technology has made teleworking seamless. But all work and no play make Kiah, Lim and Muthu burnt out and fatigued. So, organisations need to make the effort to leverage on these tools for purposes other than work. “We use teleconference and virtual meets to do more than just discuss work or actionable ideas. We also connect with our staff on the fun stuff, like organising contests and challenges,” said Dato’ Hamidah. Other trends that are taking off are playing virtual social networking games that promote camaraderie, such as houseparty and skribbl.io. This not only helps connect people, but breaks down the monotony of working alone and being socially distant.

Build a sense of purpose: Being socially isolated impacts mental well-being. One way to make employees feel more valued is to empower them to help others. Volunteering and giving back can be done in non-traditional ways that do not require physical presence. Virtual volunteering has become the norm, as is virtual gifting.

Strategise and modify in a reliable manner: As with preparations for work from home, companies can communicate their response to return-to-office preparations in a reliable manner. Promptly address support for specific changes to the physical work environment for staff who return to work physically. Communicating the company’s health and hygiene practices give returning workers peace of mind. For example, MIA did this very clearly through its issuance of statements and online announcements of its back-to-work SOPs.

Leadership a critical success factor: Amongst the above, Dato’ Hamidah emphasised the key success factor also lie with leadership. Leaders in the new normal must be creative and innovative, trusting and empowering. More importantly, each and every one of us must realise the leader in us – that we ought to take charge, turn problems into opportunities, contribute our values to our organisation.

CFO Conference 2020: Future-proofing CFOs for Sustainable Leadership

at-mia.my/2020/07/15/cfo-conference-2020-future-proofing-cfos-for-sustainable-leadership

July 15, 2020

COVID-19 is an unprecedented crisis laden with uncertainty and volatility – as such, it's understandable if businesses are fumbling for clarity and direction.

Yet, crisis can also be an opportunity for reflection and reinvention – towards a better and more sustainable tomorrow.

In a nutshell, that's what the CFO Conference 2020 hopes to impart to CFOs as stewards of their organisations – the wisdom and insights needed to pivot to resilience and courageous leadership in the midst of pessimism and trepidation.

The CFO Conference 2020 emphasises the need for CFOs to rewire their thinking and behaviour to become future-ready and agile leaders who can shift gears from fear to hope – bringing their organisations and business models onto new paths of sustainable development.

At this 2-day virtual Conference featuring the cream of international and local speakers and panellists – CFOs will pick up innovative strategies for defensive risk management, effective leadership and big picture connective thinking that will lead to business resilience and sustainable value creation.

The highlights:

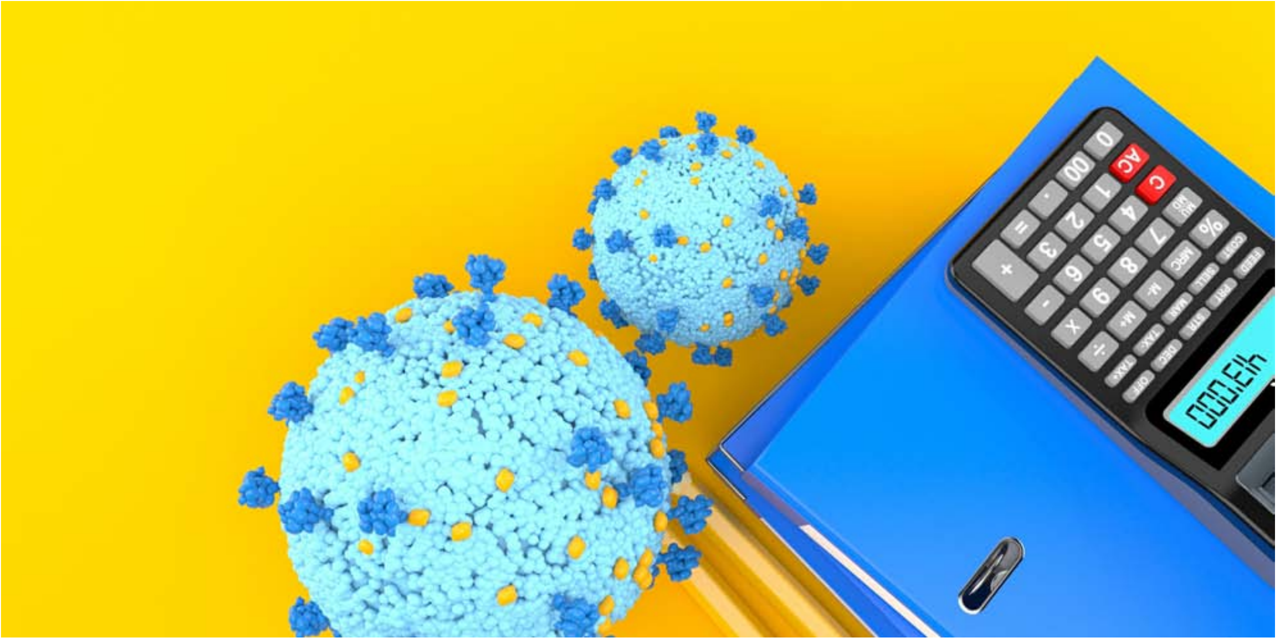
- **Innovative Liquidity Solutions** – The session on ***Enhancing Liquidity through Funding Innovation*** explores the latest strategies and funding alternatives available in the Malaysian market, including flexible funding, equity crowdfunding and P2P lending. Bonus 1: understand how to integrate the United Nations Sustainable Development Goals (UNSDGs) in business plans to attract ***climate-safe investments and funding***. Bonus 2: *Explore* ***technology funding*** via vendor subsidy programmes, co-investment and industry consortia.
- **Financial Reporting Impacts** – This session looks into some of the most pressing technical conundrums: Is COVID-19 an adjusting or non-adjusting event? What's the impact on the impairment of assets? How do we handle the write down of inventory to net realisable value, derecognition of deferred tax assets, fair value adjustments, going concern and related disclosures both within and external to the financial statements and more?
- **Post-MCO Debt & Business Restructuring: Key Legal & Tax Considerations** – effective tax and legal strategies for the new normal.
- **CFO Leadership Future-Proof Playbook** – A manual for courageous and wise leadership when faced with crisis and disruption.
- **Integrated Thinking and Reporting** – Create and protect value against erosion using integrated thinking and reporting techniques and models that enhance decision-making and business continuity.
- **Digital Transformation** – Harness the opportunities in digital disruption and explore the emerging digital technologies that are critical for CFOs and finance functions.
- **Ethics and Trust** – Navigate the latest ethical minefields to ensure compliance and lessen liability and reputational risks.

For more information or registration details, please click here.

COVID-19 – Business Realignment and Tax Considerations

at-mia.my/2020/07/10/covid-19-business-realignment-and-tax-considerations

July 10, 2020



By Nithea Nadarajah

Businesses are scrambling to re-evaluate their strategies in the wake of the COVID-19 crisis, and this includes assessing the impacts of direct and indirect taxes of current operations as well as new strategies.

With many companies falling into the red for the 2020 financial year, the Inland Revenue Board of Malaysian (IRBM) should be expected to scrutinise the quantum of losses incurred to prevent gross overstatements as well as looking into transfer pricing activities and the impacts of indirect tax obligations arising from supply chain disruptions.

During a complimentary MIA webinar on COVID-19 business realignment and tax considerations, Thenesh Kannaa, Partner at TraTax advised participants to pay attention to the following issues and their tax repercussions:

Supply Chain

Supply chain tax issues can arise both during the lockdown and post-lockdown periods.

In line with the government's Movement Control Order (MCO) restrictions, the example of a Malaysian factory allowed to operate at 50% of its capacity could end up with an excess of raw materials and components. To maximise capacity utilisation, the business could take temporary measures to move these under-utilised materials and components to factories operating at full capacity.

However, the items in question may have initially qualified for either sales tax or import duty exemptions, known only to the purchaser. Any subsequent transfers may, depending on the commercial arrangement, be tantamount to re-selling, which is likely to be viewed as a breach of conditions by the Customs Department. Therefore, do obtain proper written approvals prior to acting upon planned business measures to avoid tax penalties.

Post-crisis, Thenesh advised companies planning to restructure – which may result in new distribution channels throughout varied jurisdictions – to look into tax matters such as direct tax incentives and supply chain from the planning stage itself. Some matters to consider include:

- the tax efficiency of the 'new norm' supply chain
- potential increases in costs
- policies under Free Trade Agreements (FTAs)
- challenges in obtaining the Certificate of Origin, and
- regional value-added ratios to be entitled to the FTA benefits.

