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Regulatory & Compliance Updates Companies Commission of Malaysia

Audit Exemption Review

The Companies Commission of Malaysia (SSM) is currently seeking responses on the review of Audit Exemption Criteria for Private Companies in Malaysia. The review focuses on a new audit exemption threshold to support the growth of small and medium-sized enterprises (SMEs) in Malaysia especially the micro and small enterprises. The audit exemption aims to facilitate companies towards reducing compliance costs especially in cases of owner-managed companies. This consultation is currently ongoing and comments must be submitted (via email) by 28 February 2023 to lrpia@ssm.com.my.

Proposal to amend the Companies Act 2016 and the Limited Liability Partnership Act 2012

The proposal to amend both Acts is currently underway and the proposal is expected to be tabled in Parliament during the Second Meeting of the Fifteenth Session. The amendment for both Acts will introduce a more comprehensive provisions on corporate rescue mechanism that will be conducive for the corporate sector to remain competitive while being rehabilitated in facing a financial situation. This amendment is also expected to facilitate the economic growth post Covid-19 to enable companies and limited liability partnerships to operate within its full potential.

Movable Property Security Interest Bill

A new legal framework to address gaps when movable property is used as collateral



THE LAW

When an incorporated entity applies for asset financing with either an immovable or movable property (i.e. personal property) as collateral, the law is clear. Sections 352-364 of the Companies Act 2016 ('the Act') provides that the particulars of charge must be delivered to the Registrar of Companies within 30 days of the creation of the charge. This provides an important notice to the public of the financier's interest in the property that is used as

collateral. However, the Act only applies to companies. Where unincorporated entities such as partnership or sole proprietorship are concerned, no law currently facilitates this convenience.

As a result, the current framework is not facilitative for unincorporated entities to raise finance. Further, in the absence of a unified register for unincorporated and unregistered entities, it is difficult to identify a debtor or whether a particular movable property is already used as a collateral for a loan.

This is even more frustrating considering the fact that movable properties either tangible or intangible often account for most of the capital stock for the unincorporated entities.

With the introduction of the Bill, an integrated and unified framework for all entities (incorporated and unincorporated) will facilitate access to financing and also be critical in widening the categories of movable property which may be used as collateral such as intellectual property, crops (e.g. fruits, vegetables), livestock (e.g. cows, goats, chickens), small aircrafts, small watercrafts or even cryptocurrencies.

THE SYSTEM

A registration system under this Bill is currently being developed by Companies Commission of Malaysia. The system proposed is notice based (i.e. no document to be uploaded) using only readily available information (e.g. from the loan agreement). Also, searching for information under this Registry will be made simpler and inexpensive.

The Bill is expected to be introduced in the fourth quarter of 2023 and is one of 14 high impact projects under SSM's Strategic Direction Plan (HT14).



DID YOU KNOW?

"The impact of the introduction of movable collateral registries is economically significant: registry reform increases access to bank finance by almost 8 percentage points and access to loans by 7 percentage points".

SOURCE: WORLD BANK