The Rise of Green Leases and Green Bonds: A Legal Perspective

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As an award-winning full service law firm, we are well equipped to assist you across the entire spectrum of legal services including competition law, dispute resolution, equity and debt capital markets, employment law, joint ventures, private equity and real estate law.

We are able to support clients every step of the way in executing M&A and joint venture transactions – from conception to structuring to due diligence, documentation, financing, closing and post closing integration.
Green Leases
Green Leases

What is a Green Lease?

- A lease of a “green building” or a conventional building to be refurbished as a “green building”
- A lease that contains covenants dealing specifically with environmental or ecological sustainability matters.

What are the benefits of a Green Lease?

- Reduce utility consumption and save money
- Support corporate sustainability objectives
- Enhance your corporate/brand image
- Improve employee productivity
Best practices for Green Leases

Metering/data collection and reporting

- Arrangements to properly measure, register and periodically exchange relevant utility consumption and waste production data
- Sub-meter

Charging utilities according to consumption

Building use and occupation

- Tenant to use, occupy and maintain the building in a manner consistent with agreed sustainability goals and targets
Best practices for Green Leases (cont’d)

- Building operation, management and maintenance
- Fit-outs, alterations, maintenance and replacement of equipment
- Water and waste management
- Certification requirements
Issues to be considered in Green Leases

Compliance requirements

- Absolute obligation v reasonable endeavours

- Penalties
  - Entitlement to reduction in rent
  - No rent payable / review whilst landlord in breach
  - Right for other party to rectify breach
  - Liquidated damages
  - Right to terminate
Green Leases

Issues to be considered in Green Leases (cont’d)

Compliance requirements

- Mechanism for identifying
  a) If breach has occurred?
  b) Apportioning responsibility
  c) Determining means of remedying breach
Issues to be considered in Green Leases (cont’d)

Ongoing Management and Dispute Resolution

- Obligations for assessments and for certifications
- Cost of assessments – outgoings?
- Access to information
- Establishing Building Management Committee
- Dispute resolution mechanism
Use of Green Leases

Increased Use in the Region

- A look around the region – Singapore / Australia / Hong Kong
- Recommendations and obligations
- Drivers

Use in Malaysia

- Current Requirements
- Increasing Use – Drivers
- Use in Practice v Legal Use
2 Green Bonds
What is a Green Bond?

- A bond that is exclusively utilised for the purpose of funding eligible Green Projects that promote the preservation and protection of the natural environment.

ASEAN Capital Markets Forum 26th meeting

- Commitment to Introduction of Green Bond Standards in accordance with International Capital Market Association’s (ICMA) Green Bond principles (GBP)

Chapter 21 of Guidelines on Sukuk (effective 28/8/2014)

- 21.04 - An issuer must ensure that proceeds raised from the issuance of the Sustainable and Responsible Investment (SRI) sukuk are utilised for the purpose of funding Eligible SRI projects.
What is the significance of Green Bonds?

- Higher demand for green investment
- Benefits of a Green Bond market:
  - Additional source of financing
  - Enhancing issuer’s reputation
  - Additional cost advantages
  - “Greening” of traditionally “brown” sectors
Green Bonds in other countries

1) Hong Kong
   - Link REIT
   - USD 500 million
   - To refinance existing and future environmental projects

2) China
   - World’s largest green bond market
   - Offshore and onshore wind projects in Germany & Portugal

3) Australia
   - Funding of energy efficiency, renewable energy generation, low carbon public transport and water treatment projects
Green Bonds

Malaysia’s first Green / SRI Sukuk

- Issued by Tadau Energy Sdn. Bhd worth RM 250 Million
- Large-scale solar project of 50MW of power located in Kudat, Sabah
- First ever Green/SRI sukuk in the world
Understanding and development of Green Bonds

What we have…

▪ Fairly recent introduction

▪ Technical workshop held by Capital Markets Malaysia in association with Securities Commission Malaysia and the World Bank Group

▪ SRI Sukuk guidelines

However…

▪ No local market player with capacity to offer verification and rating services

▪ No credit enhancement tools
Thank You!

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