

NOTES OF MEETING
PEMUDAH Private Sector Meeting No. 15/2020
5 August 2020

1. OPENING REMARKS

- Chairman YBhg. Dato' Dr. Ir. Andy Seo Kian Haw commenced the **Fifteenth PEMUDAH Private Sector Meeting of 2020** via Cisco Webex video conferencing at 2.30 p.m. on 5 August 2020. He thanked everyone for their attendance. YBhg. Dato' Abdul Latif Hj Abu Seman, Director General, Malaysia Productivity Corporation (MPC) and Encik Zahid Ismail, Deputy Director General, MPC were not able to join the meeting as they had other commitments.
- The first PEMUDAH Meeting for the year 2020 that was scheduled to be held on 23 July 2020 had to be postponed as YBhg. Datuk Seri KSN had to attend to urgent tasks as required by YAB Tan Sri Prime Minister. Secretariat will communicate with KSN's Office to obtain another date for the meeting which might be on the last Thursday of August 2020.
- Chairman informed that Dato' Abdul Latif and himself were at Parliament in the morning to brief the Economic Action Council (EAC) on the progress of removing regulatory burden in the exporting process within the food industries.
- To alleviate the economic impact from the COVID-19 pandemic, the EAC had recently announced the *Malaysia Mudah (MyMudah)* programme to provide regulatory relief to support national economic recovery. Both the EAC and MPC had been tasked to lead the programme to remove regulatory burdens on doing business. PEMUDAH shall monitor the progress of all Ministries in their initiatives to remove regulatory burdens and report findings to the EAC.
- Chairman encouraged the technical working groups to hold more webinars, preferably on a weekly basis, to surface and address issues affecting their Doing Business indicator areas and, where necessary, issues could be escalated to the EAC for faster resolution as compared to resolving issues through PEMUDAH meetings. YAB Tan Sri Prime Minister chairs the EAC.
- Chairman opened the floor for the Members to raise any matters before the next agenda item was proceeded with.
- Encik Foo Chek Lee (PEMUDAH Member) informed a meeting was held on 28 July 2020 amongst the construction industry players such as consultants, architects, and suppliers to discuss *Beli Barangian Buatan Malaysia (BBBM)*. The meeting identified the key matters as:
 - (i) The definition of *BBBM* must be clarified as to whether it refers to made-in-Malaysia products only or it can also include imported products or materials that are repackaged in Malaysia;
 - (ii) Construction materials are governed by 2 pieces of legislations namely CIDB's XY20 which deals with Malaysian construction building material standards and Uniform Building Bye-Laws that deal with the safety

- aspect of construction materials but does not concern with whether the materials are Malaysian-made or imported;
- (iii) BBBM requires government initiative in procurement policies. JKR specifies only 30% for made-in-Malaysia products to be used in projects while no specification is required in the private sector;
- (iv) *BBBM* faces competition from imported products which are priced lower or can be supplied at much greater quantities or can be delivered much faster than Malaysian products; and
- (v) There is no oversight government agency to check whether agencies are prioritising *BBBM*.
- Chairman added that, in addition to products, *BBBM* should also include engaging more Malaysian professional services such as legal and accounting services. Chairman concurred with Encik Foo that local consultant engineers should not sign-off for foreign engineers merely for regulatory compliance sake.
- Chairman emphasized that the construction and other industries must prioritise the use of Malaysian-made products and Malaysian professional services and in so doing, the products and services would have references to compete overseas.
- YBhg. Dato' Chua Tia Guan (PEMUDAH Member) suggested the rules of origin which specified 40% for local content could be a guide to determine whether a product was deemed to be made-in-Malaysia. He agreed that a lot of government initiative was needed for BBBM. For instance, imported products were still used in street lighting when good local products were available.
- Chairman requested the Secretariat to obtain and furnish the official definition of *BBBM* to Encik Foo.

(i) **The meeting agreed that:**

- a. The Secretariat is to obtain and furnish the official definition of *BBBM* to Encik Foo.

