

Basic Concepts of Malaysian Foreign Exchange Regulations

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1. Introduction

With a more globalized marketplace, more and more investors have started to aspire to expand their businesses abroad. And in order to actualize such aspirations, funding into a target country is necessary. The first set of regulations that a foreign investor will face will most likely be based on foreign



exchange (“FOREX”). As such, said foreign investor will need to look into Foreign Exchange Notices (“FE Notices”). We shall now explore the basic ideas pertaining to the FE Notices.

2. Background of the FE Notices

FE Notices are standards published by Bank Negara Malaysia (“BNM”) or the “Central Bank of Malaysia” in English. FE Notices have force of law as they are published under the BNM’s authority under the Financial Services Act 2013¹. It allows BNM to specify standards or issue codes for among others, maintaining orderly conditions or the integrity of the foreign exchange market.

There are 8 FE Notices, and they are as follows:

- a) Interpretation;
- b) Notice 1: Dealings in Currency, Gold and Other Precious Metals;
- c) Notice 2: Borrowing, Lending and Guarantee;
- d) Notice 3: Investment in Foreign Currency Asset;
- e) Notice 4: Payment and Receipt;
- f) Notice 5: Securities and Financial Instruments;
- g) Notice 6: Import and Export of Currency; and

¹ Section 140 and 214 of the Financial Services Act 2013

h) Notice 7: Export of Goods

The Interpretation Notice provides for various definitions of terms that are vital to the understanding to the FE Notices. As the regulation for local and foreign individual and entities are different, it is important to look into how they are classified for the purposes of the Notices.

Based on the Interpretation Notice, a “non-resident”² is among others, defined as any person other than a resident, an overseas branch, a subsidiary, regional office, sales office or representative office of a resident company or, a Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia. The definition of course, has to be read alongside the definition of a “resident”³, which provides for the following:

- a) a citizen of Malaysia, excluding a citizen who has obtained permanent resident status in a country or a territory outside Malaysia and is residing outside Malaysia;
- b) a non-citizen of Malaysia who has obtained permanent resident status in Malaysia and is ordinarily residing in Malaysia;
- c) a body corporate incorporated or established, or registered with or approved by any authority, in Malaysia;
- d) an unincorporated body registered with or approved by any authority in Malaysia; or
- e) the Government or any State Government.

3. The scope for financing of Malaysian subsidiaries.

In an attempt in making this discourse as practical as possible, we will focus on how foreign funding can be transferred from the head office from the country of origin of investors into their subsidiaries in Malaysia as some of the FE Notices. This is the most likely scenario that will be experienced by foreign companies as usually a fledging subsidiary will probably need assistance from the principal. For simplicity and additional context, the head or principal offices from the country of origin shall be referred to as “HQ” and the local subsidiary will be referred to as “Local Office”

In FE Notice 2 on Borrowing, Lending and Guarantee, in principle, provides that a Local Office can borrow in Malaysian Ringgit (“Ringgit”) from a Non-Resident within the Local Office’s Group⁴ except for a Non-Residential Financial Institution (“NRFI”) or Non-Resident Special

² Page 14, Interpretation FE Notice

³ Page 15, Interpretation FE Notice

⁴ Item 6 and 7, FE Notice 2

Purpose Vehicle which is used to obtain borrowing from any person outside the Local Office's Group. However, a Local Office is allowed to borrow in Ringgit up to RM1 million in aggregate, except from an NRFI⁵. This borrowing limit, however, is treated differently to which the borrowing can be made for any amount⁶ in the event that the financing is for "Real Sector Activities".

In the Preamble and Interpretation Notice "Real Sector Activity" refers to an activity relating to—

- (a) *construction or purchase of a residential or commercial property, excluding purchase of land which will not be utilized for construction or production of goods or services; or*
- (b) *production or consumption of goods or services, excluding—*
 - (i) *activity in financial services sector, whether Islamic or otherwise;*
 - (ii) *purchase of securities or Islamic securities; or*
 - (iii) *purchase of Financial Instrument or Islamic Financial Instrument.*

It should be noted that the FE Notices in general did not define what "production or consumption" or "good or services" are. As such, this will probably entail the common meaning of those words.

However, sometimes it may not be possible for the HQ to be involved and that the responsibility for financing falls on the Local Office. Naturally, the said Local Office has the option to look into either Malaysian Ringgit or other currencies. With regard to this, reference should be made to **FE Notice 2 Item 9**. Here, it states that a Resident Entity is allowed to borrow in Foreign Currency in any amount—

- (a) from a Licensed Onshore Bank;
- (b) from an Entity within the Resident Entity's Group or from the Resident Entity's Direct Shareholder except for an Entity stated in paragraph 10(b) or 10(c).
- (c) through issuance of Foreign Currency Corporate Bond or Sukuk to another Resident. Subscription of the Corporate Bond or Sukuk by the latter shall be subject to compliance with Notice 3.

In light of the above, **FE Notice 2 Item 10**, it provides that a Resident Entity is allowed to borrow in Foreign Currency up to RM100 million equivalent in aggregate from—

- (a) a Non-Resident outside the Resident Entity's Group;

⁵ Item 8, FE Notice 2

⁶ Item 6, FE Notice 2

(b) a NRFI; or

(c) a Non-Resident Special Purpose Vehicle which is used to obtain Borrowing from any person outside the Resident Entity's Group.

The context pertaining to Malaysian Ringgit has already been explained above regarding Item 6 and 7 of FE Notice 2.

4. Monetary transfers from HQ

Regarding monetary transfers from HQ to Local Office, reference must be made to FE Notice 4 on Payment and Receipt. It provides that in general, a Non-Resident (ie: HQ) is allowed to make or receive payment in Ringgit⁷, in Malaysia, to or from another Resident (ie: Local Office) income earned or expense incurred in Malaysia⁸. It should be noted that there is no limit to such transfers under FE Notice 4. Additionally, a non-resident investor like the HQ is free to undertake any type of investment in Ringgit asset or foreign currency asset in Malaysia without any restriction or repatriate divestment proceeds, profits, dividends or any income arising from the investments in Malaysia. Repatriation shall be made in foreign currency⁹.

5. Conclusion

In a brief glance, the FE Notices can be seen as somewhat liberal but precise, which enables fluidity in investments but still allows clear regulation. However, different businesses have different foreign exchange requirements and may manage their business differently. As such, in the event you would like to know more about the FE Notices that were not highlighted, or you would require a more specific piece of advice, please do not hesitate in contacting us.

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⁷ Item 2(c), FE Notice 4

⁸ Item 2(b), FE Notice 4

⁹ <https://www.bnm.gov.my/fep>



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He established his own firm in Japan and worked as a representative partner of a law firm with three offices in Japan. He has provided legal service as advisor to a wide range of organization in Japan, including companies in construction, real estate management, system development as well as local government and politic parties. He has been a member of One Asia Lawyers since September 2020, providing advice on general cross-border Asian legal matters (M&A, regulatory investigations, etc.) with a focus on Malaysia.

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