



Directors' Duties Navigator: Climate Risk and Sustainability Disclosures*

Fourth edition, September 2024

**Previously titled 'Primer on Climate Change: Directors' Duties and Disclosure Obligations'*

Malaysia

1. Legal and Regulatory Landscape Regarding Climate Change

1.1. Government approach to climate change

1.1.1. Climate change legislation

Malaysia does not currently have a specific climate change legislation at federal level requiring a reduction in greenhouse gas (GHG) emissions. However, in February 2023, the Minister of Natural Resources, Environment and Climate Change (NRECC) announced a *Climate Change Bill* (the **Bill**), the development of which is expected to take two to three years from 2023.¹ Based on a report from November 2023, the Bill is intended to be tabled in 2025 and is in the preliminary stages of drafting.² More recently in July 2024, it was revealed that the results of a roadshow on the Bill will be published in September 2024, with a public consultation to be launched thereafter.³ The Minister of NRECC highlights that the Bill will include various mechanisms to reduce the country's emissions, such as carbon pricing.⁴ In August 2024, the Minister of NRECC mentions that the Bill will create new business opportunities by providing

access to markets which emphasise sustainability.⁵

Separately, one of the states in Malaysia, Sarawak, has enacted a climate change legislation, the *Environment (Reduction of Greenhouse Gases Emission) Ordinance, 2023* to regulate GHG emissions and carbon capture and storage activities⁶ within Sarawak, which came into force on 1 March 2024.⁷ The Ordinance contains requirements on: (i) the registration, reporting and the regulation of GHG emissions in respect of specific business activities such as oil & gas and energy; (ii) the issuance of carbon credit units from activities involving carbon capture and storage, forest carbon activities, or projects reducing energy consumption or using low carbon solutions, and the trading, verification, retirement and pricing of such carbon credits; and (iii) the imposition of carbon levies where the carbon emissions of a specified business activities exceeds the thresholds as determined by the Sarawak Government. The Ordinance is to be read together with the Land (Carbon Storage) Rules, 2022⁸ and the Forests (Forest Carbon Activity) Rules, 2022⁹.¹⁰

1.1.2. Transition plans and targets

The Malaysian Government has launched the Twelfth Malaysia Plan,¹¹ which was approved by the Senate on 21 October

¹ MalayMail, 'Three years to develop Malaysia's climate change Bill, says Nik Nazmi' (23 February 2023) <<https://www.malaymail.com/news/malaysia/2023/02/23/three-years-to-develop-malaysias-climate-change-bill-says-nik-nazmi/56385>>. The Natural Resources, Environment and Climate Change Minister Nik Nazmi Nik Ahmad stated that the ministry is in its early stages of developing the national climate change bill.

² New Straits Times, 'Govt aims to table National Climate Change bill in 2025' (23 November 2023) <https://www.nst.com.my/news/nation/2023/11/981684/govt-aims-table-national-climate-change-bill-2025#google_vignette>

³ Eco-Business, 'Update on Malaysia's national climate change bill will be shared in September, with public consultation launched thereafter' (25 July 2024) <<https://www.eco-business.com/press-releases/update-on-malaysias-national-climate-change-bill-will-be-shared-in-september-with-public-consultation-launched-thereafter/>>

⁴ Ibid.

⁵ Bursa Sustain (originally sourced from Bernama) 'Bill On Climate Change To Create New Opportunities For Business Sector - Nik Nazmi' (14 August 2024),

<<https://bursasustain.bursamalaysia.com/droplet-details/news/bill-on-climate-change-to-create-new-opportunities-for-business-sector>>.

⁶ The Star, 'Sarawak first in the country to enact anti-climate change law' (20 November 2023) <<https://www.thestar.com.my/news/nation/2023/11/20/sarawak-first-in-the-country-to-enact-anti-climate-change-law>>

⁷ As announced in the Sarawak Government Gazette Swk. L.N. 180/2024 published on 15 March 2024. Only Part IV of the Ordinance on carbon levies has not yet come into force.

⁸ The Land (Carbon Storage) Rules 2022 regulates the used of land as storage sites for scheduled gases by any petroleum operator or other person undertaking any industrial activity as a measure to reduce the emission of such gases to mitigate the effects of global climate change (see Section 3 of the Rules).

⁹ The Forests (Forest Carbon Activity) Rules, 2022 regulates the licensing of carbon-generating forest activities, and the reporting and trading of carbon credits generated from such activities.

¹⁰ Section 3(3) of the Ordinance.

¹¹ Malaysian Government, Economic Planning Unit, Twelfth Malaysia Plan 2021-2025 (September 2021) <<https://rmke12.ekonomi.gov.my/en>>.

2021 (the **Plan**).¹² The Plan sets out Malaysia's national development strategy for 2021-2025, including a reiteration of the goal to reduce GHG emissions by up to 45% to gross domestic product (**GDP**) by 2030 relative to 2005 (i.e. a relative emissions reduction target rather than absolute) under Malaysia's Nationally Determined Contribution (**NDC**).¹³ Malaysia will also be revising its NDCs by February 2025.¹⁴ The then Prime Minister Datuk Seri Ismail Sabri Yaakob announced that Malaysia is aiming to become a carbon-neutral nation by as early as 2050¹⁵, and the National Energy Transition Roadmap¹⁶ with the National Energy Policy 2022-2024¹⁷ reflecting this goal. The National Energy Transition Roadmap focuses on six energy transition levers: energy efficiency, renewable energy, hydrogen, bioenergy, green mobility, carbon capture, utilisation and storage (**CCUS**), whilst the Responsible Transition (**RT**) pathway sets the direction over the next three decades to meet growing energy needs and reduce GHG emissions. The Low Carbon Aspirations 2040 was announced in September 2022 as part of the National Energy Policy 2022-2040 and identifies selected targets to achieve a low carbon economy, such as through boosting the

use of electric vehicles by 37% as well as increasing the usage of alternative fuel for heavy vehicles with B30 biodiesel.¹⁸

With respect to adaptation, the Plan also announces that a national climate adaptation action plan will be developed.¹⁹ According to the Plan's mid-term review, the national adaptation plan will focus on five areas: public health, agriculture and food security, forestry and biodiversity, water resources and security, as well as infrastructure and cities.²⁰ The Minister of NRECC also mentioned in August 2024 that the national adaptation plan is being developed alongside the Bill.²¹ In December 2023, it was announced that the Malaysian government will be sending USD3 million (RM14 million) in grants from its Green Climate Fund to develop the National Adaptation Plan on climate change.²²

1.1.3. Wider government approach to climate change

On 30 April 2021, the Central Bank of Malaysia (Bank Negara Malaysia or **BNM**) issued the Climate Change and Principle-based Taxonomy guidance document (**BNM Taxonomy Guidance**

¹² Bernama, 'Dewan Negara approves 12MP motion' (22 October 2021), *The Star* <<https://www.thestar.com.my/news/nation/2021/10/22/dewan-negara-approves-12mp-motion>>.

¹³ These goals include reducing GHG emissions intensity by up to 45% by 2030 relative to 2005. See Malaysian Government, Malaysia's Update of its first Nationally Determined Contribution (July 2021) <<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Malaysia%20First/Malaysia%20NDC%20Updated%20Submission%20to%20UNFCCC%20July%202021%20final.pdf>>.

¹⁴ The Edge, 'Malaysia to complete revision of nationally determined contribution target by February 2025 — NRES' (8 August 2024) <<https://theedgemaalaysia.com/node/722099>>

¹⁵ The Edge, '12MP: Malaysia committed to becoming carbon-neutral nation by 2050, says PM' (29 September 2021) <<https://theedgemaalaysia.com/article/12mp-malaysia-committed-becoming-carbonneutral-nation-2050-says-pm>>

¹⁶ The National Energy Transition Roadmap can be accessed here: <https://ekonomi.gov.my/sites/default/files/2023-09/National%20Energy%20Transition%20Roadmap_0.pdf>

¹⁷ The National Energy Policy 2022-2024 can be accessed here: <https://ekonomi.gov.my/sites/default/files/2022-09/National%20Energy%20Policy_2022_2040.pdf>

¹⁸ The Star 'PM: GDP to expand by RM13bil annually with Low Carbon Aspiration 2040 initiative' (19 September 2022) <<https://www.thestar.com.my/news/nation/2022/09/19/pm-gdp-to-expand-by-rm13bil-annually-with-low-carbon-aspiration-2040-initiative>>. See also Section 2.2 (pages 22 to 26) of the National Energy Policy 2022-2040.

¹⁹ Malaysian Government, Economic Planning Unit, Twelfth Malaysia Plan 2021-2025 (September 2021), p. 307

²⁰ The mid-term review for Chapter 8 of the Plan which discusses the national adaptation plan can be accessed via this link: <https://rmke12.ekonomi.gov.my/ksp/storage/fileUpload/2023/09/2023091125_9_chapter_8.pdf>. See also The Star, 'Adaptation plan to address climate risks' (12 September 2023), accessible via this link: <<https://www.thestar.com.my/news/nation/2023/09/12/adaptation-plan-to-address-climate-risks>>

²¹ Bursa Sustain (originally sourced from Bernama) 'Bill On Climate Change To Create New Opportunities For Business Sector - Nik Nazmi' (14 August 2024), <<https://bursasustain.bursamalaysia.com/droplet-details/news/bill-on-climate-change-to-create-new-opportunities-for-business-sector>>.