Action: Secretariat

2. PAPER 1: APPROVALS UNDER REGULATION 11(3) HOUSING DEVELOPMENT (CONTROL & LICENSING) REGULATIONS 1989 ARE INVALID: RETROSPECTIVE OR PROSPECTIVE? BY MESSRS. ZAID IBRAHIM & CO.

A. YBrs. Ms. Sunita S. Sothi, Partner, Messrs. Zaid Ibrahim & Co., presented as follows:

(1) Objectives of the presentation:

- (i) KPKT is to clarify the status of approvals obtained by developers prior to the case of Ang Ming Lee & 34 Others versus *Menteri KPKT & Another* and other appeals;

- (ii) To clarify how developers can seek amendments to the standard Schedule G or H agreement including the extension of time for vacant possession; and
- (iii) KPKT is to clarify whether the procedure to amend the standard Schedule G or H agreement is applicable to developers seeking extension of time for vacant possession due to the MCO.

(2) The Federal Court held that in the Ang Ming Lee case Regulation 11(3) Housing Development (Control & Licensing) Regulations 1989 is *ultra vires* the Housing Development (Control & Licensing) Act 1966:

- (i) The Controller does not have the power to grant any extension of time nor to modify or waive any provision in a sale and purchase agreement (SPA); and
- (ii) Only the Minister can decide on the extension of time or amendments to the SPAs.

(3) **Problem Statement:**

- (i) Deputy Controller signed off approval for extensions of time from 36 to 48/57 months for developers in Kuala Lumpur, Penang and Johore after SPAs had been executed prior to the Ang Ming Lee case ruling and commencement of sale. This prevented purchasers from exercising their rights to seek liquidated damages from developers for late delivery; and
- (ii) Deputy Controller approved a standardised version of Schedule G and H in 2014 sanctioned by KPKT for use in the Medini Iskandar developments and amendments to agreements that catered to lease sales and not freehold/leasehold properties.

(iii) **Uncertainties Arising:**

- Developers are uncertain how to proceed: whether the Federal Court case is retrospective in effect or not;
- Should developers write-in to the Ministry of Housing & Local Government for ratification of decisions granted or maintain extended timeframes or change to 36 months or write-in for Minister's approval for the projects being sold?;
- Developers, purchasers and financiers on extended timeframes will be affected if the Minister reviews and overturns decisions or is not able to decide promptly;
- Some banks are not releasing progress payments on concern that SPAs are not valid due to ambiguity of the timeframes of 36/48/54 months; and
- Should developers in Medini continue to sell leases with the standardised SPA or re-apply for extension of time and for approval of the amended SPA?

(4) The ambiguous position needs to be clarified otherwise more ambiguity will arise from varying decisions from the Tribunal and the Courts which may

distinguish from or follow the Ang Ming Lee case. This is not good for the housing industry.

(5) **Recommendations:**

- (i) KPKT is to consider issuing new regulations under Section 24 (e) or amending the HDA to cater for extensions of time and deem them retrospective to executed agreements and where approvals were granted before the launch of projects;
- (ii) KPKT is to issue clear procedural guidelines on how to apply for exemption or amendment to the standard SPA and the timeframe for the Minister's approval; and
- (iii) The Minister is empowered under Section 24, HDA 1966 to establish a regulation for extension of time or grant extensions to developers and purchasers or grant a blanket extension for all developers and purchasers for delays in construction completions, vacant possession and banks' progress payments pursuant to the MCO.

B. The meeting noted that:

- (1) Ms. Sunita reiterated KPKT was needed to study the issues to find a way forward and PEMUDAH's assistance was requested to convene a dialogue amongst the stakeholders on the issues.
- (2) Dato' Chua enquired whether the Courts were inconsistent in their judgements. Ms. Sunita explained that the Judgement passed down in the Ang Ming Lee Federal Court case could not be challenged and judges were trying to distinguish current cases from the Ang Ming Lee case specifications so that they could decide differently. Claims for liquidated damages have to be referred to the Tribunal first. Developers and purchasers will only apply to the High Court for a review if developers are unhappy over large sums awarded by the Tribunal or if purchasers are not satisfied.
- (3) Ms. Sunita informed that some developers would have to decide whether to have their contractors rush project completions within 36 months with possibly only a delay of a few months versus a delay of a whole year. The other issue for developers was that whether to decide to execute a new agreement rather relying on the existing agreements already signed that had two different completion dates.
- (4) Chairman recalled the National House Buyers Association had contended that as developers were in control of the construction schedules what would be the reason for seeking extensions. Purchasers incurred additional rental costs and bank loan financing charges when made to wait longer for completion when extensions were granted. Ms. Sunita concurred with Chairman's viewpoint and said extensions should not be allowed after agreements had been signed and extensions should only be granted by the Controller after the purchasers agreed to a proposed extension.

