Brief: 2/04 Folder: 2/ April - June

THE ZRp BRIEF

KDN No: PP12857/8/2004

BRIEFING…

LEGAL PROFESSION

FORBIDDEN DISCLOSURE …

We examine the meaning of 'advocate' and the rule prohibiting advocates from disclosing communications made by their clients. What is the rationale of such a rule and is it applicable to in-house legal counsel?

According to section 126 of the Evidence Act 1950, an advocate is not permitted to disclose communications made to him by his client.

It is provided for in that section:

> No *advocate* shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

This section is based on the principle that the conduct of legal business without professional assistance is impossible and on the necessity, in order to render such assistance effectual, of securing full and unreserved communication and trust between the two.

Commonly referred to as the legal professional privilege, section 126 raises two issues, namely, (a) who is an 'advocate'; and (b) would an 'advocate' include an in-house legal counsel.

The use of the term 'advocate' in section 126 may create some confusion as a legal practitioner in Malaysia is referred to as an 'advocate and solicitor'. In fact, it is provided for in section 3 of the Legal Profession Act 1976:

> …an 'advocate and solicitor' and 'solicitor' where the context requires means an 'advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act.

However in the Federal Court case of *PP v Haji Kassim* (1971), the term 'advocate' was read synonymously with 'advocate and solicitor'.

Since an advocate and solicitor may not include an in-house legal counsel (as a legal counsel generally refers to a company's legal adviser), a subsequent issue is whether the privilege in section 126 extends to the latter.

On this point, reference may be made to section 129 of the Evidence Act which provides for *Confidential Communications with Legal Advisers*. It is stated in section 129:

> No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his *legal professional adviser* unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

A scrutiny of section 129 reveals that it is the client's entitlement to refuse to answer questions put to him regarding communications between him and his legal professional adviser. What should be noted is the term 'legal professional adviser'. The term is broader than advocate (as found in section 126) as a legal professional adviser may include persons who are not in practice such as company legal advisers, foreign legal advisers, lecturers and members of the academia. The employment of different terminology in sections 126 and 129 literally means that although the client is entitled to refuse to answer questions put to him about communications passing between him and legal professional advisers, there appears to be no corresponding provision to enjoin the latter from disclosing those communications.

There is no judicial clarification on this point but it may be interesting to note that in England, the rule against disclosure extends beyond barristers and solicitors to paid legal advisers or representatives. Malaysian courts should perhaps consider and endorse this approach as it is difficult to understand why legal advisers should not be subject to the same rule as advocates and solicitors - *ZRp*

INDUSTRIAL RELATIONS

OUTSOURCING…
EMPLOYERS' PREROGATIVE OR PITFALL?…

We examine the legal implications of outsourcing and whether such exercise is the sole prerogative of the employers.

Outsourcing simply means to pay another company to provide services which a company might otherwise have employed its own staff to perform. The concept of outsourcing is not one which is of recent origin but has in fact been practised by employers whenever it appears that it is necessary to have a particular sphere of activity outsourced or 'privatised'. It is a business reality and the acronym BPO (Business Process Outsourcing) is now a common term amongst stock market investors and observers.

In fact it is quite interesting to observe what Dave Barry (American Humor Columnist) had to say about outsourcing:

> Outsourcing is here to stay and it's happening *everywhere*, including industries that would surprise you – when you order a hamburger at a McDonald's drive-thru, the person who's taking your order is actually located in the Philippines. Your hamburger is physically cooked by workers in China, then transmitted almost instantaneously to the US via a high-speed Digitized Beef Patty Line (DBPL). All of this happens in less time than it takes you to pick your nose. (And soon even that will be outsourced).

The courts generally respect the management's right and prerogative to reorganise its business and implement a reorganisation exercise for reasons of economy and better management, or for reasons of profitability or convenience, but it must be borne in mind that the right to outsource is not an unlimited and absolute right. On the contrary, the right to outsource is circumscribed by the need for justification for outsourcing as well as adherence to procedural fairness.

A delicate situation that may arise is when the outsourcing results in a closure of a section of the employer's business necessitating termination of employment of the employees in that section. The issue that arises is whether the courts should interfere with the prerogative of the management.

Traditionally, the courts have frowned upon the practice of termination of employment in the name of outsourcing especially if the job function is still required by the company and that function is procured from an outside contractor.

A good example of court intervention in an outsourcing or privatisation exercise is the case of *Kelab Gymkhana Miri v Lim Ngiang Wei & Ors* (2000). In this case the Club had outsourced its housekeeping services. The employees of the Club in the housekeeping section challenged the outsourcing as being arbitrary, unwarranted and unjustified. The Club's justification for the privatisation was cost savings but this was not borne out by the evidence.