²² MalayMail 'Nik Nazmi: Govt to spend US\$3m Green Climate Fund grant on climate change national adaptation plan' (5 December 2023) <[https://www.malaymail.com/news/malaysia/2023/12/05/nik-nazmi-govt-to-spend-us3m-green-climate-fund-grant-on-climate-change-national-adaptation-plan/105939#:~:text=DUBAI%2C%20Dec%205%20E2%80%94%20The%20government,NRECC\)%20Nik%20Nazmi%20Nik%20Ahmad](https://www.malaymail.com/news/malaysia/2023/12/05/nik-nazmi-govt-to-spend-us3m-green-climate-fund-grant-on-climate-change-national-adaptation-plan/105939#:~:text=DUBAI%2C%20Dec%205%20E2%80%94%20The%20government,NRECC)%20Nik%20Nazmi%20Nik%20Ahmad)>.

Document),^{23,24} prepared in collaboration with the Risk Management sub-committee²⁵ of the Joint Committee on Climate Change (JC3). The BNM Taxonomy Guidance Document provides that it is imperative that financial institutions integrate climate change considerations into all aspects of their business strategies,²⁶ and also recognises that financial institutions play a pivotal role in accelerating their customers' transition towards more sustainable practices in their business operations.²⁷ Furthermore, the BNM Taxonomy Guidance Document provides that a consistent and systematic classification of economic activities can facilitate and promote the channelling of financial flows to activities that support climate change and environmental objectives, and further classifies²⁸ economic activities into three broad categories of "Climate Supporting", "Transitioning", and "Watchlist" which are structured around five guiding principles:²⁹ (i) "climate change mitigation"; (ii) "climate change adaptation"; (iii) "no significant harm to the environment"; (iv) "remedial measures to transition"; and (v) "prohibited activities".³⁰

The Securities Commission Malaysia (SC), on the other hand, launched in December 2022 the Principles-Based Sustainable and Responsible Investment Taxonomy for the Malaysian Capital Market (SRI Taxonomy) to lay out voluntary guiding principles for PLCs on the classification of economic activities that qualify for sustainable investment.³¹ As of October 2023, the next iteration of the SRI Taxonomy is being worked on.³²

In Malaysia's 2024 Budget, there are a number of allocations made in support of the green economy. It was announced that an additional tax deduction of up to RM300,000 will be given to companies spending on Measurement, Reporting and Verification (MRV) related to the development of carbon projects,³³ and that the Government will pioneer the issuance of biodiversity sukuk of up to RM1 billion involving the replanting of degraded forests that will in turn generate carbon credit.³⁴ The Government will also provide the Fund to Facilitate National Energy Transition valuing at RM2 billion.³⁵ Furthermore, Syarikat Jaminan Pembiayaan Perniagaan Berhad (SJPP)³⁶ will guarantee up to 80%

²³ BNM, Climate Change and Principle-based Taxonomy (30 April 2021)

<<https://www.bnm.gov.my/documents/20124/938039/Climate+Change+and+Principle-based+Taxonomy.pdf>>.

²⁴ Paragraph 4.1 of the BNM Taxonomy Guidance Document provides that it complements the Value-based Intermediation Financing and Investment Impact Assessment Framework Guidance Document (VBIAF Guidance Document) issued by BNM on 1 November 2019. It further provides that the VBIAF Guidance Document lays the foundation for ESG considerations in the provision of financial services to generate a positive and sustainable impact on the economy, community and environment, and that while the VBIAF is premised on Shariah tenets, the framework has universal application for financial institutions seeking to reflect ESG considerations in their governance, business strategy and operations, reporting and risk management systems. See the VBIAF Guidance Document at BNM, 'Value-based Intermediation Financing and Investment Impact Assessment Framework: Guidance Document' (1 November 2019) <https://www.bnm.gov.my/documents/20124/761679/VBIAF_Final+guidance+1.11.2019.pdf/97938f34-3796-216c-14a0-54002c377e3b?t=1590725447991>.

²⁵ The committee comprises of the following entities: Bank Islam Malaysia Berhad, Bank Pertanian Malaysia Berhad (Agrobank), CIMB Bank Berhad, Etiqa Insurance and Takaful, Hong Leong Bank Berhad, Institutional Investors Council Malaysia, Malayan Banking Berhad, Nomura Asset Management Malaysia Sdn. Bhd., the SC, Standard Chartered Bank Malaysia Berhad and Zurich Insurance and Takaful. See the Preface & Acknowledgement section on page 2 of the BNM Taxonomy Guidance Document.

²⁶ *Ibid*, para.1.5, pp. 4-5.

²⁷ *Ibid*, para. 1.6, p. 5.

²⁸ See Section 9 on pages 23 and 24 of the BNM Taxonomy Guidance Document for further elaboration on these categories of classifications.

²⁹ See Section 7, Part C on pages 12 to 21 of the BNM Taxonomy Guidance Document for further elaboration on these guiding principles.

³⁰ *Ibid*, para. 9.1, p. 23.

³¹ The media released issued by SC on 12 December 2022 can be accessed via this link: <<https://www.sc.com.my/resources/economy/media-release/sc-unveils-principles-based-sustainable-and-responsible-investment-taxonomy-for-the-malaysian-capital-market>>, and the document itself can be accessed here <<https://www.sc.com.my/api/documentms/download.ashx?id=a0ab5b0d-5d7d-4c66-8638-caec92c209c1>>

³² New Straits Times 'SC working on next iteration of SRI taxonomy – chairman' (23 October 2023) <<https://www.nst.com.my/business/economy/2023/10/970368/sc-working-next-iteration-sri-taxonomy-chairman>>

³³ Para. 154, page 71, 2024 Malaysia Budget <<https://belanjawan.mof.gov.my/pdf/belanjawan2024/ucapan/ub24-BI.pdf>>

³⁴ Para. 159, page 73 of the 2024 Malaysia Budget.

³⁵ Para. 147, page 68 of the 2024 Malaysia Budget.

³⁶ SJPP is a wholly-owned company of Minister of Finance Incorporated formed in 2009 to administer and manage government guarantee schemes which enable small medium

of SME entrepreneurs' loans, especially those involved in the green economy, with the availability of guarantee funds of up to RM20 billion.³⁷ Financial institutions will also provide financing funds with a total value of RM200 billion to encourage the industry to transition towards a low-carbon economy.³⁸

With respect to carbon pricing, the Plan includes a feasibility study on carbon pricing, such as carbon tax and an emissions trading scheme.³⁹ However, there are not yet any firm plans on the launch of a carbon tax system by the Malaysian government.⁴⁰

In October 2023, the Ministry of Investment, Trade and Industry launched the National Industry Environmental, Social And Governance Framework (**i-ESG Framework**), with the objective of accelerating the transition towards sustainable practices among manufacturing companies.⁴¹

It is also worth highlighting the Minister of Economy's announcement in May 2024 to table a memorandum on the legal framework to implement carbon capture, utilisation and storage (CCUS) initiatives in Malaysia, which shall constitute a standalone bill to be tabled by the end of this year.⁴²

1.2. Regulatory approaches to climate change

1.2.1. Climate risk as a systemic/financial risk

Malaysian financial regulators are quite attuned to the magnitude and breadth of climate-related financial risks.

1.2.2. Financial regulation and guidance

Joint Committee on Climate Change: As far back as 2019, the JC3 was formed by both BNM and the Securities Commission Malaysia (**SC**) with the intention of pursuing collaborative actions for building climate resilience in Malaysia whilst being guided by three principal mandates, one of which being to build capacity through the sharing of knowledge, expertise, and best practices in assessing and managing climate-related risks.⁴³ The JC3 held its most recent meeting on 23 July 2024, where it agreed to establish the Climate Finance Innovation Lab to accelerate decarbonisation efforts via innovative financial solutions and to provide support to the other pilot projects of the JC3, and also referred to the development of a Transition Finance Guidance.⁴⁴

Bank Negara Malaysia: On 30 November 2022, BNM published a policy document and supplemental guidance on climate risk management and scenario analysis for financial institutions (the **BNM Climate Risk Policy Document**).⁴⁵ which requires financial institutions to make annual climate-related disclosures in line with the TCFD recommendations, as further discussed under Section 2.2.2 below. The BNM Taxonomy Guidance Document and the BNM Climate Risk Policy Document acknowledged that climate change has significant impacts on the society,

enterprise (SME) companies to gain access to financing facilities from financial institutions.

³⁷ Para. 103, page 48, 2024 Malaysia Budget.

³⁸ Para. 148, page 68, 2024 Malaysia Budget.

³⁹ Malaysian Government, Economic Planning Unit, Twelfth Malaysia Plan 2021-2025 (September 2021), p. 298.