- (5) Ms. Sunita said issues existed before the MCO. Further delays occurred due to the MCO when developers were not able to do joint inspections of completed projects prior to handing over of possession or to remedy defect liabilities.
- (6) Ms. Sunita informed she had contacted the Conveyancing Practices Committee of the Bar Council but had yet to receive a response. She suggested that, amongst others, the Conveyancing Practices Committee and REHDA should also be involved in the proposed stakeholder dialogue.
- (7) Chairman agreed that a stakeholder dialogue was necessary and suggested the Technical Working Group on Registering Property of PEMUDAH take the lead on this matter and PEMUDAH would contact the various stakeholders such as KPKT, Master Builders Association Malaysia, the Bar Council, State Bar Committees, National House Buyers Association, developers, etc. to convene a dialogue. Ms. Sunita will be invited to participate in the dialogue. A webinar on the issues will be useful.

C. The meeting agreed that:

- (1) A stakeholder dialogue is necessary, the Technical Working Group on Registering Property will take the lead on this matter, PEMUDAH will contact the various stakeholders such as KPKT, Master Builders Association Malaysia, the Bar Council, State Bar Committees, National House Buyers Association, developers, etc. to convene a dialogue and Ms. Sunita will be invited to participate in the dialogue. A webinar on the issues will be useful.

Action: Secretariat

3. PAPER 2: THE REGULATORY DELIVERY MODEL

A. Prof Dr Christopher Hodges, Professor of Justice Systems, Centre for Socio-Legal Studies, Fellow of Wolfson College, University of Oxford and Fellow of European Law Institute, presented as follows:

- (1) Does regulation deliver? Good regulatory delivery improves the impact of regulation to give protection and prosperity and minimises costs to the State resulting in efficiency in the use of the resources of the State and those regulated.
- (2) The Regulatory Delivery Model sets out a six-element framework to steer improvements to regulatory delivery. Graham Russell and Christopher Hodges co-authored the book, *Regulatory Delivery*, which explored the model by asking questions about regulatory delivery and did not set out answers deliberately.
- (3) Prerequisites for effective regulatory systems (“building the right conditions”): Governance framework, culture and accountability.

- (4) Governance framework determines whether regulatory bodies' operating environment is right in terms of purpose, structures, landscape and powers and responsibilities.
- (5) Accountability is based on transparency, mechanisms and capacity building.
- (6) The regulated community has to be engaged with as "you can't regulate what you don't understand".
- (7) Culture is about the leadership, values and competency of regulators. Competency in relating professional competency with rules-based decision-making frameworks is shown within its context, assesses risks and understands the regulated. It checks and supports compliance and responds to non-compliance, all of which enables evaluation.
- (8) Practices for effective regulatory systems ("doing the right things"): Risk-based prioritisation, intervention choices and outcome measurement.
- (9) Outcome measurement relates to what is to be achieved for society, the economy and the environment. It involves identification, contribution and measurement.
- (10) An Inputs-Activities-Outputs-Outcomes-Impacts matrix was shown on the importing of timber into the United Kingdom. Attention is given primarily to the outcomes and impacts.
- (11) Risk-based prioritisation relates to what is to be focussed on. It involves identification, assessment, data, information, intelligence and using risk. Risk is about the level of hazard and the likelihood it will cause harm. Hazard is anything with potential to cause harm.
- (12) A regulatory risk framework relates the level of hazard to the likelihood of non-compliance.
- (13) Intervention choices relate to the range and shape of interventions available, building of compliance and the use of sanctions.
- (14) Graphical regulatory shapes were shown by relating the amount of regulatory effort to pre-entry authorisation, in-service supervision and post-event investigation.
- (15) The parties in the regulatory landscape are government/regulatory agencies, regulated entities and beneficiaries.

