

# Climate Change: Championing a Lower-Carbon Economy

| by Crystal Wong Wai Chin |

Climate change is one of the biggest threats and long-term challenges for businesses. In the 2019 Annual Global CEO Survey conducted by KPMG, over a thousand CEOs viewed climate change as the single biggest risk to business growth.<sup>1</sup>

In this short article, we consider the political, commercial and regulatory risks arising out of climate change and examine the emerging opportunities for corporations leading the transition towards a lower-carbon economy.

## 01 | International commitments: The Paris Agreement

*“Climate change threatens global security and territorial sovereignty”<sup>2</sup>*

The Paris Agreement came into force in 2016 and has been regarded as the “*historic turning point*” in the fight against climate change. The objective of the Paris Agreement is to keep the increase in global temperature to well below 2°C above pre-industrial levels. Article 8 of the Paris Agreement urges signatory states to recognise “*the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge*”.

Malaysia has pledged to uphold its commitment in the Paris Agreement to achieve a 35% reduction in its carbon emissions by 2030 from their level as recorded in 2005, and up to 45% with international support from developed countries, such as climate finance funding, technology transfer and capacity building.<sup>3</sup> In this regard, the main emission contributors in Malaysia are the energy industry, transport, manufacturing industries and industrial processes, waste and the agriculture sector.

## 02 | Malaysia ramping up renewable energy investments

Malaysia aspires to supply 50% of its electricity needs using renewable energy (“RE”) by 2050, with an interim target of 20% by 2025.<sup>4</sup> Active consideration is being given to minor hydro power, solar energy, biomass and biogas projects.<sup>5</sup>

To this end, the country is implementing various RE-related initiatives, for example, the Large Scale Solar (“LSS”) initiatives with a total capacity of 1,228MW for open bidding.<sup>6</sup> Tenaga Nasional Berhad (“TNB”), Malaysia’s national utility company, has recently announced the completion of the country’s largest LSS project which is targeted to reach its full solar photovoltaic (“PV”) capacity of 50MW by year-end.

Facing an evolving energy landscape, the government is considering various funding schemes for new and existing RE players to invest in energy-efficient equipment and technologies.<sup>7</sup> The government is also implementing other RE-related regulations:

1 KPMG, *Agile or irrelevant, Redefining resilience*, 2019 Global CEO Outlook, KPMG International 2019.  
 2 Achieving Justice and Human Rights in an Era of Climate Disruption, International Bar Association, Climate Change Justice and Human Rights Task Force Report, July 2014, p. 88.  
 3 SEDA Announcements on Quota Release for Small Hydro, Biomass and Biogas on 25 October 2018.  
 4 Tan Xue Ying, “Malaysia needs RM33b to achieve 2025 green energy target”, *The Edge Financial Daily* (4 September 2019) <<https://www.theedgemarkets.com/article/malaysia-needs-rm33b-achieve-2025-green-energy-target>>.  
 5 Malaysia’s Intended Nationally Determined Contribution submitted on 18 January 2016, available at <<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Malaysia/1/INDC%20Malaysia%20Final%202027%20November%202015%20Revised%20Final%20UNFCCC.pdf>>.  
 6 Sustainable Energy Development Authority Malaysia (“SEDA”) Announcement on Revocation of Non-performing feed-in tariff projects and new quota release by SEDA in Q4 2018 on 18 October 2018.  
 7 Sofyan Rizal Ishak, “Yeo: Cheaper loans for renewable energy initiatives”, *New Straits Times* (25 September 2018), available at <<https://www.nst.com.my/business/2018/09/414912/yeo-cheaper-loans-renewable-energy-initiatives>>.

- new feed-in tariff projects,<sup>8</sup> including 74.5682MW for small hydro projects, 30MW for biogas projects and 10MW for biomass projects;
- a net energy metering scheme;
- solar leasing through supply agreements for RE; and
- a new Energy Efficiency Conservation Act, to achieve energy savings and ensure compliance with building energy codes in the industrial, commercial and residential sectors.<sup>9</sup>

### 03 | Understanding and managing climate change risk

Corporations should consider future-proofing their businesses in preparation for a lower-carbon world. The **physical risks**, associated with damage caused by climate change, are particularly pertinent to:

- **infrastructure and buildings**, given their long lifespans and high initial cost, as well as their essential roles in the functioning of our societies and economies; and
- **agricultural production**, in terms of both crop yields and the locations where different crops can be grown.<sup>10</sup>

In addition, it is essential for corporations to recognise regulatory, technological, market demand and reputational risks arising from new laws and policies, formulated by legislators to facilitate the transition to a

lower-carbon economy. The energy, natural resources and infrastructure industries should evaluate whether their assets will endure these **transitional risks**.

**STEP 1:** Corporations should **keep track of governmental climate policy and commitments**. They should learn about, and embrace, the economic opportunities presented by climate change. A viable and enhanced business model might entail taking into consideration the development of technological solutions, and staying abreast of new international treaties and reporting requirements that may affect their investments.

With the announcement by the Ministry of Energy, Science, Technology, Environment and Climate Change of a new regulatory framework, the Energy Efficiency and Conservation Act, TNB, as the lead utility company in Malaysia, has launched a campaign to promote Energy Efficiency (EE) with the intention of reminding and educating Malaysians about the significance of environmental sustainability through power saving.<sup>11</sup>

Lee Hishammuddin Allen & Gledhill actively participates in the dialogue between industry and government on climate-related regulatory development. This allows us to advise businesses on a wide variety of climate change and other environment-related issues and transactions.