⁴⁰ The Edge 'Malaysia's carbon tax will help achieve carbon neutrality by 2050' (8 October 2022) <<https://theedgemaalaysia.com/article/malaysias-carbon-tax-will-help-achieve-carbon-neutrality-2050>>

⁴¹ See the media released issued by MITI on 2 October 2023, accessible via this link: <https://www.miti.gov.my/miti/resources/Media%20Release/ME%20DIA_RELEASE_NATIONAL_ESG_FRAMEWORK_PREPARES_MANUFACTURING_SECTOR_FOR_US12_TRILLION_ESG-RELATED_MARKET_OPPORTUNITIES.pdf>, and the

framework itself can also be found here: <<https://www.miti.gov.my/index.php/pages/view/9849?mid=1282>>

⁴² Bernama 'Cabinet Tables Memorandum on Carbon Capture, Utilisation and Storage (21 May 2024) <<https://www.bernama.com/en/news.php?id=2300123>>

⁴³ BNM, 'Inaugural Meeting of Joint Committee on Climate Change' (27 September 2019) <<https://www.bnm.gov.my/-/inaugural-meeting-of-joint-committee-on-climate-change>>.

⁴⁴ <<https://www.sc.com.my/resources/media/media-release/updates-from-the-13th-joint-committee-on-climate-change-jc3-meeting>>

⁴⁵ BNM, Climate Risk Management and Scenario Analysis (30 November 2022) <https://www.bnm.gov.my/documents/20124/938039/PD_Climate-Risk-Mgmt-Scenario-Analysis-Nov2022.pdf>

economy, and financial system.⁴⁶ Specifically, BNM notes that this impact would manifest in three dimensions of risk, namely: 1) physical risk (damaged property, reduced productivity and disrupted trade), 2) transition risk (changes in legislative and regulatory framework, shift in consumer and investor behaviour), and 3) liability risk (legal risk and claims on damages and losses).⁴⁷

The 2024 Climate Risk Stress Testing Exercise – Methodology Paper was published by BNM on 29 February 2024 (**BNM CSR Methodology Paper**), and requires licensed financial institutions to participate in the 2024 Climate Risk Stress Test (**CRST**).⁴⁸ The CRST aims to facilitate financial institutions' learning and capacity building in addressing risks from climate change.⁴⁹ To conduct the 2024 CRST exercise, financial institutions are required to employ three long-term adverse climate scenarios to capture the impact of different combinations of physical or transition risks, namely the Net Zero 2050 (**NZ 2050**), the Divergent Net Zero 2050 (**DNZ 2050**), and the NDCs⁵⁰, with an overview of such scenarios further set out therein.⁵¹

Bursa Malaysia Berhad Securities: The stock exchange regulator, Bursa Malaysia

Berhad Securities (**Bursa Malaysia**)⁵² has also made amendments to the listing requirements to enhance the sustainability disclosure framework for PLCs, including requirements for listed companies to report on prescribed sustainability matters, including on anti-corruption, energy management and labour practices and standards, climate related disclosures in line with TCFD recommendations, as well as data and performance targets (see Section 3.1.2 for further details).

Bursa Malaysia's FTSE4Good Bursa Malaysia Index (**F4GBM Index**)⁵³ is designed to highlight companies demonstrating a leading approach to addressing ESG risks.⁵⁴ PLCs listed on the FTSE Bursa Malaysia EMAS Index⁵⁵ are eligible to be listed on the F4GBM Index, subject to achieving a prescribed rating of the FTSE4Good ESG scores are based on the FTSE Russell ESG Ratings and other screening criteria.⁵⁶ According to the FAQs on FTSE4Good ESG Ratings published jointly by FTSE Russell and Bursa Malaysia (**FTSE4 FAQs**),⁵⁷ all PLCs⁵⁸ will be provided with a FTSE Russell ESG Ratings based on an assessment conducted annually⁵⁹ by FTSE Russell

⁴⁶ Paragraph 1.1, page 4 of the BNM Taxonomy Guidance Document, as well as Paragraphs 1.1 and 1.2 of the BNM Policy Risk Document

⁴⁷ *Ibid*, para. 5.1, p. 7.

⁴⁸ Para. 6.2, page 7 of the BNM CRS Methodology Paper.

⁴⁹ Para. 1.2, page 4 of the BNM CRS Methodology Paper.

⁵⁰ Para. 9.1, page 9 of the BNM CRS Methodology Paper.

⁵¹ Para. 10.3, page 9 of the BNM CRS Methodology Paper.

⁵² Bursa Malaysia Securities is a wholly-owned subsidiary of Bursa Malaysia and provides, operates and maintains the securities exchange.

⁵³ See Bursa Malaysia, 'Bursa Malaysia announces launch of Environmental, Social and Governance Index (22 December 2014) <https://www.bursamalaysia.com/about_bursa/media_centre/bursa-malaysia-announces-launch-of-environmental-social-and-governance-index>.

⁵⁴ Para. 1, Section D (page 12) of the FTSE4 FAQs. See also Para. 2, Section D (page 12) of the FTSE FAQs, which provide that the F4GBM Index is regularly used by large, mainstream institutional investors looking to meet an ESG mandate. In addition, many companies use their inclusion in the F4GBM Index as a way to show their commitment to having strong ESG performance.

⁵⁵ This index comprises the constituents of the FTSE Bursa Malaysia Top 100 Index and the FTSE Bursa Malaysia Small Cap Index, and will represent 98% of the full market capitalisation of all ordinary securities listed on the main market of Bursa Malaysia. See Paras. 1.4.6 and 4.6.1 of the FTSE Bursa Malaysia Index Series Ground Rules (version 5.9, March 2024), accessible via this link: <https://www.lseg.com/content/dam/ftse-russell/en_us/documents/ground-rules/ftse-bursa-malaysia-index-series-ground-rules.pdf>

⁵⁶ Para. 1, Section D (page 12) of the FTSE4 FAQs. See also Section 6 of the FTSE4Good Bursa Malaysia Index Ground Rules (version 2.8, May 2024), accessible via this link: <https://www.lseg.com/content/dam/ftse-russell/en_us/documents/ground-rules/ftse4good-bursa-malaysia-index-ground-rules.pdf>, and Section 6 of the FTSE4Good Index Series Ground Rules (version 5.3, May 2024), accessible via this link: <https://www.lseg.com/content/dam/ftse-russell/en_us/documents/ground-rules/ftse4good-index-series-ground-rules.pdf>

⁵⁷ <https://www.bursamalaysia.com/sites/5d809dcf39fba22790cad230/assets/64ec56e439fba23c0ab66896/FTSE4GOOD_ESG_Ratings_FAQ_August_2023.pdf>

⁵⁸ Paras. 11 and 15, Section A (page 7) of the FTSE FAQs.

⁵⁹ Para. 12, Section A (page 7) of the FTSE FAQs.

analysts.⁶⁰ Assessments are based on publicly-available data sources which in turn encourages best practice disclosures⁶¹ given that they are encouraged to ensure that high quality data and information are provided publicly on their practices.⁶² The ratings of the PLCs are listed publicly on the official website of Bursa Malaysia.⁶³ The F4GBM Index is reviewed semi-annually in June and December,⁶⁴ and the ESG ratings of the PLCs will be updated either at the June or December index reviews depending on when the relevant PLC's assessment is completed.⁶⁵ The PLCs which are successful in being listed on the FGBM4 Index are also listed publicly on the official website of Bursa Malaysia,⁶⁶ thus increasing the profile and exposure of companies with leading ESG practices.⁶⁷

More recently, Bursa Malaysia announced in its 2023 Sustainability Report its support for the recommendations of the TCFD and that it remains committed to achieving net zero GHG emissions by 2050.⁶⁸ In 2023, it also conducted various advocacy sessions, workshops and leadership programmes to improve the disclosure standards and practices of PLCs.⁶⁹

The Bursa Carbon Exchange completed Malaysia's inaugural carbon credit auction on 16 March 2023, which saw participation

from 15 buyers comprising mainly of Government-linked companies and financial institutions, purchasing 15,000 Verra-registered carbon credits from the Linshu Biogas Recovery and Power Generation Project in China and the Southern Cardamom Project, which is a REDD+ (Reducing Emissions from Deforestation and Forest Degradation) project from Cambodia.⁷⁰ The National Voluntary Carbon Market Handbook was also launched as a guide to generate carbon credits that adhere to international standards.⁷¹

In a media release dated 15 February 2024, Bursa Malaysia, the Indonesia Stock Exchange, the Stock Exchange of Thailand (**SET**), and Singapore Exchange (**SGX Group**), announced a collaboration on the ASEAN-Interconnected Sustainability Ecosystem (**ASEAN-ISE**), to advance ASEAN's sustainable development through the implementation of common ESG metrics in their respective data infrastructures.⁷²

1.2.3. Liability risk: enforcement action by regulators

At the timing of writing, we are not aware of any enforcement action taken by regulators in respect of climate related offences. However, regulators have in the past taken

⁶⁰ Paras. 3 and 4, Section B (page 8) of the FTSE4 FAQs.