TP Issues – Allocation of Profits

Companies entering into related party transactions, whether domestic or cross-border, are expected to adhere to the arm's length principle and ensure that adequate contemporaneous TP documentation are prepared with annual updates maintained. A transaction is deemed conducted on an arm's length basis if both parties are acting independently with the transacted price clearly based on fair market value.

However, companies falling below the following thresholds are absolved from such stringent requirements but are still required to prepare adequate documents justifying adherence to the arm's length principle: –

- gross income exceeding RM25 million and total amount of related party transactions exceeding RM15 million; or
- the provision of financial assistance exceeding RM50 million.

Although Limited Risk Distributors (LRDs) are low risk business ventures, the current crisis warrants a reassessment of such arrangements with the principal entities. Say for example, a UK-based Multinational Company (UK MNC) enters into an LRD arrangement with its Malaysian related party (M Co) to oversee the local distribution of its products in return for a guaranteed margin of, say, 5% annually. At the end of each year, should the margin fall below the 5% threshold, it was agreed that the UK MNC shoulder the risks and responsibilities of raising it up to 5%. In return, the UK MNC will receive entrepreneurial returns which could fluctuate between super profit margins averaging at 20% and unforeseen losses.

"The unprecedented COVID-19 crisis necessitates a revisit of the relevant TP documents in order to determine the business-worthiness of the current arrangement and whether it should remain 'status quo', or possibly a lowering of the agreed margin, or maybe even attribution of a certain amount of losses to the local LRD," said Thenesh.

TP issues relating to toll or contract manufacturing arrangements are somewhat similar to LRDs with foreign principals earning entrepreneurial returns whilst allocating a fixed margin to the local outfits. The same question again arises as to whether there should be any change to the current business arrangement in view of the turbulence caused by this pandemic. There is no standard answer as it goes back to the functional profile and the TP documents in place in order to determine if the manufacturing capacity risk was acknowledged and duly allocated to the local entity. Another determining factor would be the varying preferences of businesses, where for example, some businesses are able to continue with minimal profit or possibly having proportionate losses allocated to the local outfit, whilst other ventures are duly aware that unlike Malaysia, certain other jurisdictions allow the carry back of losses which then makes it good sense to maintain the 'status quo'.

TP Issues – Inter-Company Financing

The IRBM views financial assistance between associated persons (whether with or without consideration), as controlled transactions which necessitate the application of the arm's length principle [2012 TP Guidelines (updated in 2017)].

During the COVID -19 crisis, the Malaysian government, in its efforts to ease the cash flow of borrowers, introduced a 6-month loan moratorium on mortgage payments (interest compounded) and hire-purchase payments (interest not compounded). The question that now arises is whether borrowers of inter-company loans can apply the similar moratorium on interest payments.

With the arm's length principle in mind, the Malaysian TP laws will rely on the same behavioural pattern that is the acceptable norm between independent parties, and most likely grant borrowers of inter-company loans the same 'elbow room'. Furthermore, inter-company loan arrangements that are agreed upon based on fixed interest rates may be revisited in line with Bank Negara Malaysia's reduction in Base Rate (BR). In light of the current crisis, it would be advisable to review such inter-company loan arrangements and possibly alter the interest rates from that of a fixed rate to a variable one, or alternatively reduce the interest rates charged to better commensurate market practices. Factors such as the character of the loan, the currency of the loan (if it is a cross-border arrangement) and the credit worthiness of the borrowers, amongst others, must be duly considered before such pertinent decisions are made.

Inter-company financing arrangements in Malaysia are not regarded as actions directly related to business activities and therefore, any waivers granted on such loans will neither be allowed deductions nor subject to tax. However, the IRBM contemplates that it has the power to scrutinise expenses incurred out of the borrowed money and start disallowing them [Section 30(4) of the Income Tax Act 1967 (ITA), refers]. In this regard, it is advisable not to waive the principal amount but restrict planning strategies to interest payments with proper contemporaneous documents duly maintained.

In relation to cross-border financing arrangements, Withholding Tax (WHT) payment obligations (15% on all outbound interest payments from Malaysia) are important considerations during strategic planning. Labuan, being Malaysia's offshore jurisdiction, does not impose any applicable WHT on payments made to non-residents. Although popular in the past, cross-border business structures involving Labuan have somewhat waned. Significant regulative amendments were also made to the Labuan tax regime (which came into effect on I January 2019), in order to refine the taxation system and incapacitate harmful tax practices.

Another form of group financing arrangement would be intra-group guarantees, created when a company (with good credit ratings) provides a guarantee for a bank loan advanced to its related company (with a lower credit rating) so that the borrower enjoys beneficial conditions via the funding arrangement, i.e. a lower interest rate. The question then arises as to whether the granting of such a guarantee is tantamount to an intra-group service chargeable to the borrower.

Pursuant to the Australian case, Chevron Australia Holdings Pty Ltd vs Commissioner of Taxation, the Courts considered the possibility of charging guarantee fee to a subsidiary where a third-party bank provides funding to the subsidiary which is backed by parental guarantee. Should the IRBM take a similar view on this matter, it would create tax inefficiencies since such a fee will be taxable in the hands of the recipient, but the payer may not be allowed any tax deductions. Therefore, it is advisable to navigate cautiously when structuring such arrangements, especially considering the tax risks involved and the uncertainties surrounding the current crisis.

Expatriate Tax and Permanent Establishment (PE) Issues

Under the Malaysian taxation system, residents enjoy lower tax rates due to its progressive scale rate from 0 – 30%, as compared to non-residents who are taxed at a flat rate of 30%. To qualify as a tax resident, the IRBM does not look at a taxpayer's citizenship status but the number of days spent in Malaysia (Section 7 of the ITA refers). Taxpayers who are frequent travellers due to their nature of work, will generally have their travel dates closely monitored to ensure the days spent in Malaysia are within the residency requirements. However, with the COVID-19 crisis resulting in global travel restrictions, careful tax consideration is necessary to enable expatriates working in Malaysia to qualify as tax residents, where say for example, once travel restrictions are uplifted, expatriates should quickly travel back to Malaysia to clock-in the required number of days to qualify as tax residents. Subsequent to the webinar, the IRBM has issued guidelines allowing days of absence from Malaysia arising from COVID-19 travel restrictions to be deemed as being present in Malaysia but there is no guideline on the manner of application for frequent business travellers.

Such unpredictable travel restrictions would cause unprecedented PE issues as well. Say for example, a China Co and a Malaysia Co entered a contract for the supervision of an installation project in Malaysia for a period of five months. Pursuant to the Double Tax Agreement (DTA) with China, PE is created in Malaysia only after a period of six months. Therefore, it was budgeted that the payments made to the China Co would only attract a 10% WHT for services performed in Malaysia. Due to the COVID-19 restrictions, workers from China had to leave Malaysia at the end of the second month and were only scheduled to return six months later to complete the remaining work.

Based on the Organisation for Economic Co-operation and Development's (OECD's) interpretation, this six-month absence is deemed part of the project which unfortunately increases the project timeline to 11 months (2+6+3) and thereby creating a PE in Malaysia. The WHT charged will then increase to 13% (10%+3%) throughout the 11-month duration, instead of the earlier budgeted rate of 10%. The IRBM has remarkably expressed willingness to overlook the existence of PE arising from COVID-19 travel restrictions, subject to meeting certain critera. In this regard, it is imperative that strategic PE assessments are carried out extensively on outbound service payments to foreign vendors to minimise future tax disputes attributable to the COVID-19 crisis.

How to Become an Approved Liquidator Under the Companies Act 2016

at-mia.my/2020/08/06/how-to-become-an-approved-liquidator-under-the-companies-act-2016

August 6, 2020

By Small and Medium Practices Department

Interested in applying to become an approved liquidator under the Companies Act 2016? Then this article is for you.

On 21 January 2020, the Accountant General (AG) issued the Guidelines for Approval as a Liquidator under the Companies Act (CA) 2016 (The Guidelines). These allow for qualified persons to apply for approval as a liquidator under the CA 2016, in order to take on appointments as liquidator, receiver or receiver and manager, judicial manager and nominee in a corporate voluntary arrangement.

Following this, Suruhanjaya Syarikat Malaysia (SSM) also issued the Circular No.1/2020 Guidance Notes on the Registration of Firms of Liquidators and Notification on the Approval as an Approved Liquidator (The Circular) on 24 January 2020.

New Qualification Regime for Approved Liquidators

The new qualification regime for a liquidator will involve meeting the following criteria:

**On 13 March 2018, the Malaysian Institute of Accountants (MIA) and the Malaysian Institute of Certified Public Accountants (MICPA) were gazetted as recognised professional bodies under Section 433(5) of the CA 2016.*

Passing the Interview

A member of MIA and / or MICPA that fulfils the qualifying requirements must pass an interview before one can become an approved liquidator.