<sup>8</sup> *Supra* n 5.

<sup>9</sup> Singapore International Energy Week, "Investment, Innovation and Integration are Key Pillars to Realise the Energy Transformation in ASEAN", available at <<https://www.siew.sg/newsroom/articles/detail/2018/10/30/investment-innovation-and-integration-are-key-pillars-to-realise-the-energy-transformation-in-asean>>.

<sup>10</sup> European Commission, "Adaptation to climate change: Sectors affected", available at <[https://ec.europa.eu/clima/policies/adaptation/how/sectors\\_en](https://ec.europa.eu/clima/policies/adaptation/how/sectors_en)>.

<sup>11</sup> "TNB promotes energy efficiency", *New Straits Times* (3 April 2019), available at <<https://www.nst.com.my/news/nation/2019/04/475681/tnb-promotes-energy-efficiency>>.

**STEP 2:** Corporations should **embrace sustainability reporting**. To encourage public listed companies to adopt a holistic approach to business management which has regard to the economic, environmental and social risks, opportunities and financial implications of climate change, Bursa Malaysia Securities Berhad has imposed a requirement for sustainability reporting on all public listed companies in Malaysia. The benefits of integrating sustainability into business include enhancing risk management, securing capital, promoting innovation and improving productivity. Corporations should monitor these developments and ensure that their corporate governance and disclosure practices meet the increasingly well understood reporting obligations.

Further, Malaysia is evolving into a responsible investment hub.<sup>12</sup> As of 14 May 2018, five green Sukuk totalling RM2.407 billion had been issued under the Securities Commission Malaysia's Sustainable and Responsible Investment ("SRI") Sukuk Framework.<sup>13</sup> Local investors are increasingly considering sustainability factors as part of their investment decision-making processes. This growth in responsible investment has seen a heightened demand for higher quality sustainability-related disclosures to allow investors to make better informed investment decisions.

## 04 | Opportunities arising from climate change

Climate change presents opportunities for businesses, specifically in relation to the energy industry:

- **New green investment opportunities** are being offered by the government in the RE sector. Various attractive incentives are presented to energy investors so as to facilitate the decarbonisation of the local energy system, such as through the transition from generation from conventional sources to generation from renewable sources.
- **New financial instruments**, such as green bonds, are being developed and offered, giving businesses access to a pool of ethical and socially responsible investors which they might not otherwise have been able to reach. July 2017 marked a new milestone for Malaysia in both the green financing and global Sukuk arena with the inaugural issuance of the world's first green SRI Sukuk by Tadau Energy Sdn Bhd. As of April 2018, there had been five issuances of green Sukuk with an approved issuance size of RM3.7 billion, out of which RM2.4 billion has been issued to finance RE projects and green building.<sup>14</sup> The unprecedented prospect of Islamic green finance broadens the options open to investors, including pensions and managed funds, who now have added incentive to invest in a socially responsible way.

12 "RAM: Malaysia evolving into sustainable responsible investment hub", *The Sun Daily* (24 July 2018), available at <<http://www.thesundaily.my/news/2018/07/24/ram-malaysia-evolving-sustainable-responsible-investment-hub>>.

13 Bursa Malaysia, *Sustainability Reporting Guide* (2nd Ed, 2018), available at <[https://bursa-malaysia.s3.amazonaws.com/reports/Bursa%20Malaysia%20Sustainability%20Reporting%20Guide%20\(2nd-Edition\).pdf](https://bursa-malaysia.s3.amazonaws.com/reports/Bursa%20Malaysia%20Sustainability%20Reporting%20Guide%20(2nd-Edition).pdf)>.

14 Securities Commission Malaysia, *Islamic Green Finance: Development, Ecosystem and Prospects* (March 2019), available at <<https://www.sc.com.my/api/documentms/download.ashx?id=a86707ce-07e0-4c75-9e45-7ad7bca6f540>>.

## 05 | Dispute resolution

Energy contracts are capital-intensive, long-term agreements. However, governments may change their policies over time, with a significant impact on the profitability and viability of RE projects. Notably, Spain, Italy and the Czech Republic previously provided strong incentives for RE investment, such as premium tariffs; these countries have now reduced the incentives offered to RE investors, in some instances with retrospective effect.

In response, several energy investors have initiated investment treaty arbitrations under the Energy Charter Treaty against Spain, Italy and the Czech Republic, challenging the reversal of their RE subsidies. Malaysia is not a party to the Energy Charter Treaty but participated in the negotiations on the International Energy Charter signed in May 2015.

With the rise in energy-related investment, the construction of more energy projects, and governmental efforts to achieve and implement their RE goals, emissions targets and other initiatives to reduce or eliminate non-RE production, RE-related

arbitrations are inevitable. Energy arbitrations may even catalyse investors to give greater scrutiny to climate change-related risk as part of their investment decision-making process.

It is therefore critical that when entering into RE contracts, investors should pay particular attention to the language and import of stabilisation, *force majeure* and price review clauses to ensure proper management of the risk of changes in laws, regulations or government policies which may adversely affect the commercial viability of their contracts. **LH-AG**

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