⁶¹ See the relevant webpage on the official website of Bursa Malaysia available via this link: <https://www.bursamalaysia.com/trade/our_products_services/indices/ftse4good-bursa-malaysia-f4gbm-index>

⁶² See Item 3, Section B (page 8) of the FTSE4Good FAQs

⁶³ Bursa Malaysia, 'ESG Ratings of PLCs Assessed by FTSE Russell# in Accordance with FTSE Russell ESG Ratings Methodology', <https://www.bursamalaysia.com/sites/5d809dcf39fba22790cad230/assets/667e26d2e6414a9b3a6aedc1/ESG_Ratings_of_PLCs_assessed_by_FTSE_Russell_n_Index_Constituents_Jun_e2024.pdf>.

⁶⁴ Para. 8, Section D of the FTSE4Good FAQs.

⁶⁵ Para. 9, Section D of the FTSE4Good FAQs.

⁶⁶ See the latest list from the June 2024 review available via this link: <https://www.bursamalaysia.com/sites/5d809dcf39fba22790cad230/assets/66713a5ae6414a1baa7aedac/130624_FTSE4_GOOD_BURSA_MALAYSIA_JUNE_2024_SEMI-ANNUAL_REVIEW.pdf>

⁶⁷ See the relevant webpage on the official website of Bursa Malaysia available via this link:

<https://www.bursamalaysia.com/trade/our_products_services/indices/ftse4good-bursa-malaysia-f4gbm-index>

⁶⁸ Bursa Malaysia, 'Bursa Malaysia 2023 Sustainability Report' (2023), 57 <https://www.bursamalaysia.com/sites/5d809dcf39fba22790cad230/assets/65deff8ee6414a30c4ea52e6/Bursa_SR23%4028.2.24.pdf>.

⁶⁹ *Ibid*, 49

⁷⁰ *Ibid*, 9. See also the press release issued by Bursa Malaysia Berhad on 17 March 2023, accessible via this link: <https://bcx.bursamalaysia.com/index.php?rp=bcx_pressrelease_17march2023>

⁷¹ *Ibid*, 10. The VCM Handbook can be accessed at <https://bcx.bursamalaysia.com/index.php?rp=vcm_handbook>

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<https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5c11a9db758f8d31544574c6/65cd9ba8cd34aa9934da3000/files/150224_MEDIA_RELEASE_BURSA_MALAYSIA_IDX_SET_AND_SGX_GROUP_COLLABORATE_TO_DEVELOP_AN_ASEAN_INTERCONNECTED_SUSTAINABILITY_ECOSYSTEM_ASEAN-ISE.pdf>

action in respect of false and misleading financial statements.⁷³ Given the increased requirements on sustainability disclosures for PLCs and financial institutions as discussed in Section 3 below, it is likely that we will see the regulators bringing their first enforcement action against PLCs and financial institution for breach of such requirements in the next few years.

2. Directors' Duties and Climate Change

2.1. Legal framework for directors' duties

Malaysia is a common law jurisdiction and the *Companies Act 2016 (CA 2016)* codifies the fiduciary duty⁷⁴ of loyalty of a director, established under common law. The CA 2016 sets out certain general duties of directors. Section 213 of the CA 2016 provides that a director has a duty to: exercise his⁷⁵ powers, at all times, for a proper purpose and in good faith in the best interest of the company;⁷⁶ and exercise reasonable care, skill and diligence with the knowledge, skill and experience that may reasonably be expected of a director having the same responsibilities and any additional knowledge, skill and experience that the director in fact has.⁷⁷

In determining whether a director has acted in good faith and in the best interest of the company, the Malaysian courts adopt both a subjective and objective test.⁷⁸ The

subjective element is determined based on an assessment of the state of mind of the director.⁷⁹ The objective element is determined by whether an honest and intelligent man in the position of the director could reasonably have believed the transaction was for the benefit of the company.⁸⁰

2.2. Guidance on interpretation of directors' duties

2.2.1. Legal guidance

A legal opinion published in July 2022 concluded that, if directors do not proactively account for and mitigate against climate-related risks and information in their board decisions and in the operations of the companies of which they are directors, they risk exposing themselves to statutory liability and common law actions which can manifest as tangible risks to the company.⁸¹

In light of the above and regulatory guidance outlined below, it is imperative that directors evaluate and incorporate climate risks and considerations into their board decisions, as it can be anticipated that the Malaysian courts would likely step in to align the law with current guidance by expressly endorsing climate change as a key consideration for determining if a director was carrying out his duties under statute and common law to act in the best interest of the company.

⁷³ See Tan Sri Zarinah Anwar and To' Puan Janet Looi, Legal Opinion on Directors' Duties and Disclosure Obligations under Malaysian Law in the context of Climate Change Risks and Considerations (22 July 2022) <<https://commonwealthclimatelaw.org/legal-opinion-on-directors-duties-and-disclosure-obligations-under-malaysian-law-in-the-context-of-climate-change-risks-and-considerations/>>.

⁷⁴ Nallini Pathmanathan J explained in paragraph 219 of the High Court decision of *Petra Perdana Bhd v Tengku Dato' Ibrahim Petra Bin Tengku Indra Petra & Ors* [2014] 11 MLJ 1 that the essence of a fiduciary duty involves acting *bona fide* in the interests of the company. See also the High Court decision of *Ng Pak Cheong v Global Insurance Co Sdn Bhd* [1995] 1 MLJ 64 at page 77 in citing the dicta of the Australian decision of *Australian Growth Resources Corp Pty Ltd v Van Reesema* (1988) 13 ACLR 261.

⁷⁵ In this section, references to "he", "his", "him" and "man" are intended as referring to persons of all genders.

⁷⁶ Section 213(1) of the CA 2016.

⁷⁷ *Ibid*, s. 213(2).

⁷⁸ See paragraph 166 of the Federal Court decision of *Tengku Dato' Ibrahim Petra Bin Tengku Indra Petra v Petra Perdana Bhd and Another Appeal* [2018] 2 MLJ 177 per Azahar Mohamed FCJ.

⁷⁹ *Ibid*, in discussing what constitutes the subjective element of the test.

⁸⁰ This objective element is also known as the "Charterbridge Principle", which was elaborated by Azahar Mohamed FCJ in paragraphs 172 and 173 of *Tengku Dato' Ibrahim Petra Bin Tengku Indra Petra v Petra Perdana Bhd and Another Appeal* [2018] 2 MLJ 177 and Zainun Ali JCA in the Court of Appeal decision of *Pioneer Haven Sdn Bhd v Ho Hup Construction Co Bhd & Anor and Other Appeals* [2012] 3 MLJ 616 at paragraphs 239 and 240.

⁸¹ See Tan Sri Zarinah Anwar and To' Puan Janet Looi, Legal Opinion on Directors' Duties and Disclosure Obligations under Malaysian Law in the context of Climate Change Risks and Considerations (22 July 2022) <<https://commonwealthclimatelaw.org/legal-opinion-on-directors-duties-and-disclosure-obligations-under-malaysian-law-in-the-context-of-climate-change-risks-and-considerations/>>.

2.2.2. Regulatory guidance

The SC has issued Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries dated 30 July 2020 (revised 12 April 2021) (**SC Guidelines**). The SC Guidelines reiterate the duties under the CA 2016 for a director of a corporation to exercise his powers for a proper purpose and in good faith in the best interest of the corporation in which he sits as a board member.⁸² With respect to group governance, the SC Guidelines provide that a listed corporation and its directors must establish and ensure that the group-wide framework on corporate governance include, amongst others, managing material sustainability risks.^{83,84}

Another tool for promoting good corporate governance practices in publicly-listed companies (**PLCs**) is the Malaysian Code on Corporate Governance (updated 28 April 2021) (**MCCG**), issued by the SC.⁸⁵ Non-listed entities are also encouraged to adopt the MCCG in their practices.⁸⁶ The MCCG provides that effective board leadership and oversight require the integration of sustainability considerations in corporate strategy, governance and decision-making, as sustainability and its underlying ESG issues become increasingly material to the ability of companies to create durable and sustainable value and maintain confidence of their stakeholders.⁸⁷ Furthermore, boards and their directors should, in discharging their duties, ensure that the strategic plan of the company supports long-term value creation and includes strategies on the economic, environmental

and social considerations underpinning sustainability.⁸⁸

The Corporate Governance Guide 2021 (4th edition) issued by Bursa Malaysia⁸⁹ further elaborates on corporate governance-related best practices such as the involvement of board chairmen committees, the exercise of proper and effective oversight on material sustainability matters, the formulation of a fair, transparent and well-structured remuneration policy and putting in place transparent shareholder engagement practices for virtual general meetings.⁹⁰

Furthermore, in the BNM Climate Risk Policy Document, BNM requires that:

- (i) the board and senior management of financial institutions should have overall responsibility and effective oversight over climate change-related risks to safeguard the financial institution's resilience against climate change, including appointing a dedicated Chief Sustainability Officer to oversee the effective management of climate-related risks or expanding the current responsibilities of an existing senior management officer for this purpose;⁹¹
- (ii) the board and management should ensure that they have a sound understanding of climate-related risks to inform the financial institution's business and risk management strategies.⁹²

⁸² Securities Commission Malaysia, 'Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries' SC-GL/4-2020 (12 April 2021), 4 <<https://www.sc.com.my/api/documentms/download.ashx?id=e5c77f58-2055-4d1c-82f2-79f552a67682>>.

⁸³ Page 2 of the covering pages to the SC Guidelines.