Candidates must pass the interview which will be conducted by the Jawatankuasa Kelulusan Penyelesai Syarikat (Jawatankuasa). The Secretariat of the Jawatankuasa is Unit Kawal Selia Juruaudit Syarikat dan Penyelesai, Bahagian Pembangunan Perakaunan dan Pengurusan (BPPP) from the Accountant General's office.

The Jawatankuasa was established by the Accountant General's Department (AG) to assess the competency and character of the candidates applying to become an approved liquidator. The Jawatankuasa comprises the following members:

- Accountant General's Department (AG) or AG's representative (Chairman)
- Representative from the Malaysian Institute of Accountants (MIA)
- Representative from the Malaysian Department of Insolvency (MDI)
- Representative from the Securities Commission (SC)
- Representative from the Suruhanjaya Syarikat Malaysia (SSM)

The interview will be conducted 1-2 times in a month at the Jabatan Akauntan Negara Malaysia (JANM), Presint 2, 62599 Putrajaya. It is estimated that an interview session will last for approximately one hour per applicant, with each panel interviewer spending approximately 15 minutes questioning the applicant on their respective areas of authority.

Scope of interview for Approved Liquidators

What questions can an applicant expect from each Jawatankuasa representative during the interview? Below, we have compiled information on the scope of the interview and expected knowledge for approved liquidators which will benefit applicants preparing for the interview:

Malaysian Institute of Accountants (MIA)

COVERAGE - CORE AREA			
By-Laws of the MIA - Subsection 111: Integrity - Subsection 112: Objectivity - Subsection 113: Professional Competence and Due Care - Subsection 114: Confidentiality - Subsection 115: Professional Behaviour - Section 310: Conflict of Interest - Section 320: Professional Appointment - Section 321: Second Opinion - Section B200: Method of Practice	Technical knowledge of insolvency practices and rescue schemes including MIA's Insolvency Guidance Notes (IGN), winding up rules and relevant provisions of other legislation affecting insolvency administrations (e.g. Employment Act)	Legal cases relevant to insolvency administrations	Methods of asset disposals and the procedures, precautions and other factors to be considered

COVERAGE - NON-CORE AREA	
Role of special administrators under various Acts applicable from time to time	Consultative paper issued by the SSM or other authorities dealing with insolvency practices or the general accounting landscape (in relation to insolvency engagements)

Note:

1. The scope was last updated in March 2020. It is expected that these areas will evolve over time.
2. It is not expected that an interviewer has to cover all the above areas in each interview session.
3. The same standard should apply for all interviewees without regard to their experience profile

Malaysian Department of Insolvency (MDI)

1. Part IV of the Companies Act 2016 (Winding-Up by Court)
2. Companies (Winding-Up) Rules 1972
3. Relevant laws
4. Liquidation administration
   - Powers and functions of approved liquidator; and
   - Dos and Don'ts
5. Documents lodged to Official Receiver
   - Importance of the documents;
   - Contents of documents; and
   - Purpose of lodgement.
6. Supervision on approved liquidator
   - Supervision by Official Receiver;
   - Supervision by Court; and
   - Duties of approved liquidator towards the supervision.

Securities Commission (SC)

1. Various Acts and guidelines administered by the Securities Commission Malaysia and the Malaysian Code on Corporate Governance.
2. Roles and responsibilities of the Securities Commission Malaysia, Audit Oversight Board and Bursa Malaysia Berhad.
3. Liquidation:
   - Criteria and obligations of PN17 issuers under Main Market listing requirements of Bursa Malaysia Berhad.
   - Criteria and obligations of GN3 issuers under ACE Market listing requirements of Bursa Malaysia Berhad.
   - Contents of announcement in relation to appointment of a liquidator by a public-listed company.

Suruhanjaya Syarikat Malaysia (SSM)

1. Division 8 of Part III of the Companies Act 2016 – Corporate Rescue Mechanism
2. Part IV of the Companies Act 2016 – Cessation of Companies
   - Division 2 – Provisions Applicable to Every Winding Up
   - Division 3 – Winding Up of Unregistered Companies

Interview Passing mark

A candidate must pass all modules (i.e. MIA, SSM, SC and MDI) in order to obtain an overall pass to become an approved liquidator. The passing mark is 60% for each module. Candidates would have to go through the entire application process again and be interviewed by the same panel consisting of MIA, SSM, SC and MDI, regardless of how many modules he or she failed.

However, for a candidate who failed marginally (50%-59%) in only one module, the candidate is allowed to re-attempt the failed module only, within three months from the date of the letter of results. Should the candidate fail the interview again, such a candidate will have to go through a fresh interview process if he or she is determined to become an approved liquidator.

Submission of application

The AG accepts manual applications as an interim measure, until the Business Licensing Electronic Support System (BLESS) is ready to cater for electronic applications to become approved liquidators. For further information, please visit the AG's website at http://www.anm.gov.my/index.php/khidmat/kelulusan-juruaudit-dan-penyelesai-syarikat.

For further enquiries, please contact the AG's Unit Kawal Selia Juruaudit Syarikat dan Penyelesai at 03-8882 1000 or email at ukp@anm.gov.my .

Important Updates to AMLA

August 11, 2020

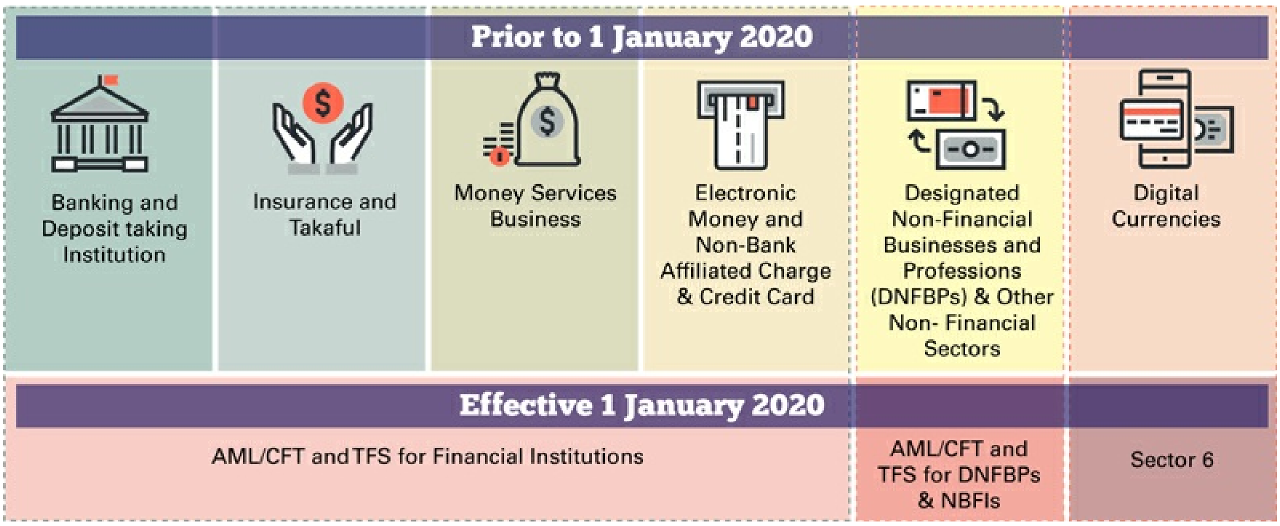
By Bank Negara Malaysia & the Malaysian Institute of Accountants

As key players in the battle against money laundering and terrorism financing, accountants are advised to take note of the Revision to the Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses Profession and Non-Bank Financial Institutions Policy Document as released by Bank Negara Malaysia (BNM).

Below is an infographic for easier understanding of the policy revisions.

What are the key changes?

