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## Digital Policies For The Digital Age: Proposed Licensing Of Data Centres

While the bold aspirations laid out in the Malaysia Digital Economy Blueprint (MyDIGITAL) certainly promise to propel Malaysia forward, there have been some recent policy decisions resulting in great concern across the technology industry. One such decision is the Malaysian Communications and Multimedia Commission (MCMC)'s intent to subject data centres and cloud service providers to the licensing obligations of the Communications and Multimedia Act 1998 (CMA 1998).

There are several reasons why this is an issue of concern to local and international technology companies, and the growth of Malaysia's digital economy :

1. **The multistakeholder nature of the digital economy requires a collaborative approach**

The 'global by default' nature of the digital economy requires public sector and private sector to jointly chart the path forward in the best interests of the nation. While MCMC undoubtedly has certain rationale and justifications for the decision to impose licensing, the proposed introduction of a licensing scheme contrary to international best practices would put at risk Malaysia's efforts to project regulatory stability and a policy environment that is conducive to investors and foreign direct investment in the digital age.

Across the international regulatory landscape for data centre and cloud computing, China, with its population of 1.4 billion, is the only country that subjects cloud services to its telecommunications licensing regime. The European Union, the United States, and neighbouring countries such as

Indonesia, Vietnam and Singapore currently rely on international standards such as ISO/IEC 27001, 27017, 27018, Uptime Institute Tier III or IV, TIA 942D, and PCI DSS to provide trust and assurance.

In Malaysia, MCMC has previously released a voluntary Technical Code for Cloud Service Provider Selection while Bank Negara Malaysia and Securities Commission Malaysia have issued their own respective guidelines. In a sector that relies on globally accepted standards, the introduction of its own licensing regime could hamper Malaysia's ability to further enhance its competitiveness and participate in digital economy free trade agreements.

"As a home-grown technology company that consistently works in close partnership with global technology players to attract investment and bring in tech transfer to Malaysia, Green Packet welcomes policies that will increase our country's competitiveness for investments as well as facilitate agility and clarity in our collective efforts to achieve the nation's digital aspirations", said CC Puan, the Group Managing Director and Chief Executive Officer.

While a licensing scheme may not be the catalyst Malaysia requires, the appointment of the new Prime Minister grants us an opportunity for renewed consultative and collaborative development of enabling policies towards a resilient, competitive, and inclusive digital Malaysia.

**2. Impact on Foreign Direct Investment**

Based on the proposed licensing scheme, all licensees must contribute 6% of revenue to the Universal Services Provision (USP) Fund once they reach the minimum revenue threshold of RM2 million. This requirement is unprecedented and unheard of anywhere else in the world. It would be detrimental to the growth of small-to-medium sized Malaysian technology companies and would increase costs to licensees and end users by 20% to 40%. This would not only impact research, development, and innovation efforts, but would also be viewed as a non-tariff barrier that would decrease market opportunities and reduce Malaysia's appeal and competitiveness as an investment destination. As a result, companies could be encouraged to redomicile to neighbouring countries, with less costly, less complex regulations.

“As an organisation with an accomplished history of developing global communication technologies spanning from satellites to submarine cables and today, the open 5G platform, we have seen various benefits which digital infrastructure, specifically data centre investment, can provide to countries, including employment opportunities and improvements to the digital ecosystem,” said Chong Kai Wooi, Managing Director, NEC Malaysia. “We welcome opportunities to contribute to the development of policies which will support the continued growth of technology companies that choose to operate in Malaysia.”

Absent the implementation of this licensing proposal, the Malaysia data centre market is expected to grow at a compound annual growth rate (CAGR) of over 16% during the period 2021–2026. With a small but steadily growing market, it is an opportune time for Malaysia to introduce enabling policies and position itself as a technology investment hub.

**3. Malaysia needs inclusive digital policies for the digital age**

When the Communications and Multimedia Act (CMA) 1998 was drawn up to regulate telecommunications services over 20 years ago, data centres and cloud services were not explicitly defined. As a result, the new licensing proposal risks exceeding the CMA’s legal remit.

Such a scheme also has far-reaching implications for end users such as micro, small, and medium enterprises (MSMEs), who have become increasingly reliant on cloud-based digital platforms to connect with their customers.

“As an organisation working for all internet users and internet service providers in the country, ranging from data centre operators, cloud service providers, solution providers to web hosters, Internet Alliance Malaysia is committed to partnering the public and private sector towards a conducive environment for digital investment and adoption as some of the key building blocks of the MyDIGITAL agenda”, shared Tan Tuan Khai, President, Internet Alliance Malaysia. “MSMEs, for example, have turned to online channels and marketplaces in order to stay afloat and bounce back from the economic impacts of COVID-19. With accelerated digital adoption in response to the new normal, the introduction of a licensing scheme for data centre and cloud service providers may result in adverse economic impact, particularly for smaller enterprises.”

Given the threat of additional multiple layers of cost and complexity associated with the proposed licensing scheme, Malaysia runs the risk of MSMEs, enterprises, customers, and end users choosing to migrate the hosting and use of cloud services outside Malaysia.

While the CMA 1998 has certainly served us well, it was not made with 21st century technology in mind. It might be time for Malaysia to reconsider existing regulation in partnership with industry and civil society, and ensure that we avoid force-fitting laws and policies into scenarios that were not envisioned at the time of drafting. To be able to take advantage of the current window of opportunity, both the government and private sector must collaborate and focus on building the ecosystem and creating an enabling environment.

There is a need and an opportunity for greater collaboration between the various stakeholders if we are to fulfill the goals of the Malaysia Digital Economy Blueprint. Clarity, urgent action, and a willingness for regular two-way engagement are essential to enable Malaysia's digital economy, particularly in achieving our goals to create 500,000 jobs and contribute 22.6% to the nation's GDP by 2025.