⁸⁴ Paragraph 5.02, Chapter 5 on page 7 of the SC Guidelines.

⁸⁵ Securities Commission Malaysia, 'Malaysian Code on Corporate Governance', (28 April 2021), 2 <<https://www.sc.com.my/api/documentms/download.ashx?id=239e5ea1-a258-4db8-a9e2-41c215bdb776>>.

⁸⁶ *Ibid*, para. 2.8, p. 4.

⁸⁷ *Ibid*, Introductory paragraphs, Section I: Board Responsibilities, Principle A: Board Leadership and Effectiveness, p. 15.

⁸⁸ *Ibid*, para. G1.1, Section I: Board Responsibilities, Principle A: Board Leadership and Effectiveness, p. 17.

⁸⁹ Bursa Malaysia is a listed exchange holding company with several subsidiaries, including Bursa Malaysia Securities Berhad, and is under the purview of the SC and Ministry of Finance. It is the operator and regulator of Bursa Malaysia, the Malaysian stock exchange.

⁹⁰ Bursa Malaysia, Pull-out I, Corporate Governance Guide (4th Edition) (13 December 2021), 110-113 <<https://bursa-malaysia.s3.ap-southeast-1.amazonaws.com/reports/1-non-interactive-pdf-cg-guide.pdf>>.

⁹¹ See paragraph 8.1-8.5 of the BNM Climate Risk Policy Document.

⁹² See paragraphs 8.6-8.8 of the BNM Climate Risk Policy Document.

- (iii) climate-related risks should be incorporated and embedded into, amongst others, the financial institution's business strategies and risk appetite frameworks;⁹³
- (iv) financial institutions continuously develop data capabilities, tools and methodologies to effectively aggregate and report material climate-related risks;⁹⁴
- (v) financial institutions actively monitor and escalate material and potential climate-related risks in a timely manner;⁹⁵
- (vi) financial institutions understand the transmission and impact of climate-related risks on existing risk types such as credit and liquidity risks and ensure their risk management systems account for material climate-related risks;⁹⁶
- (vii) financial institutions should conduct scenario analysis to determine the resilience of their business strategies to material climate-related risks;⁹⁷ and
- (viii) financial institutions should disclose climate-related risks.⁹⁸

The BNM Climate Risk Policy Document applies both at the entity level (including overseas branch operations) and consolidated level (including both financial and non-financial subsidiaries) of financial institutions.⁹⁹ BNM will monitor compliance with the BNM Climate Risk Policy Document as part of its supervisory process.¹⁰⁰

Directors in the financial industry are therefore expressly encouraged to consider the impact of climate change in their decision-making processes; as

reflected in the requirements in the BNM Climate Risk Policy Document. More importantly, the BNM Taxonomy Guidance Document and the BNM Climate Risk Policy Document will have an effect on the profile of industries that financial institutions are prepared to lend to, and will see a trickle-down effect to the wider economy by encouraging (and later, effectively compelling) a shift in funding and investments towards businesses with satisfactory environmental and sustainability practices and governance. Directors of non-financial companies would therefore also do well to incorporate such practices in their companies' daily operations.

2.3. Directors' liability and litigation risk

There have not yet been any Malaysian court decisions expressly linking the exercise of directors' duties with climate-related considerations. However, decisions of courts in other common law jurisdictions will be persuasive authority in Malaysia, particularly where claims have been brought by shareholders and members of the public against the directors of a company for failing to factor in climate change considerations in business decisions.

Furthermore directors can be found personally liable under the *Environmental Quality Act 1974 (EQA 1974)* for allowing practices by their companies that are harmful towards the environment, unless such director can prove that the offence was committed without his consent or connivance, and that he had exercised all such diligence to prevent the commission of the offence.¹⁰¹ In relation to climate change, the EQA 1974 and certain secondary regulations generally prohibit the emission of environmentally hazardous substances into different areas of the

⁹³ See paragraph 10 of the BNM Climate Risk Policy Document.

⁹⁴ See paragraphs 11.4-11.6 of the BNM Climate Risk Policy Document.

⁹⁵ See paragraphs 11.7-11.8 of the BNM Climate Risk Policy Document.

⁹⁶ See paragraphs 11.15-11.32 of the BNM Climate Risk Policy Document.

⁹⁷ See paragraph 12 of the BNM Climate Risk Policy Document.

⁹⁸ See paragraphs 13.1-13.8 of the BNM Climate Risk Policy Document.

⁹⁹ See paragraphs 7.1 and 7.2 of the BNM Climate Risk Policy Document.

¹⁰⁰ See paragraphs 15.1-15.2" of the BNM Climate Risk Policy Document.

¹⁰¹ Section 43 of the EQA 1974.

environment above prescribed limits. For example, the *Environmental Quality (Prohibition on the Use of Chlorofluorocarbons and Other Gases as Propellants and Blowing Agents) Order 1993* was introduced under the EQA 1974 pursuant to Malaysia's ratification of the Montreal Protocol¹⁰² to prohibit the use of controlled substances such as chlorofluorocarbons, one of the primary GHGs contributing to climate change. The EQA 1974 was also recently amended on 7 July 2024 with enhanced penalties for various offences including in respect of open burning and the emission of environmentally hazardous substances.¹⁰³

3. Directors' Duties and Sustainability Disclosure Obligations

3.1. Narrative sustainability disclosures

3.1.1. Sustainability disclosure frameworks

At present, mandatory disclosure requirements only apply to listed companies in Malaysia.

The Advisory Committee on Sustainability Reporting (**ACSR**), which was formed in May 2023¹⁰⁴ and comprises of representatives from the Audit Oversight Board (**AOB**), BNM, CCM and Bursa Malaysia, with SC as chair,¹⁰⁵ published the Public Consultation Paper No. 1 / 2024¹⁰⁶

on the proposed National Sustainability Reporting Framework (**NSRF**) inviting feedback on the adoption of the standards issued by the International Sustainability Standards Board (**ISSB**), specifically International Financial Reporting Standards (**IFRS**) S1 General Requirements for Disclosure of Sustainability-related Financial Information (**IFRS S1**), and IFRS S2 Climate-related Disclosures (**IFRS S2**) (collectively, the **ISSB Standards**), and a sustainability assurance framework, with targeted companies being listed companies and large non-listed companies with an annual revenue of RM2 billion and above¹⁰⁷, through a gradual adoption of the standards for annual reports issued for FYE 2025, FYE 2026, FYE 2027, FYE 2028 and FYE 2029.¹⁰⁸ It is anticipated that the CA 2016 and MMLR will be amended to cater for the adoption of the ISSB standards pursuant to this framework.¹⁰⁹

Furthermore, the SC unveiled the Catalysing MSME and MTC Access to the Capital Market: 5-Year Roadmap (2024-2028) in May 2024, which provides for the boosting of micro, small and medium enterprises (**MSMEs**) readiness to access the capital market by supporting effective ESG disclosures by MSMEs.¹¹⁰ That same day, the Finance Minister II announced that Capital Markets Malaysia (**CMM**),¹¹¹ an

¹⁰² Department of Environment Malaysia, 'Malaysia HCFC Phase-Out Management Plan (HPMP Stage-2)' (2017-22), 11-12 <https://www.doe.gov.my/portalv1/wp-content/uploads/2017/12/Buku-HPMP-Stage-2_Part1.pdf>.

¹⁰³ Please see the summary of the amendments to the EQA 1974 provided by To' Puan Janet Looi and Tham Zhi Jun of Skrine Advocates & Solicitors at <<https://www.skrine.com/insights/alerts/october-2022/enhanced-penalties-for-contravention-of-the-enviro>> (Skrine Advocates & Solicitors, 8 October 2022), as well as an alert in respect of the coming into force of the amendments to the EQA 1974, also by To' Puan Janet Looi and Tham Zhi Jun of Skrine Advocates & Solicitors, at <<https://www.skrine.com/insights/alerts/july-2024/environmental-protection-gets-stronger-bite-updat>> (Skrine Advocates & Solicitors, 5 July 2024)

¹⁰⁴ See the preamble (page 1) to ACSR's Public Consultation Paper No. 1/2024, which can be accessed via this link: <<https://www.sc.com.my/api/documentms/download.ashx?id=46cad705-4a30-4315-b09c-b8d205a46be1>> and Para. 1.1 of the FAQs dated 11 March 2024, which can be accessed via this link: <<https://www.sc.com.my/api/documentms/download.ashx?id=b4cc5b1d-47c2-48b9-81ba-ed9836d59166>>

¹⁰⁵ Ibid.