1. Reclassification of AML/CFT Policy Documents : from six sectors into three sectors

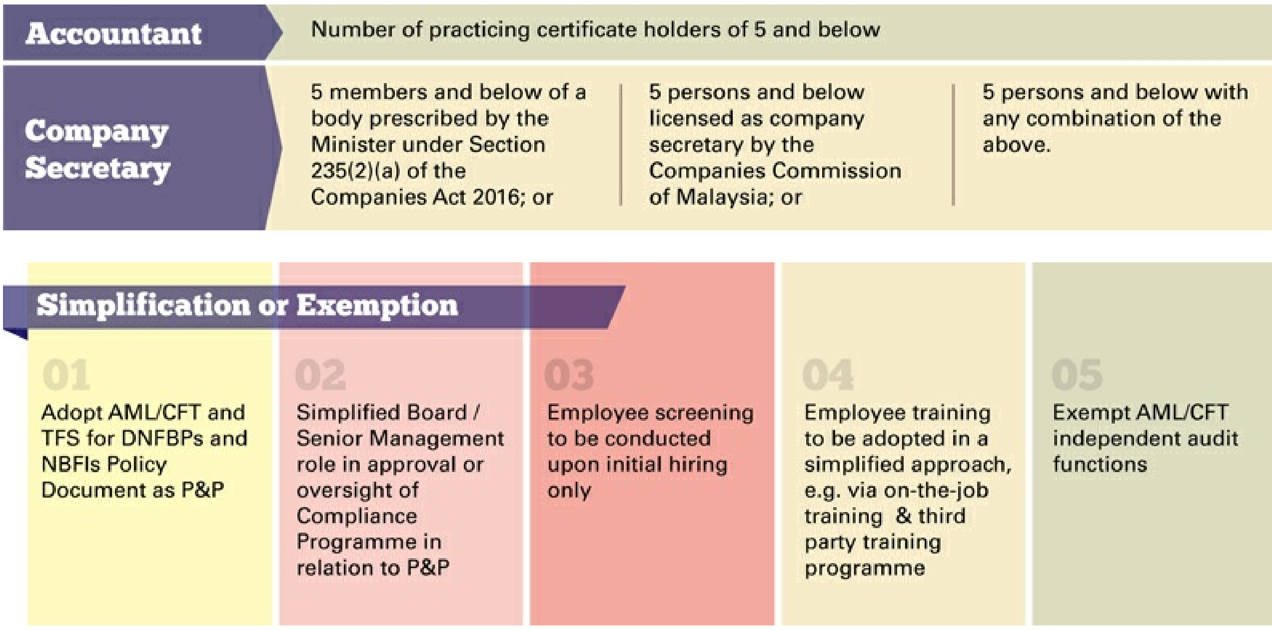


Please click here for the revised AML/CFT and TFS for DNFBPs and NBFIs Policy Document: [*http://amlcft.bnm.gov.my/publication/AML_CFT_TFS_PD_for_DNFBPs_and_NBFIs.pdf*](http://amlcft.bnm.gov.my/publication/AML_CFT_TFS_PD_for_DNFBPs_and_NBFIs.pdf)

2. Enhancements to AML/CFT Compliance Programme

Application of Differentiated Approach for Small-sized Reporting Institutions

Small-sized reporting institutions (RIs) defined under Appendix 2 of the Policy Document are subject to some simplified or exempted AML/CFT Compliance Programme requirements, as specified under Paragraph 11.1.



Notwithstanding the above simplifications and exemption, the RIs must comply with the AML/CFT Compliance Programme requirements as and when specified by the competent authority or supervisory authority to its fullest extent.

Expansion of Fit and Proper Criteria for the Appointment of Compliance Officer (CO)

- RIs must appoint a CO at management level at the Head Office and designate a CO at management level at each branch or subsidiary, pursuant to Section 19 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA).
- CO acts as the reference point for AML/CFT matters, must have sufficient stature, authority, seniority and be fit and proper to carry AML/CFT responsibilities effectively.
- Fit and proper criteria is expanded to include financial integrity assessment, as specified in paragraphs 11.5.4 to 11.5.8 of Policy Document.

- RIs are required to inform the Financial Intelligence and Enforcement Department, BNM upon appointment of the CO at Head Office or any change in the appointment within ten working days, in writing or by completing the CO Nomination Form which can also be found on the AML/CFT microsite.

Please click here for CO infographic, Appendix 11 of AML/CFT & TFS for DNFBPs & NBFIs Policy Document:
http://amlcft.bnm.gov.my/document/DNFBP/infographic/ii%20INFOGRAPHIC%20COMPLIANCE%20OFFICER'S%20ROLE%20&%20RESPONSIBILITIES.pdf

Exclusion of employee screening & training on several functions

RIs are given the flexibility to exclude several functions that do not have direct dealings with customers and/or not involved in the monitoring of client transactions, based on size, nature and complexity of operations and money laundering and terrorism financing (ML/TF) risks.

Elevate Board's accountability on AML/CFT oversight

RI's Board / Senior Partners to determine & ensure frequency and scope of independent audits conducted commensurate with its ML/TF risks and vulnerabilities. The appointed auditor must be separate from the compliance function. Please refer to paragraph 11.9 of the Policy Document.

3. Enhancements to Customer Due Diligence (CDD) Requirements

Additional CDD data points for individual customers

Paragraph 14.10.1 of the revised Policy Document requires the RIs to obtain 9 mandatory CDD data points to enable more comprehensive risk profiling, of which the additional data points are

- Occupation type:
- Name of employer or nature of self-employment or nature of business: and
- Contact number (home, office or mobile)

Tightened CDD for Government-linked companies (GLCs), state-owned corporations (SOCs) & registered persons (RP)

- Effective 1 January 2020, GLCs, SOCs and RPs are subject to standard CDD requirements.
- For existing GLC, SOC and RP customers, RIs are given a 12 months period to comply with the standard CDD requirements.

Expanded Verification Methods

Principle-based requirements for the RIs to verify customer/beneficial owner's (BO) identity through reliable and independent documentation, electronic data or any other measures that RIs deem necessary

- Documentary data, e.g. ID issued by Malaysian government, including NRIC, driving license, etc.
- Electronic data, e.g. biometric identification, commercial or public databases, etc.

Enhanced CDD or ongoing due diligence for Higher Risk Services

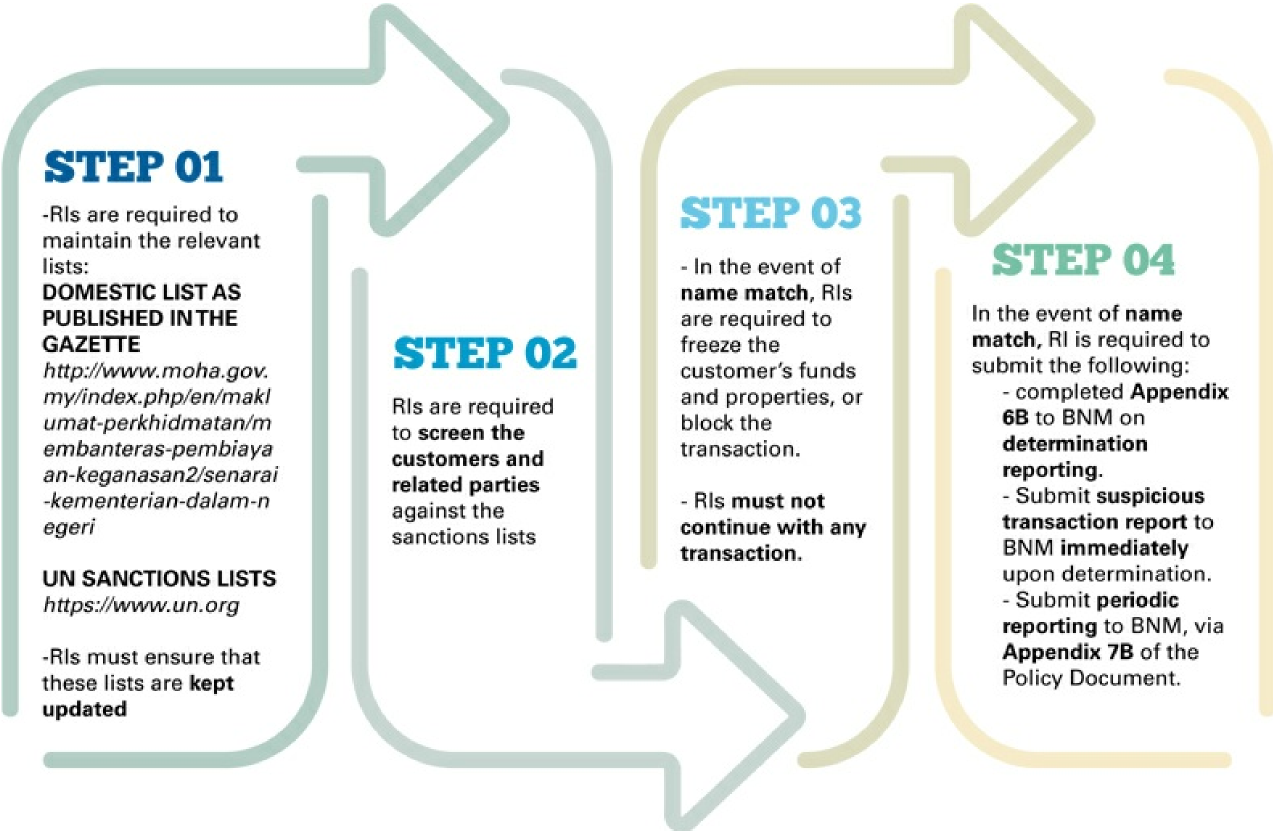
Where nominee services (shareholdings, directorship, or partnership) are provided by gatekeepers (including accountants and company secretaries) to their clients, such clients shall be subjected to automatic enhanced CDD or enhanced ODD measures, where applicable as specified under paragraph 14C.2.1 of PD.