- (16) Business compliance involves awareness and interpretation of requirements, intention to comply, compliance measures put in place and the monitoring of compliance measures.
- (17) Appropriate interventions are selected based on a diagnosis of an issue at the sector level which may involve a lack of awareness or a lack of understanding or low intention or motivation or some other factors.

B. The meeting noted that:

- (1) Chairman described the model as being creative problem solving in nature that utilised problem-solving tools and that it was also applicable in businesses. Prof Dr Hodges concurred with Chairman that the model could also be business corporations-oriented and that the culture factor was absolutely critical in regulatory delivery.
- (2) Chairman mentioned about the need to institutionalise accountability and culture into the governance framework to mitigate against policy flip-flop. Prof Dr Hodges pointed out that it took time to foster a right culture within a regulator and in businesses as it was complex. Ethical business regulation is increasingly important in a relationship between the regulator and the regulated.
- (3) Chairman enquired how customers could hold regulators to account. Prof Dr Hodges mentioned the possibility of customers making use of complaint mechanisms or an independent ombudsman system and a move away from Courts and judges towards informal and quicker resolution means such as constructive discussions between regulators and companies.
- (4) Chairman also noted that the presentation focussed on processes and not on time and costs. Prof Dr Hodges informed that it was a standard practice for governments to conduct regulatory impact assessments (RIAs) which was not good enough as RIAs looked at the costs and benefits of regulations but did not pose questions as to whether the delivery systems worked or not which, if answered, could increase cost effectiveness.
- (5) Prof Dr Hodges mentioned that good self-regulation could co-exist with formal regulations when regulators and regulated entities were in an open relationship with discussions.

4. OTHER MATTERS

The following matters were addressed / noted by the meeting:

(1) **PEMUDAH Webinars**

Chairman encouraged the private sector co-chairs of TWGs to work with the Secretariat to hold at least a webinar each in a series of weekly webinars as a forum to raise and address issues in line with the *MyMudah* avenue.

(i) **The meeting agreed that:**

- a. The private sector co-chairs of TWGs should work with the Secretariat to hold at least a webinar each in a series of weekly webinars as a forum to raise and address issues in line with the *MyMudah* avenue.

Action: TWGs / Secretariat

(2) **Reviving PEMUDAH - DBKL Joint Initiative Committee**

YBhg. Dato' Pardip (PEMUDAH Member) is drafting out an agenda first before approaching DBKL on the proposed revival of the PEMUDAH - DBKL Joint Initiative Committee.

(3) **Technical Working Group on Paying Taxes (TWGPT)**

Dato' Chua informed that TWGPT had held their latest meeting in end-July 2020. TWGPT is establishing smaller working groups to address specific issues relating to Customs, income taxes, etc. in a more focussed and efficient manner and also in order to be in compliance with the MCO social distancing guidelines. TWGPT is concentrating on addressing current issues at hand first before holding a webinar to solicit for other issues.

(4) **World Bank Group's Doing Business Team in Kuala Lumpur Relocating to the USA**

Chairman informed that the World Bank Group's Doing Business team based in Kuala Lumpur would relocate to the USA. PEMUDAH and MPC should hold a farewell dinner for the Doing Business team so as to show appreciation for their cooperation and to maintain further rapport in the relationship.

(i) **The meeting agreed that:**

- a. PEMUDAH and MPC should hold a farewell dinner for the Doing Business team so as to show appreciation for their cooperation and to maintain further rapport in the relationship.

Action: Secretariat

5. ADJOURNMENT OF MEETING

Chairman adjourned the meeting at 4.15 p.m. with a word of thanks to the members and the presenters for their presence and contributions to the meeting.

The date and time of the next meeting will be determined and notified to the members.

SECRETARIAT

PEMUDAH - THE SPECIAL TASK FORCE TO FACILITATE BUSINESS

7 AUGUST 2020