¹⁰⁶ ACSR's Public Consultation Paper No. 1/ 2024 can be accessed via this link: <

¹⁰⁷ See Para. 6.3 of ACSR's Public Consultation Paper No. 1/2024 and Para. 2.1 of the FAQs dated 27 March 2024 <<https://www.sc.com.my/api/documentms/download.ashx?id=a67c702c-36ea-47e9-95a2-94ae101cd9db>>

¹⁰⁸ See Para. 6.5 of ACSR's Public Consultation Paper No. 1/2024 and Para. 2.1, FAQs dated 11 March 2024

¹⁰⁹ See Para. 6.6 of ACSR's Public Consultation Paper No. 1/2024 and Para. 1.3, FAQs dated 11 March 2024

¹¹⁰ See pages 69 to 72 of the Catalysing MSME and MTC Access to the Capital Market: 5-Year Roadmap (2024-2028), accessible via this link: <<https://www.sc.com.my/api/documentms/download.ashx?id=e9b390ba-f259-4afc-99d6-08b20cf6cf00>>

¹¹¹ Capital Markets Malaysia (formerly known as the Capital Markets Promotion Council (CMPC), was set up by SC in 2012, to promote international participation in the Malaysian capital markets, and receives funding from the Capital Market Development Fund. For more information, please visit the relevant webpage on the official website of Capital Markets

affiliate of SC, will be issuing specialised disclosure guidelines for SMEs involved in global supply chains in 5 sectors: energy, transport-and-storage, construction-and-real estate, agriculture, and manufacturing.¹¹² These would be an extension to the Simplified ESG Disclosure Guide (**SEDG**) for SMEs in Supply Chains launched by CMM in October 2023,¹¹³ which is intended to provide SMEs within global supply chains with a streamlined and standardised set of guidelines in relation to ESG disclosures. The guidelines are already made available on CMM's official website.¹¹⁴

3.1.2. Specific sustainability disclosure requirements for listed entities

PLCs would need to disclose the application of each of the “*practices*” set out under the MCCG, i.e. action items that PLCs are expected to adopt to achieve a specific outcome, during the financial year, to Bursa Malaysia in the prescribed format and announce the same together with the

announcement of its annual report.¹¹⁵ The MCCG provides that directors should ensure that the strategic plan of the company includes environmental considerations.

Chapter 9 of the Main Market Listing Requirements (as updated) (**MMLR**)¹¹⁶ issued by Bursa Malaysia requires a PLC to include a narrative statement of its management of material economic, environmental and social risks and opportunities (**Sustainability Statement**), in the manner prescribed by Bursa Malaysia, in its annual report.¹¹⁷

On 26 September 2022, Bursa Malaysia issued amendments to the MMLR to increase the sustainability practices and disclosures of listed issuers.¹¹⁸ These new requirements under the MMLR include: (i) require disclosure of prescribed sustainability matters¹¹⁹ that are deemed material for listed issuers across all sectors;¹²⁰ (ii) introduce climate change-

Malaysia via this link
:https://www.capitalmarketsmalaysia.com/about-cmm/.

¹¹² The Edge 'CMM to issue specialised ESG disclosure guidance for SMEs in five sectors' (23 May 2024) <https://theedgemalaysia.com/node/712644>.

¹¹³ The Simplified ESG Disclosure Guide (SEDG) for SMEs in Supply Chains can be accessed via this link: https://sedg.capitalmarketsmalaysia.com/wp-content/uploads/2023/10/SEDG-Full-Guide.pdf. See also the relevant webpage on the official website of CMM accessible via this link: <https://sedg.capitalmarketsmalaysia.com/>.

¹¹⁴ The ESG specific disclosure guidelines can be accessed from the relevant webpage on the official website of CMM accessible via this link: <https://sedg.capitalmarketsmalaysia.com/>

¹¹⁵ Paragraph 15.25(2) of the Main Market Listing Requirements.

¹¹⁶ To note that in the Federal Court judgment of *Bursa Malaysia Securities Berhad v Mohd Afrizan bin Husain Federal Court of Malaysia Civil Appeal No.: 02(f)-39-07/2021(W)*, the question of law concerning the interpretation of the Main Market Listing Requirements had been considered, and it was held that there is both a statutory and independent contractual relationship between Bursa Malaysia Securities and the PLCs, including its directors. Please see the summary of the judgment provided by Nimalan Devaraja and Ann Tiang Wen En of Skrine Advocates & Solicitors at, 'Federal Court: Bursa Securities has discretion to maintain listing of Wound-Up Company – Liquidators must ensure compliance with Listing Requirements while Company remains listed' (Skrine Advocates & Solicitors, 13 January 2022) <https://www.skrine.com/insights/alerts/january-2022/federal-court-bursa-securities-has-discretion-to-m>.

Furthermore, it had also been reported that the High Court had cited the aforementioned decision of the Federal Court in dismissing Serba Dinamik Holdings Berhad's (Serba Dinamik's) application to seek an injunction on Bursa Malaysia Securities to prohibit the same from forcing Serba Dinamik to release the fact-finding update by Ernst & Young Consulting Sdn. Bhd., given the undertaking that Serba Dimanik has with regards to

contractual obligations with Bursa Malaysia Securities: see Hafiz Yatim, 'High Court strikes out Serba Dinamik's bid to stop Bursa Malaysia from compelling company to release fact-finding update', *The Edge Markets* (10 February 2022) <https://www.theedgemarkets.com/article/high-court-dismisses-injunction-application-serba-dinamik-stop-release-factfinding-update>.

¹¹⁷ Item 29, Part A, Appendix 9C of the MMLR, pursuant to Paragraph 9.25 of the MMLR. Paragraph 9.25(1) of the MMLR provides that a PLC must set out the items under Part A of Appendix 9C in its annual report unless the following conditions are met: (a) the information has been previously announced or disclosed to shareholders pursuant to the MMLR, or remains substantially unchanged from year to year; (b) the PLC publishes such information on its website and (c) the PLC discloses in the annual report, the address of its website and the place on its website where the information can be accessed. Furthermore, Paragraph 9.25(2) of the MMLR provides that, unless otherwise specified in Part A of Appendix 9C, the information provided pursuant to Part A of Appendix 9C must be information made up to a date not earlier than six weeks from the date of the notice of the annual general meeting in the annual report of the PLC.

¹¹⁸ Bursa Malaysia, Bursa Malaysia enhances Sustainability Reporting Framework with new Climate Change Reporting (26 September 2022) <https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5c11a9db758f8d31544574c6/63312a2439fba20d86ba8e16/files/26Sept_2022_Bursa_Malaysia_Enhances_Sustainability_Reporting_Framework_With_New_Climate_Change_Reporting.pdf?1664169009>.

¹¹⁹ We note that para. 6.2(a) of Practice Note 9 of the Main Market Listing Requirements defines “*sustainability matters*” as economic, environmental and social (EES) risks and opportunities.

¹²⁰ Paragraph 6.3(c), read together with Annexure PN9-A of Practice Note 9.

related disclosures in line with the recommendations of the TCFD;¹²¹ (iv) introduce enhanced disclosure requirements of the companies' quantitative information on material sustainability matters;¹²² and (v) require a statement on whether the Sustainability Statement has been internally reviewed and independently assured, and if so, the scope covered by the review or assurance.¹²³ These requirements apply to Sustainability Statements issued either for the financial year ending on or after 31 December 2023 (or on or after 31 December 2024).¹²⁴ Bursa Malaysia has also released a Sustainability Reporting Guide and Toolkits (3rd edition) to assist PLCs in preparing their sustainability disclosures as required under the MMLR.¹²⁵

3.1.3. Specific sustainability disclosure requirements for financial institutions

Sections 66 and 67 of the Financial Services Act 2013 (**FSA 2013**) provides that financial institutions are required to prepare and publish their financial statements subject to such standards as may be specified by BNM (equivalent section for Islamic financial institutions: Sections 74 and 75 of the Islamic Financial Services Act 2013 (**IFSA 2013**)).

The BNM Climate Risk Policy Document requires financial institutions to establish a board-level policy on climate disclosures and make annual climate-related disclosures in line with TCFD requirements, to be published together with the annual financial reports for financial

years beginning on or after 1 January 2024.¹²⁶

Furthermore, financial institutions are required to separately address specific areas in the annual disclosures, including governance around climate-related risks and opportunities and actual and potential impact of climate-related risks and opportunities on business, strategy and financial planning.

In June 2022, the JC3 issued a TCFD-aligned application guide for disclosures on climate-related risks by financial institutions (**TCFD Application Guide**), which includes guidance on “Basic” and more sophisticated “Stretch” disclosures which the JC3 expects of financial institutions.¹²⁷ The appendices to the BNM Climate Risk Policy Document provide the description of the disclosures aligned to the “Basic” and “Stretch” recommendations outlined in the TCFD Application Guide.

In a JC3 meeting held on 23 July 2024, it discussed measures to reduce reporting burdens on companies for information furnished to financial institutions through the use of standardised templates by financial institutions to obtain climate-related information from customers.¹²⁸ This easing of information gathering from customers will enable financial institutions to provide clearer and more accurate sustainable disclosures.

3.1.4. Directors' duties regarding sustainability disclosures

There are a number of disclosure requirements and initiatives specific to

¹²¹ Paragraph 6.2(d) of Practice Note 9.

¹²² Paragraphs 6.2(c)(iii), 6.2(f) and 6.5 of Practice Note 9.

¹²³ Paragraph 6.2(e) of Practice Note 9.

¹²⁴ The proposals under (i) (for sustainability matters on anti-corruption, community / society, diversity, energy management, health and safety, labour practices and standards, supply chain management, data privacy and security and water), (iv) and (v) shall be effective for financial statements ending on or after 31 December 2023, whilst the proposals under (i) (for sustainability matters on emission management), (ii) and (iii) shall be effective for financial statements ending on or after 31 December 2024.