Please click here for CDD infographic, Appendix 11 of AML/CFT & TFS for DNFBPs & NBFIs Policy Document:
http://amlcft.bnm.gov.my/document/DNFBP/infographic/iii%20INFOGRAPHIC%20CUSTOMER%20DUE%20DILIGENCE.pdf

4. Targeted Financial Sanctions (TFS) on Terrorism Financing (TF), Proliferation Financing (PF) & Other UN Sanctions Regimes (OSR)

Consolidation of TFS requirements and detailed guidance

Under the revised Policy Document, the RIs are required to screen customers and related parties against Domestic List (for TF), United Nations Security Council Resolutions Lists for TF, PF and OSR.



Please refer to AML/CFT microsite for Appendices 6B and 7B. Please click here for TFS infographic, i.e. Appendix 11 of AML/CFT & TFS for DNFBPs & NBFIs Policy Document:
http://amlcft.bnm.gov.my/document/DNFBP/infographic/iii%20INFOGRAPHIC%20CUSTOMER%20DUE%20DILIGENCE.pdf

5. Data and Compliance Report (DCR)

- Paragraph 25.1 of the revised Policy Document provides for the submission of the DCR.
- DCR is issued pursuant to Section 8(3)(a) of the AMLA, read together with Section 143(2) of the Financial Services Act 2013 (FSA) and operationalising paragraph 25.1 (a) of the revised Policy Document
- BNM issued the DCR on 22 May 2020, which is designed to allow self-assessment of the RI's risks and vulnerabilities to ML/TF and identify areas of improvement needed to meet the AML/CFT requirements via generated "report card". This is important for the firm to prepare for the possibility of being selected for onsite examination.
- The DCR is due for submission by 21 August 2020.
- BNM conducts DCR clinic to provide step-by-step guidance on how to complete the DCR. Please email to compliancesurvey@bnm.gov.my or fied@bnm.gov.my if you need any assistance.
- Please follow the following steps to answer the DCR:

STEP 1: Download the DCR at this link:
http://amlcft.bnm.gov.my/Docs/DCR_2020.xlsx

STEP 2: Complete the DCR

STEP 3: Submit your response to compliancesurvey@bnm.gov.my

You may refer to the following links for more information on the DCR:

Newsletter on the DCR :
http://amlcft.bnm.gov.my/NL/Newsletter_3_version_K.htm
What is the DCR?: https://youtu.be/CwDbwnB0k4c
How to complete the DCR?: https://youtu.be/obe7vTRmNqw
BNM's Circular on the DCR 2020 for DNFBPs and NBFIs: http://amlcft.bnm.gov.my/Docs/DCR_2020_Circular.pdf

Launch of Industry-wide Electronic Bank Confirmation Platform Set to Transform Auditing & Capital Market

at-mia.my/2020/07/03/launch-of-industry-wide-electronic-bank-confirmation-platform-set-to-transform-auditing-capital-market

July 3, 2020

The industry-wide Electronic Bank Confirmation (EBC) Platform (eConfirm.my) was officially launched on 26 June 2020 by the Malaysian Institute of Accountants (MIA) and Extol Corporation Sdn Bhd (Extol), a wholly-owned subsidiary of AppAsia Berhad, at an e-ceremony attended by various stakeholders, including auditors, audit clients, bankers and regulators.

In his welcome remarks, MIA President Huang Shze Jiun noted that eConfirm.my marks another significant milestone for MIA on its mission to continuously improve the current bank confirmation process, which in turn advances MIA's digital transformation agenda for nation- building and delivers significant benefits for stakeholders such as auditors, banks, reporting entities and the capital market as a whole.

In her presentation on the EBC platform, MIA CEO Dr.Nurmazilah Dato' Mahzan explained MIA's commitment to advocating for digital technology that drives audit efficiency and effectiveness. "The traditional process (of bank confirmations) is slow and time-consuming. Any delays affect clearance by auditors and could impact the timely approval of financial statements by the Board of Directors," she said.

Watch Video At: https://youtu.be/756DqGe5WqA

Chairman of AppAsia Berhad, Datuk Wira Rahadian Mahmud concurred that "The capital market benefits from reduced delays in clearance of audited financial statements. It also mitigates the risk of confidential information being wrongly sent to other parties through postal services".

In his remarks, Calvert Wong, Executive Director of AppAsia Berhad and Extol Corporation Sdn Bhd extolled the "collaborative efforts" that drove the successful launch of the eConfirm.my and thanked MIA as well as all participating banks and audit firms for their positive response and assistance. He emphasised that: "This is a unique homegrown product with first-of-its-kind end-to-end encryption technology, a key factor that ensures top level security and protection."

Key Benefits of the EBC Platform

By replacing the manual paper-based confirmation process with secure electronic confirmation processes, the EBC Platform offers several significant benefits for auditors, audit clients, banks and the capital market:

- achieves greater efficiency and savings
- eliminates duplications and loss of confirmations, and expedites confirmation replies to the auditors.
- mitigates the risk of confidential information being wrongly sent to other parties through postal services.
- enhances accountability and traceability because the system is able to trail the confirmation status at any point in time.
- expedites confirmation and reduces delays in clearance of audited financial statements which benefits the capital market.

- enhances compliance with approved standards on auditing, financial reporting deadlines and practice review requirements.
- reduces the risk of fraud which may potentially go undetected by auditors whilst protecting the interest of stakeholders that rely on audited financial statements.
- supports protocols for health and wellness in the COVID-19 new normal, as the EBC platform minimises human contact and promotes social distancing through a technology platform.

Background of the EBC

To address several issues and risks pertaining to bank confirmation, eConfirm.my was conceptualised for implementation in 2016 with MIA, under the leadership of the then MIA President, YBhg Dato' Mohammad Faiz Azmi, spearheading together with relevant stakeholders such as auditors, bankers, Bank Negara Malaysia (BNM) and the Association of Banks in Malaysia (ABM) within the electronic bank confirmation ecosystem. The plan was supported by the MIA Council and the ABM and enjoyed continuous collaboration with the latter's respective member banks.

Local vendor Extol was eventually awarded the tender to develop the Platform, with a much more economical usage fee compared to the current fee charged by a global vendor in the market. The usage fee is RM15 per online submission of confirmation request and will only be charged upon the successful receipt of the confirmation.

"Looking ahead, we will continue to engage with the participating auditors and banks in order to materialise the idea of an industry-wide electronic bank confirmation platform. Engaging the audit clients will also be particularly critical to scale up adoption," emphasised Huang.

To date, 350 audit firms and seven banks have signed up to the EBC Platform and MIA is confident that many more will join once the eConfirm.my gains momentum.

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at-mia.my/2020/07/03/launch-of-industry-wide-electronic-bank-confirmation-platform-set-to-transform-auditing-capital-market

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Public Sector Internal Audit Conference 2020: Meeting Rising Expectations in Internal Audit

at-mia.my/2020/07/28/public-sector-internal-audit-conference-2020-meeting-rising-expectations-in-internal-audit

July 28, 2020

Internal auditors face a lot of pressure to implement robust controls and manage risks as they are a central pillar of governance in organisations.

This pressure is exacerbated for public sector internal auditors during the COVID-19 crisis as the public sector ramps up services to ensure the wellbeing of the people and the economy.

As this special Conference is geared specifically to public sector internal audit, participants can expect to learn more about emerging trends in digital transformation and governance and how to recalibrate their culture of auditing and governance to brace for challenges ahead.

Held virtually over two days, this Conference jointly organised by MIA and the Institute of Internal Auditors Malaysia (IIAM) features a slew of local and international experts who will speak on the following:

Meeting Rising Expectations in Internal Audit – Keynote Address by DR.ONG HOCK CHYE, Auditor General, Asian Development Bank.

Responsibilities for IT Governance in the Digital Era – guidance on how to manage an organisation's IT risk exposure and optimise its existing governance and control set to improve audit outcomes and enhance organisational resilience.

IA Pioneered: Enterprise- Wide Analytics for a Secure and Sustainable Business Growth – innovates the internal audit function by leveraging on cross-collaborations to optimise an organisation's foray into data analytics. Explores how matured IA functions can drive analytics adoption for organisational transformation.

Effective Risk Management in a Digital Environment – Guides participants through the uncertain and disruptive landscape of digital risks and opportunities and debates best practices and solutions for enhancing risk management and governance.