¹²⁵ The Sustainability Reporting Guides and Toolkits can be accessed on the official website of Bursa Sustain via this link:

<<https://bursasustain.bursamalaysia.com/droplet-details/resources/sustainability-reporting-guide-3rd-edition>>

¹²⁶ See paragraph 13.1-13.8 of the BNM Climate Risk Policy Document.

¹²⁷ JC3, Task Force On Climate-Related Financial Disclosures (TCFD) Application Guide For Malaysian Financial Institutions (29 June 2022) <https://www.bnm.gov.my/documents/20124/3770663/TCFD_Application_Guide.pdf>.

¹²⁸ The joint statement issued by BNM and SC on the 13th JC3 meeting held on 29 February 2024 can be accessed via this link: <<https://www.sc.com.my/resources/media/media-release/joint-statement-by-bank-negara-malaysia-and-securities-commission-malaysia-from-the-12th-joint-committee-on-climate-change-jc3-meeting>>

PLCs that need to be considered by the directors of those entities.

Chapter 15 of the MMLR issued by Bursa Malaysia imposes a requirement on PLCs to ensure that their directors provide an overview of the application of the principles set out under the MCCG in the annual report of the PLCs.¹²⁹ Practice Note 9 of the MMLR highlights that a PLC must ensure that the overview on the principles and disclosure of application of the practices under Chapter 15 MMLR must be approved by the board of directors of the PLC.¹³⁰

Directors will owe fiduciary duties to their PLCs and financial institutions to ensure compliance with the requirements on sustainability disclosures referred to in Section 3.1.3. The SC Guidelines for PLCs and the MCCG containing these requirements are discussed in Section 2.2.2.

Furthermore, the MMLR had been amended with effect from 1 August 2023 to include sustainability training and related roles as Part II under the Mandatory Accreditation Programme required to be undertaken by directors of PLCs pursuant to Chapter 15 of the MMLR.¹³¹ A director who is appointed for the first time as a director of a PLC on or after 1 August 2023 must complete Part II of the Mandatory Accreditation Programme within 18 months from the date of his/ her appointment, whilst a director of a PLC which has been admitted on the Main Market on or after 1 August 2023 must complete Part II of the Mandatory Accreditation Programme within 18 months of the date of admission

of the PLC, where such date occurs on or after 18 months.¹³² Furthermore, existing directors of PLCs who are appointed prior to 1 August 2023 must complete Part II of the Mandatory Accreditation Programme on or before 1 August 2025.¹³³

3.1.5. Liability risk arising from narrative sustainability disclosures

In the case of PLCs subject to the sustainability disclosure requirements under the MMLR, Section 369 of the *Capital Markets and Services Act 2007 (CMSA 2007)* provides that any person who deceives, makes or lodges any statement, information or document that is false or misleading to any stock exchange (including Bursa Malaysia) relating to, amongst others, the dealing in securities, the affairs of a listed corporation or any requirement of the SC under the CMSA 2007 or its guidelines, will be punished with imprisonment for a term not exceeding 10 years and shall also be liable to a fine not exceeding RM3,000,000. Any person who at the time of the commission of the offence was a director, a chief executive, an officer or a representative will also be liable for the offence under Section 367(1) of the CA 2016.

Sections 177 and 178 of the CMSA 2007 also make it an offence for the making or publishing of any misleading, false or deceptive statement or other similar action which has the effect of inducing the sale or purchase of securities to other persons. Where it appears to the SC that a person has contravened Sections 177 and 178(1) of the CMSA 2007, the SC may institute civil proceedings against such person,

¹²⁹ Paragraph 15.25(1) of the Main Market Listing Requirements.

¹³⁰ Paragraph 2.3, Practice Note 9 of the MMLR.

¹³¹ Paragraph 15.08(1) of the MMLR provides that a director of a PLC must ensure that he attends such training programmes as may be prescribed by Bursa Malaysia from time to time. This is to be read together with Practice Note 5 of the MMLR (updated as at 1 August 2023), which sets out the specific requirements of the training programmes, namely the Mandatory Accreditation Programme, of Bursa Malaysia as required to be undertaken by a director of a PLC pursuant to Paragraph 15.08(1) of the MMLR. The board of directors is also required under Paragraph 15.08(3) of the MMLR to disclose in the PLC's annual report, a statement on the training attended by its directors which includes the following information: (a) the board

has undertaken an assessment of the training needs of each director; (b) a brief description on the type of training that the directors have attended for the financial year; and (c) in exceptional circumstances where any director has not attended any training during the financial year, valid justifications for the non-attendance of such director.

¹³² See the circular letter dated 6 June 2023 issued by Bursa Malaysia Berhad to the PLCs, accessible via this link: <https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5ce3b50239fba2627b2864be/647ed1935b711a604f1d1c4d/files/Main_Circular_SustainabilityTraining_signed.pdf?1702362681>

¹³³ Ibid.

recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and (b) claim civil penalty in such amount as the court considers appropriate not exceeding RM1,000,000 (Sections 200(1) and (2), CMSA 2007).

PLCs and their directors are also bound to comply with the MMLR and a breach of the MMLR is therefore legally enforceable.¹³⁴ Chapter 16 of the MMLR stipulates the types of sanctions that can be taken by Bursa Malaysia including, in the case of a PLC or a director, the issuance of a caution letter, a private reprimand and/or fine not exceeding RM1 million (Paras. 16.19(1) of the MMLR). Directors of PLCs are also specifically prohibited under Para. 16.13 to cause, aid, abet or permit a breach of the MMLR by its PLC.

Bursa Malaysia also has, in the case of a breach of the MMLR by a PLC, the power to suspend the trading of the securities of the companies in breach (Para. 16.02(1)) or delist companies after consultation with the SC (Para. 16.11(1)).

In the case of financial institutions required to comply with BNM's Guidelines on Sustainability Disclosures, Section 98(1) of the *Central Bank of Malaysia Act 2009 (CBMA 2009)* provides that BNM may, by regulations, impose administrative penalties on any person for any delay in complying with any directive, guideline, standard, circular, specification, order or notice issued by BNM in respect of any provision of the CBMA 2009. Section 234(1)(d) of the FSA 2013 further provides that a person commits a breach under the FSA 2013 if they fail to comply with or give effect to any standards, condition, restriction, specification, requirement or code which they are required to comply with. In such circumstances, BNM may do any of the following: (a) order compliance; (b) monetary penalty (c) written reprimand; (d) order requiring steps to mitigate the

breach and/or (d) an order requiring restitution to an aggrieved person specified in Section 234(3) of the FSA 2013 (equivalent sections for Islamic financial institutions: Sections 245(1)(d) and 245(3) of the IFSA 2013).

3.2. Climate-related disclosures in financial statements

3.2.1. Climate-related disclosures in financial statements

The CA 2016 requires the preparation of financial statements in accordance with approved accounting standards (Section 244(2) CA 2016), and which must give a 'true and fair view' of the financial position of the company as at the end of the financial year (Section 249(1) CA 2016). The directors' report to be attached to the financial statements under Section 251 CA 2016, may include a business review containing the information set out in Part II of the Fifth Schedule of the CA 2016, which in turn includes, amongst others, *"information about environmental matters, including the impact of the company's business on the environment."*

As discussed in Section 3.1.2 above, PLCs are required to disclose, amongst others, prescribed sustainability matters, which include economic, environmental and social (EES) risks and opportunities, as well as climate change-related disclosures in line with the recommendations of the TCFD.

Furthermore, Section 3.1.3 discusses that financial institutions are required under the BNM Climate Risk Policy Document also make annual climate-related disclosures in line with the TCFD recommendations.

The onus for the preparation of the financial statements and directors' report falls on the directors, as discussed in Section 3.2.2 below.

3.2.2. Directors' duties regarding climate-related disclosure in financial statements

¹³⁴ See Page 38 of the CCLI Opinion by Tan Sri Zarinah Anwar and To' Puan Janet Looi.

Section 248 of the CA 2016 requires directors to prepare annual financial statements in accordance with approved accounting standards (Section 244(2) CA 2016) and which must give a 'true and fair' of the financial position of the company as at the end of the financial year (Section 249(1) CA 2016). The financial statements must also be approved by the board and accompanied with a statutory declaration by the directors on the accuracy of the statements (Section 251(2) CA 2016). Furthermore, the directors must prepare a directors' report for each financial year to be attached to the financial statements under Section 251 CA 2016, which may also include an optional statement on environmental matters (see Section 3.2.1 above).

We note that the Public Consultation Paper No. 1/2024 on the proposed National Sustainability Reporting Framework (**NSRF**), which recommends the adoption of ISSB standards in financial statements as discussed under Section 3.1.1 above, does not specifically refer to whether directors are to make specific declarations or sign off on the sustainability disclosures which are to be made pursuant to the ISSB Standards. The Paper does mention, however, that specific legislative amendments, including to the CA 2016, will need to be made in line with the ISSB Standards, hence it remains to be seen how the existing requirements on directors under the CA 2016 to prepare, approve and sign-off on financial statements will be aligned with the introduction of the sustainability disclosures under the ISSB standards.