IA in Times of Crisis: IA as Control Monitor and Real-Time Control Adviser – In times of crisis, controls can often slip. Efforts to prioritise business continuity could divert management's attention from making sure that controls are operating effectively. In such situations, IA is best-placed to step in and provide monitoring to pick up the slack.

Continuous Auditing Against Corruption: Creating "Fair" Value in Digital Age – Panellists debate the extraordinary challenges public sector auditors face when rooting out bribery and corruption. This session delves into the public sector's role, responsibility, and challenges in the perpetual battle against bribery, money laundering and corruption.

Internal Audit's Role in Auditing Culture – Explore the process by which internal auditors can step up and positively impact the auditing culture in the public sector, despite challenges and others' reluctance to change.

To find out more and to register, please click *HERE*

Relevance of Force Majeure in Transfer Pricing Amidst Current Turbulence

at-mia.my/2020/07/03/relevance-of-force-majeure-in-transfer-pricing-amidst-current-turbulence

July 3, 2020

By Gagandeep Nagpal and Bhrigu Dhingra

Given the scale of disruption caused by COVID-19, many businesses are posed with a serious risk of dislocation of their supply chains and inability to meet business obligations, resulting in potential breach of legal contracts. Business owners have started assessing their contracts to understand the extent of their rights and obligations, and the remedies available. This has brought the force majeure clause in business contracts to the spotlight. This clause has equal relevance in related party business arrangements as well. Below, we will discuss the peculiarities of this clause, and its relevance in the context of transfer pricing.

What is a Force Majeure clause?

The French term *'force majeure'* is a clause in a contract to regulate the rights and obligations of contracting parties and its legal effect, when an extraordinary event or circumstance beyond the control of parties occurs. Force Majeure creates a kind of exception to foundational contract law principles, and contracting parties are usually absolved from performing their contractual obligations on its invocation, which otherwise is construed as a breach of the contract. An application of the force majeure clause would depend on the facts and circumstances of each case. Besides this, a contract may itself provide the course of action to be followed in the event force majeure triggers.

A sample force majeure clause reads as below:

"Neither party shall be liable for any delays or non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions or the failure to cooperate by the other party (including, without limitation, entities or individuals under its control, or any of their respective officers,

directors, employees, other personnel and agents), fire or other casualty, act of God, epidemic, strike or labour dispute, war or other violence, or any law, order, or requirement of any governmental agency or authority."

There are differences between the legal basis to establish force majeure in common law and civil law countries. Under common law, there is no definition of force majeure; a party may only be able to rely on the principle of frustration to avoid performing the contract. Whilst in civil law countries, the general law defines and provides remedies for force majeure, which may be in addition to what is provided for in the contract. So where civil law applies, if the contract does not provide for force majeure, the party that is impeded or unable to perform its obligations under the contract may still be able to rely on the general law to establish force majeure and obtain relief from the performance of the contract.

Malaysia's Position on Force Majeure

Malaysia is a common law country and there is no general defined concept of force majeure; however, that does not preclude contracting parties from incorporating such a clause in the legal contract. Section 57(2) of the Contracts Act recognises the concept of frustration of contract by providing that, *"A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful"*. Therefore, the party invoking force majeure must establish the relationship between the impossibility of performance and the force majeure event. In case the contract does not contain a force majeure clause, or where the force majeure clause does not cover events such as COVID-19, alternative defences such as material adverse change/effect or the doctrine of frustration can be relied upon.

There are judicial precedents available in Malaysia in this regard. The key considerations and guiding principles emanating from a perusal of these judgments on this aspect can be summarized as below:

- A Force Majeure clause shall not be implied in a contract, i.e. it cannot be relied upon if the parties do not make any provision for it;
- Parties will have to assess the specific circumstances/events mentioned in their agreement that qualify as a force majeure event; and
- The party relying on a force majeure clause must show a causal link between the event and its inability to perform the contract. The alleging party must further prove that there is no other reasonable course of action, which is possible for performance of the contract.

This clause is subject to debate and dispute in transfer pricing as well. Interestingly, in a related party scenario, the invocation of force majeure may be a subject matter of dispute with tax authorities instead of a legal dispute with a contracting party under the Contract Act.

Transfer pricing implications

At the moment, there is limited transfer pricing guidance on this kind of legal aspects. A few relevant prescriptions extracted from the OECD TP Guidelines are –

- Understanding of contractual terms is considered to be the starting point for delineation of transactions under transfer pricing;
- Written contract definitely reflects the intention of the parties at the time the contract was concluded in relation to the aspects of the transaction covered by the contract. However, written contract alone is unlikely to provide all the information necessary to perform a transfer pricing analysis;
- In the context of business restructuring, it has been mentioned that there should be no presumption that all contract terminations or substantial renegotiations should give a right to indemnification at arm's length, as this will depend on the facts and circumstances of each case. Further, it has been mentioned that the analysis of whether an indemnification would be warranted at arm's length should be made based on the accurate delineation of the arrangements and the options realistically available to the parties.

With the above limited guidance, we need to apply the general lens of transfer pricing principles and the contract would be expected to be consistent (in terms of substance) with the arm's length principle and should always be expected to reflect third party behaviour.

Given the COVID-19 situation and government-imposed restrictions, related parties may be unable to meet their contractual obligations. Under such a scenario, it is important to assess whether invocation of force majeure to relieve the transacting related party from performing its contractual obligations is consistent with an arm's length behaviour. In an endeavour to better understand the transfer pricing implications of force majeure clause amidst COVID 19, the following scenarios have been framed-

Scenario 1 – A contract manufacturer in Malaysia produces auto parts for its related party in Thailand, which further uses these parts in the final assembly of main components. Due to COVID- 19, there was a 70% drop in end customer sales of the Thailand entity and it could not honour the volume committed to the Malaysian entity. This consequentially resulted in significant under-absorption of fixed cost and incremental carrying cost of inventory for the Malaysian entity. These parts are niche parts customised as per the specific requirements of the Thailand entity and the Malaysian entity did not have any options realistically available to sell these parts to any other customer. In such case, can the force majeure clause be invoked by the Thailand entity to absolve itself from the obligation to make good the losses incurred by the Malaysian entity?

Although this situation is arising from COVID-19, which is an unforeseen event, it would be difficult to prove impossibility of performance in such a case as it is merely a situation of financial and economic hardship. Therefore, issues like non-placement of orders due to depressed profits or supply side constraints, such as an alternate expensive route to ship the supplies, cannot be considered conditions for invocation of force majeure. The performance obligated under the contract should be objectively impossible and not merely difficult, more burdensome or economically onerous.

Scenario 2 – A captive service provider based in the Philippines provides accounts payable processing services to its Malaysian affiliate. Due to COVID-19, the Philippines service centre was not operational and could not process the supplier's invoices for the Malaysian entity. The Philippines entity in such a case may invoke force majeure and may be discharged from its performance obligation and any consequential damages (such as interest levied by the suppliers of the Malaysian affiliate) due to delayed payments. However, in such a situation, can the Malaysian entity also take a position to relieve itself from its obligation to provide assured returns to the Philippines service provider and terminate the contract in entirety? The parties need to show that they have used reasonable actions to prevent or at least mitigate the effects of force majeure; therefore, re-negotiation seems to be a pragmatic response to such situations, considering the options realistically available rather than completely terminating contracts.

The other question to deal with here is whether tax authorities can question the commercial prudence of the taxpayer. Whether force majeure should be invoked or the contract should be renegotiated is a matter of commercial prudence of the taxpayer. Even in a third-party scenario, the transacting party may give concessions or provide flexibility to an extent, if there is a situation of impossibility of performance. Alternatively, parties may agree to less favourable contractual terms, if there are no options realistically available.

Scenario 3 – An oil and gas project is awarded to a Malaysian entity (M1) acting as the project owner, which outsourced part of the contract work to its group entity in Malaysia (M2) engaged in project management. Due to the Movement Control Order, M2 could not complete the project on a timely basis, which led to project delays. Herein, it would be critical to understand whether the party awarding the project to M1 gave any concession in terms of a relaxed timeline to complete the project or any re-negotiation of contract with M1. From a transfer pricing perspective, it would be prudent to replicate the similar modified terms in an agreement between M1 and M2. Such mirroring of an arrangement would help to establish the arm's length behaviour and would help to defend against any possible scrutiny by the tax authority.

Force majeure is generally invoked in the rarest of rare situations, such as an act of Mother Nature or government actions. Even the recession arising out of a normal economic crisis may not result in invocation of this clause. Therefore, there are not many precedents available, especially in the context of transfer pricing.

In one of the interesting transfer pricing judgements in the past, the Danish National Tax Tribunal allowed relief to a Danish company on its transfer pricing adjustment taking into consideration the force majeure clause in the contract. The case concerns a Danish company that had a royalty claim from one of its subsidiaries, which, due to special circumstances in its home country, was unable to make payment of this royalty. The Danish Tax Authority increased the taxable income of the taxpayer on the ground that the Danish company was entitled to receive interest for this receivable. The taxpayer, however, disagreed with this view, since the disbursements were made impossible because of special circumstances in the subsidiary's home country. The Danish National Tax Court found that the claim had risen solely because of the special circumstances of the subsidiary's home country and the restrictions imposed by the authorities therein. These restrictions were considered to be beyond the reasonable control of the taxpayer and its subsidiary, and therefore, fell within the force majeure clause in the licensing agreement.

Conclusion

Malaysia is a hub for many contract manufacturers, captive service providers and limited-risk distributors, and discussion on this legal aspect from the transfer pricing perspective would certainly be relevant. Therefore, the following safeguards would be helpful for Malaysian taxpayers to effectively deal with transfer pricing implications arising from the force majeure clause –

- **Define with specificity** – Within the same group, related parties may not have enough motivation to define the contractual terms with specificity, as they are not so worried about protecting their own interest, unlike third parties. However, any vague contractual terms without specificity could give room to the tax authority to interpret the contract to their advantage. Therefore, defining the force majeure clause with specificity in the inter-company agreement is critical, viz. list out all possible events, define severity of disruption which should be caused by the event, and define the consequential rights and obligations of the transacting parties;
- **Take necessary steps before its invocation** – Invocation of force majeure should not be automatic. Give a reasonable notice period to the transacting related party and evaluate all options realistically available, before invoking the force majeure clause;
- **Well supported documentation** – There is a need to have adequate supporting documentation in regard to the interactions carried out with the transacting related party at the time of invoking the force majeure clause and documentation to establish that there is really a situation of impossibility of performance and further, that the same has arisen due to circumstances beyond the control of the transacting parties;
- **Try to mirror third party behaviour** – Keep a close watch on competitors or identify any close comparable or similar situation to mirror third party behaviour, as it would assist to ease the burden in establishing arm's length behaviour;

- **Assess the need for indemnification** – Regardless of the presence of a force majeure clause or the applicability of alternative legal remedies, before seeking to terminate and/or renegotiate intercompany agreements for relief of non-performance, it is also critical to consider if the resulting economic impact may require that indemnification be given to the party who gets adversely affected due to non-performance;
- **Contract vs conduct** – Conduct should always be aligned to the contract and any re-negotiation of contractual terms reflected in the contract;
- **Consistency in approach** – Invocation may invalidate the consistency of TP positions, and therefore, TP documentation should be appropriately amended; and
- **Signing and stamping** – Intercompany contracts should be signed and stamped (may have possible stamp duty implications otherwise).

COVID-19 is certainly creating novel transfer pricing issues for taxpayers and tax administration, and the OECD has recently announced that the Inclusive Framework is exploring the option of developing guidance on these issues. Hopefully, some light will be shed on these legal aspects as well in the near future; however, until that time we need to find a solution based on the general principles of transfer pricing.

Gagandeep Nagpal is Director of Transfer Pricing, Deloitte Malaysia and Bhrigu Dhingra is Senior Manager of Transfer Pricing, Deloitte Malaysia.

The content in this article is the personal view of the authors and does not purport to reflect the views of Deloitte.

The “Adequate” In “Adequate Procedures” for Commercial Organisations

at-mia.my/2020/07/09/the-adequate-in-adequate-procedures-for-commercial-organisations

July 9, 2020

By Raymon Ram

When the Malaysian Anti-Corruption Commission (Amendment) Act 2018 was passed by Parliament in April 2018, all eyes were on the most notable amendment made which introduced the Corporate Liability Provision (Section 17A) in Malaysia. The new Section 17A of the Malaysian Anti-Corruption Commission Act (“the MACC Act“) allows for a company, its directors and senior management to be prosecuted for the act of bribery committed by a “person associated” to the company. This includes, but not limited to the Director, Controller, Employee or partners and Agents who perform services on behalf of the company. However, after the coming into force was held in abeyance for two-years to give Corporate Malaysia time to revamp their stance against bribery and corruption, the provision came into force on 1 June 2020.

As a commonwealth nation whose laws predominantly mimic those of the UK, Malaysia had taken a similar approach to Corporate Liability as per the UK Bribery Act 2010 (UK Bribery Act). Our amendment is in line, although perhaps not in its entirety, with Section 7 of the UK Bribery Act on *Failure of Commercial Organizations to Prevent Bribery*. Here, it is deemed that a relevant commercial organisation is guilty of an offence under this section, if a person associated with the commercial organisation bribes another person intending 1) to obtain or retain business, or 2) to obtain or retain an advantage in the conduct of business. It is a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

Significant UK Cases

There are a number of cases where companies were charged and convicted for bribery-related offences in the UK. In the Sweet Group PLC case, a construction and services company was sentenced under Section 7 (1) (b) of the UK Bribery Act for failing to prevent an act of bribery intended to secure and retain a contract with the Al Ain Ahlia

Insurance (AAAI) Company in the United Arab Emirates. The Serious Fraud Office (SFO) investigation into Sweet Group PLC uncovered that its subsidiary company, Cyril Sweet International Limited had made corrupt payments to Khaleed Al Badie, the vice-chairman of the Board and Chairman of Real Estate and Investment Committee of AAAI to secure the award of a contract with AAAI for the building of the Rotana Hotel in Abu Dhabi.

This case highlighted the need for a company, its Directors and Senior Management to enter into a defence of Adequate Procedures. Here, the defence needed to prove that those running the company had taken the necessary anti-corruption efforts and initiatives to prevent such conduct. This is similar to Section 17A here in Malaysia, where the company would need to enter a similar defence, one of which is to prove under subsection (5) that adequate procedures to prevent bribery were sought and the top level had in no way played a part in the conduct being questioned.

However, things may not be that simple. In another case in the UK, the defence of 'adequate procedures' was thrown out by the jury simply because the procedures in place were deemed 'not adequate enough'. Skansen Interiors, a small-scale UK-based refurbishment company was charged under Section 7 of the UK Bribery Act in relation to allegations that Skansen's former managing director paid bribes to secure refurbishment contracts worth £6 million. Even though Skansen Interiors had self-reported the incident, and claimed that they had in place an ethics policy (which detailed the company's anti-corruption stance), the jury ruled that the procedures taken to uphold the culture of integrity and deter corruption were insufficient. Policies were easily bypassed and there was no enforcement, monitoring or reviews done on high-risk functions within the business. Hence, this highlights that not only do companies need to have proper policies and procedures in place, but there is a need for them to be systematically enforced, reviewed and monitored as well.

Meanwhile, back in Malaysia

Pursuant to Subsection (5) of Section 17A, the Minister in the Prime Minister's department had issued the Ministerial Guidelines on Adequate Procedures for commercial organisations on 4 December 2018. The guidelines revealed what are deemed as adequate procedures, which are to be used as a general non-prescriptive, principles-based application rather than a checklist of items required. Now, with this, companies would need to sit down to decipher, plan, prepare, implement and continuously monitor measures within the stipulated guidelines.

But are companies ready at the moment? Even as enforcement came to effect in June 2020, many organisations are still struggling to meet their anti-bribery/corruption objectives. In addition, Bursa Malaysia amended its Listing requirements for the Main

Market / ACE Market late last year to include having adequate procedures as a pre-requisite for listing on the stock exchange.

Reinforcing Malaysia's commitment to anti-corruption, the penalties under Section 17A are ten times the value of gratification or RM1 million, whichever is higher and/or imprisonment of not more than 20 years. It is time for thorough consideration on an organisation's anti-corruption initiatives, what is deemed adequate and how to achieve the required 'adequacy' of procedures.

Safety Measures

Companies could take the UK Bribery Act and its prescribed adequate/proportionate procedures and our ministerial guidelines on adequate procedures into consideration while also keeping in mind the following points, before we have a precedent from our courts on the deemed definition:

1) **Due diligence on 'Person Associated' and reporting mechanism.** Organisations need to understand who are the persons associated to the business. Ensure the mechanism of due diligence is well established to look into their background and the operations undertaken by internal (such as directors, senior management or controllers) and external parties (such as subsidiaries, agents, contractors or joint venture partners). Also, there is a need for a whistle-blower or ethics hotline to be in place for reporting of suspected corrupt practices by internal or external parties.

2) **Having a robust 'Bribery Risk Assessment' framework.** Companies need to consider a holistic bribery risk assessment to determine the level of risk faced by each segment within the business and the types of controls / resources required to mitigate the level of risk in these stipulated areas. Factors to be considered include geographical locations of operations, types of products, partnerships and transactions undertaken by the company.