3.2.3. Liability risk arising from financial statements

Section 591 of the CA 2016 provides that every corporation which advertises, circulates or publishes any financial statements, makes or authorizes the making of a materially false or misleading statement and every officer of the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication of such statements shall, in the case of the corporation, be liable to a fine not

exceeding RM3,000,000; and, in the case of an officer, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding RM3,000,000 or to both.

Furthermore, Section 592 of the CA 2016 provides that an officer of a corporation who, with intent to deceive, makes or furnishes or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report to a stock exchange (including Bursa Malaysia) or the SC, relating to the affairs of the corporation shall be liable to imprisonment for a term not exceeding ten (10) years or a fine not exceeding RM3,000,000 or to both.

Please see Section 3.1.5 for the implications for misrepresentations in financial statements in the case of PLCs and financial institutions.

Biodiversity Risk

Malaysia is one of the world's mega-biodiverse countries¹³⁵ with more than 50% of its areas still under forest cover,¹³⁶ and representing 9.2% of the world's forest diversity.¹³⁷ Of this 18.7% is classified as primary forest, the most biodiverse and carbon-dense form of forest.¹³⁸ From 2001 to 2023, Malaysia lost 9.23 Mha of tree cover - equivalent to a 31% decrease in tree cover since 2000, and 5.32 Gt of CO₂e emissions - with the primary driver being deforestation.¹³⁹

Malaysia's Financial Sector Blueprint 2022-2026 states that biodiversity is equally important as climate.¹⁴⁰ The Twelfth Malaysia Plan (2021-2025) cites biodiversity loss as a key issue requiring urgent attention, and aims to reduce dependency on natural resources and maintain at least 50% forest cover.¹⁴¹ Malaysia has at least 40 environment-related acts covering everything from terrestrial to marine to pollution and urbanisation.¹⁴² While there are no specific environmental protections in the Federal Constitution, Article 5 provides for the right to life and liberty which has been interpreted by a court to include the right to live in a reasonably healthy environment.¹⁴³ The 2024 Malaysia Budget announced that the allocation for Ecological Fiscal Transfer for Biodiversity Conservation (EFT) will be increased to RM200 million.¹⁴⁴

The CCLI has published a report on how companies in Malaysia and other jurisdictions may depend on biodiversity for the functioning of their business models.¹⁴⁵ Biodiversity risks may constitute material financial risks which boards are required to consider within the purview of directors' duties.

A 2021 World Bank study found that, in a worst-case scenario of partial ecosystem collapse, Malaysia could experience a 6% GDP loss per annum by 2030 compared to a baseline scenario.¹⁴⁶ In 2022, the BNM and the World Bank Group's released the results of a joint assessment of nature-related financial risks for the Malaysian banking sector.¹⁴⁷ It found that many of Malaysia's economic activities are directly or indirectly dependent on nature and the degradation of biodiversity and ecosystems could lead to physical and transition risks that could be transmitted through the economy. In addition, about 54% of Malaysian banks' commercial lending portfolio could currently be exposed to physical risk and about 87% of Malaysian banks' commercial lending portfolio could currently be exposed to sectors that strongly impact ecosystem services, thus facing a higher level of transition risk.¹⁴⁸ The (then) Governor of BNM said that the economic and societal threat posed by nature-related

¹³⁵ Convention on Biological Diversity, Malaysia – Country Profile <<https://www.cbd.int/countries/profile?country=my>>

¹³⁶ WWF, Our Forest <https://www.wwf.org.my/our_work/forest/>

¹³⁷ Lillian . L. Chua et al., Plants, People, Planet, Volume 5, Issue 4 (October 2022) 'Current state of knowledge on the extinction risk of Malaysian tree species: Proximate needs to mitigate loss' <<https://nph.onlinelibrary.wiley.com/doi/full/10.1002/ppp3.10320>> p.483-495

¹³⁸ Mongabay, Malaysia Forest Information and Data (2010) <<https://rainforests.mongabay.com/deforestation/2000/Malaysia.htm>>

¹³⁹ Global Forest Watch – Malaysia <<https://www.globalforestwatch.org/dashboards/country/MYS/>>

¹⁴⁰ Bank Negara Malaysia, Financial Sector Blueprint (2021) <https://www.bnm.gov.my/documents/20124/5915429/fsb3_en_book.pdf>.

¹⁴¹ Malaysian Government, Economic Planning Unit, Twelfth Malaysia Plan 2021-2025 (September 2021), accessible via the link under footnote 12. Biodiversity is mentioned in strategy priorities B1, B3, B6, C1 and C3.

¹⁴² Pei Sin Tong, More policies and laws, is it better for biodiversity conservation in Malaysia? (2020) <<https://conbio.onlinelibrary.wiley.com/doi/10.1111/csp2.235>>

¹⁴³ *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan* [1996] 2 CLJ 771

¹⁴⁴ Para. 156, page 72 of the 2024 Malaysia Budget, accessible via the link under footnote 42. The 2025 Budget is due to be tabled in Parliament on 18 October 2024.

¹⁴⁵ CCLI, Biodiversity Risk: Legal Implications for Companies and their Directors (December 2022) <https://commonwealthclimatelaw.org/wp-content/uploads/2022/12/CCLI_Biodiversity_risk_paper_2022.pdf>.

¹⁴⁶ Johnson, J.A., et al., 2021. The Economic Case for Nature : A Global Earth-Economy Model to Assess Development Policy Pathways., Washington, DC: World Bank. <https://openknowledge.worldbank.org/handle/10986/35882>

¹⁴⁷ BNM and the World Bank, An Exploration of Nature-Related Financial Risks in Malaysia (2022) <<https://www.bnm.gov.my/documents/20124/3770663/wb-bnm-2022-report.pdf>>

¹⁴⁸ BNM and the World Bank, An Exploration of Nature-Related Financial Risks in Malaysia (2022) <<https://www.bnm.gov.my/documents/20124/3770663/wb-bnm-2022-report.pdf>>

risks cannot be ignored.¹⁴⁹ The Malaysian Climate Change and Principles-based Taxonomy adopted for the financial sector in 2021 adopts a “do no harm” approach, by encouraging financial institutions to take into account the impact of economic activities on the wider ecosystem by specifically regarding whether such economic activities protect ecosystems and biodiversity.¹⁵⁰

BNM and Bursa Malaysia are members of the TNFD Forum, a global multidisciplinary consultative group that is aligned with TNFD’s mission and principles.¹⁵¹ The TNFD released its final recommendations in September 2023. In June 2022, Malaysia’s Platform for Business and Biodiversity pledged to introduce mandatory requirements for businesses to disclose their dependencies and impacts on biodiversity.¹⁵²

In light of these policy and regulatory developments, directors may wish to begin considering biodiversity risk in order to ensure that they are fulfilling their legal duties and disclosure responsibilities.

Practical considerations for directors

Given the increasing focus of Malaysian capital market and financial regulators on climate change and sustainability issues, including an increased emphasis on climate-related risk management; the potential for increased mandatory obligations on climate-related disclosures; and the potential for legislation requiring nationwide reductions in greenhouse gases, well-counselled directors of Malaysian companies, and in particular directors of PLCs and financial institutions, should:

- a) delegate climate risk identification and evaluation to a clearly identified team in management which reports directly to the CEO and board;
- b) put on the agenda for the board within 3 to 6 months a process to start developing a climate transition roadmap to 2050 with transparent carbon neutrality or reduction targets, with clear interim targets for 2040, 2030, and within the current rolling multi-year strategic plan, and periodically thereafter report back to the board;
- c) delegate to the appropriate committee(s) of the board, such as risk, audit, legal and governance, scenarios / strategy, nominations / remuneration, or sustainability / corporate responsibility, the task of translating the long-term strategy into a clear decision-making process for each aspect that is relevant to each committee; and
- d) discuss disclosure obligations and best practice with appropriate counsel and subject experts, in order to develop an external engagement and communications plan.

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¹⁴⁹ Speech by Ms Nor Shamsiah Mohd Yunus, Governor of BNM, Launch of the Joint Report on nature-related financial risks in Malaysia (15 March 2022) <<https://www.bis.org/review/r220315b.pdf>>.

¹⁵⁰ BNM, Climate Change and Principle-based Taxonomy (30 April 2021) <<https://www.bnm.gov.my/documents/20124/938039/Climate+Change+and+Principle-based+Taxonomy.pdf>>.

¹⁵¹ TNFD, The TNFD Forum <https://tnfd.global/engage/tnfd-community/?_sf_s=malaysia>

¹⁵² Bursa Sustain, 'Malaysia Platform for Business and Biodiversity pledges to adopt mandatory requirements on biodiversity assessment in business' (25 June 2022) (June 2022) <<https://bursasustain.bursamalaysia.com/droplet-details/news/malaysia-platform-for-business-and-biodiversity-pledges-to-adopt-mandatory-requirements-on-biodiversity-assessment-in-business>>, see also Bernama, 'MPBB pledges to adopt mandatory requirements on biodiversity assessment in business during post-2020 GBF' (26 June 2022) <<https://www.bernama.com/en/business/news.php?id=2094597>>.

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