3) **Extraterritorial Reach of the MACC Act.** Companies based in Malaysia with businesses outside of Malaysia or based in other countries but with businesses in Malaysia will fall under the reach of the MACC Act. Hence, actions taken, or offences committed by a 'person associated' inside or outside the country would be deemed as occurring within the country. Hence, controls and monitoring requirements extend beyond our borders.

4) **Leveraging technology for systematic monitoring and review.** Data analytics have come a long way from simple anomaly detection through statistical analyses to machine learning through ongoing monitoring of behaviour and/or transactions. Companies should consider the power of analytics to decipher data, to alert management on anomalies which resemble corrupt activity and to act as a reporting tool for directors to review.

5) **Considering the term ‘adequate’ in ‘adequate procedures’.** Companies are required to get management involved in the entire process towards achieving the organisational anti-corruption objectives. A thorough risk assessment needs to be done in order to assess the type of control activities that must be undertaken before implementation. This is with due respect on monitoring and oversight management of the entire process. Understanding that there is no-one-size-fits-all solution to having adequate procedures, the company bears the responsibility to assess their very own nature of business, daily operations and persons associated before deciding on and implementing control measures.

For more information please click here.

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The Impact of the IFRIC Agenda Decision on Over Time Transfer of Constructed Good (IAS 23 Borrowing Costs)

at-mia.my/2020/07/03/the-impact-of-the-ifric-agenda-decision-on-over-time-transfer-of-constructed-good-ias-23-borrowing-costs

July 3, 2020

By Mohd Ilham Mat Rabi

In March 2019, the IFRS Interpretations Committee (IFRIC) issued an Agenda Decision on IAS 23 Borrowing Costs relating to capitalisation of borrowing costs in relation to the construction of a residential multi-unit real estate development (building). MFRS 123 Borrowing Costs is identical to IAS 23 in all respects other than the nomenclature.

The IFRIC issues Agenda Decision on a submission received when it did not recommend standard-setting to address the matter in the submission. Agenda decisions often include information to help companies applying IFRS where it explains how the applicable principles and requirements in IFRS apply to the submission with the objective to improve consistency in the application of IFRS.

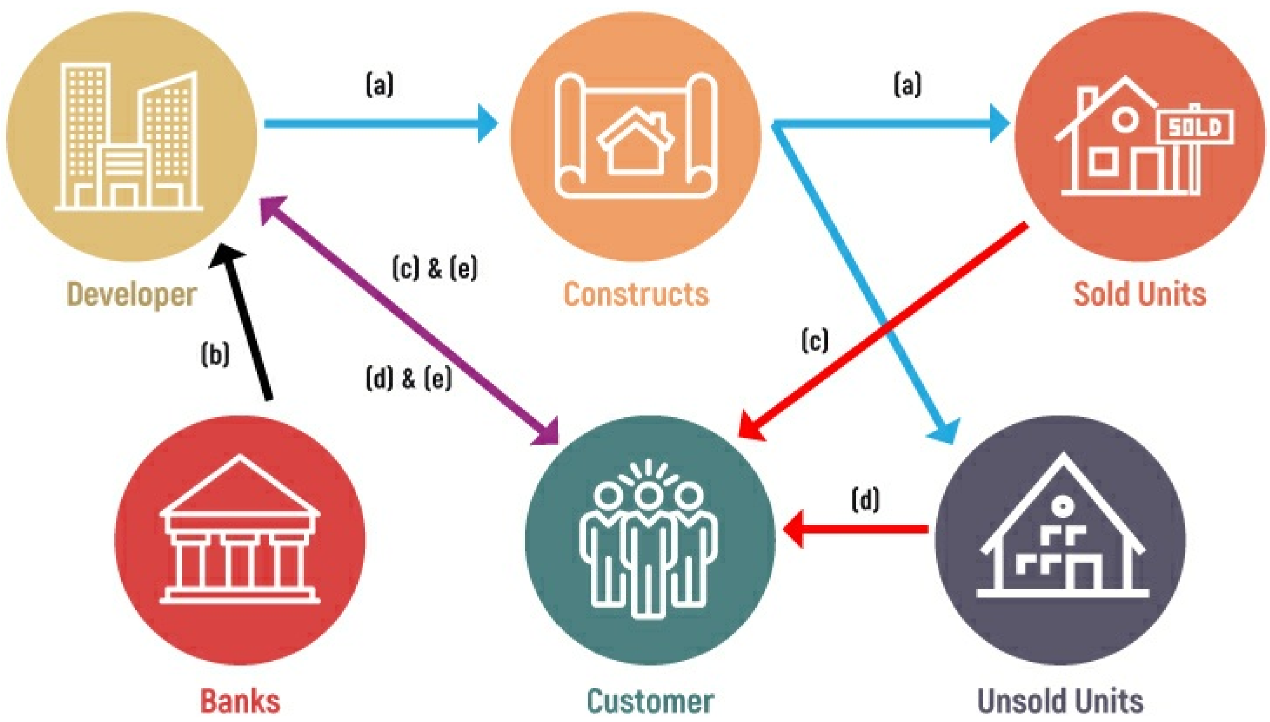
Agenda decisions do not have the authority of IFRS Standards and therefore, they are not mandatory requirements but should be seen as helpful, informative and persuasive. The International Accounting Standards Board (IASB) does not ratify Agenda Decisions. Similar to the IASB, the Malaysian Accounting Standards Board (MASB) does not ratify IFRIC Agenda Decisions.

Fact pattern

The fact pattern described in the Agenda Decision is as follows:

(a) a real estate developer (entity) constructs the building and sells the individual units in the building to customers.
(b) the entity borrows funds specifically for the purpose of constructing the building and incurs borrowing costs in connection with that borrowing.
(c) before construction begins, the entity signs contracts with customers for the sale of some of the units in the building (sold units).
(d) the entity intends to enter into contracts with customers for the remaining part-constructed units (unsold units) as soon as it finds suitable customers.
(e) the terms of, and relevant facts and circumstances relating to, the entity's contracts with customers (for both the sold and unsold units) are such that, applying paragraph 35(c) of IFRS 15 Revenue from Contracts with Customers, the entity transfers control of each unit over time and, therefore, recognises revenue over time. The consideration promised by the customer in the contract is in the form of cash or another financial asset.

The fact pattern is illustrated below.



Issue raised

The requestor asked whether the entity has a qualifying asset as defined in IAS 23 and, therefore, capitalises any directly attributable borrowing costs.

IFRIC's conclusion

Paragraph 8 of IAS 23 states that "an entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them" while paragraph 5 of IAS 23 defines a qualifying asset as 'an asset that necessarily takes a substantial period of time to get ready for its intended use or sale'.

Accordingly, an entity should assess whether, in the fact pattern described above, it recognises an asset that necessarily takes a substantial period of time to get ready for its intended use or sale. Depending on the particular facts and circumstances, the entity might recognise a receivable, a contract asset and/or inventory.

IFRIC concluded that:

- a receivable that the entity recognises is not a qualifying asset. Paragraph 7 of IAS 23 specifies that financial assets are not qualifying assets.
- a contract asset that the entity recognises is not a qualifying asset. The contract asset (as defined in Appendix A to IFRS 15 Revenue from Contracts with Customers) would represent the entity's right to consideration that is conditioned on something other than the passage of time in exchange for transferring control of a unit. The intended use of the contract asset – to collect cash or another financial asset – is not a use for which it necessarily takes a substantial period of time to get ready.
- inventory (work-in-progress) for unsold units under construction that the entity recognises is not a qualifying asset. In the fact pattern described in the request, this asset is ready for its intended sale in its current condition – i.e. the entity intends to sell the part-constructed units as soon as it finds suitable customers and, on signing a contract with a customer, will transfer control of any work-in-progress relating to that unit to the customer.

The principles and requirements in IAS 23 provide an adequate basis for an entity to determine whether to capitalise borrowing costs in the fact pattern described in the request.

Application of the Agenda Decision in Malaysia

The MASB observed that non-private entities in the real estate industry might need to change their accounting policy as a result of the Agenda Decision on IAS 23.

In ensuring consistent application of the Malaysian Financial Reporting Standards, which are word-for-word IFRS Standards, the MASB has decided that an entity shall apply the change in accounting policy as a result of the Agenda Decision to financial statements of annual periods beginning on or after 1 July 2020.

Conclusion

As the Agenda Decision may entail changes in an entity's accounting policy, entities should consider the impact of applying the Agenda Decision in its financial statements both before and after 1 July 2020 and apply the requirements on accounting policy change in MFRS 108 Accounting Policies, Changes in Accounting Estimates and Errors.

References

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