The Court questioned the necessity of privatisation of the housekeeping services and found that there was insufficient recourse to consultation and negotiation with the staff. In fact that Court held that the decision of the club was drastic and concluded that the whole exercise might well have been unnecessary had the parties sat down to talk and mutually agree on cost-cutting measures affecting their emoluments and other benefits.

Thus it may be seen that the mere label of an outsourcing exercise will not justify an employer's action to terminate the services of its employees where those functions are outsourced to an independent contractor.

In light of the above, it appears that there are risks involved in outsourcing as that decision may be challenged in a court of law. Management should therefore consider factors such as (a) the necessity of outsourcing; (b) the result of any cost-saving exercise (assuming that this is the reason for outsourcing); and (c) whether consultation and negotiation with staff had been conducted - *ZRp*

TORT

OF PRIVACY AND PREJUDICE

… In a recent judgment, the Malaysian High Court had occasion to deal with the question of whether a photograph taken of the complainant in a public area and subsequently published as part of an advertisement in the newspapers, constituted an invasion of privacy

INTRODUCTION Mr Justice Eady, a member of the Calcutt Committee (a UK inquiry into press behaviour in respect of personal privacy) was reported to have said in a speech in late 2002:-

> I have occasionally wondered, if no one is going to decide whether there is a tort of privacy at first instance, how an appellate court will have the opportunity. Does this mean that we shall never be let into the secret?

FACTS The complainant in the Malaysian case of *Ultra Dimension Sdn Bhd v Kook Wei Kuan* [2004] was one of a group of several kindergarten pupils photographed by one of Ultra Dimension's members of staff at an open area outside the kindergarten. Kook complained, among other things, that in so doing, Ultra Dimension had invaded his privacy. Undoubtedly, the subsequent employment of that photograph and the resulting unsolicited attention must have disconcerted Kook, but could Ultra Dimension have been said to have committed an invasion of his privacy with those actions?

WHAT IS PRIVACY? The judge in *Ultra Dimension* interpreted the nature of privacy as 'the right to be left alone and live free from all intrusions by others'. This meaning has its origins from the earliest (and simplest) definition of privacy given by Justice Cooley in 1888. It also partly reflects the approach of the Calcutt Committee in their first report in 1990 on privacy, that is to say:

> …the right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.

A RIGHT OF PRIVACY? Setting it apart in a legal sense, however, is not quite as simple. Privacy is not a recognised legal concept in Malaysia or England in statute or common law, and consequently, there is no legal definition. Since there is no right to privacy, accordingly there is no right of action for breach of a person's privacy. The right of privacy is also not envisaged or protected by the Federal Constitution, unlike fundamental rights such as that of life and personal liberty. In *Ultra Dimension*, the court held that Kook did not have the right to institute an action against Ultra Dimension for invasion of privacy rights.

ALTERNATIVE REDRESS Despite the general rejection by Parliament and the courts of a general right to privacy, present law accords privacy some protection in specific respects.

- *By way of an existing tort*
  Firstly, redress may be derived from other established causes of action – in this regard, where the facts surrounding the invasion of privacy fall within the boundaries of an existing and recognised tort and so giving rise to a cause of action in that existing tort. The pursuit of such a cause of action is, however, confined to the framework of that tort, and does not actually set up a unique action in privacy.

  To illustrate, the court in *Ultra Dimension* considered whether the facts in the case did fall within the confines of the torts of defamation or nuisance. It was held not to be so with regard to defamation as the court was of the view that Ultra Dimension did not do anything which lowered the reputation of the complainant (in the estimation of right thinking members of society generally). Neither could resort be made to the tort of nuisance as Ultra Dimension did not unlawfully interfere with the complainant's use or enjoyment of the land or some right over, or in connection with it.

  In similar vein, although there is no general right of privacy, statutory legislation also affords a measure of protection in other forms.

- *Criminal sanctions*
  An 'invasion of privacy' in specific situations may attract criminal sanctions. Take the example of a neighbour who enters one's home without permission and installs therein a secret spy camera. Firstly, an offence of house trespass would have been committed under section 448 of the Penal Code. Secondly, the installation of the secret spy camera would offend section 509 of the Penal Code, which is reproduced below:

  > Whoever, intending to insult the modesty of any person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or *intrudes upon the privacy of such person*, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

  It is interesting to note that an intrusion of privacy is explicitly punishable under section 509 and this is reminiscent of the case of *PP v Ahmad Bakhtiar Abdul Kayoom* where the accused was charged under both sections 448 and 509 of the Penal Code and was not only found guilty of trespassing into the complainant's apartment but also of intruding upon the privacy of Malaysian actress and model, Nasha Aziz, by installing a closed-circuit camera to spy on her with the intention of tarnishing her integrity and causing her shame.

- *Other legislation*
  In 1998, Parliament approved the Communications and Multimedia Act which has several sections on telecommunications privacy – namely section 234 which prohibits unlawful interception of communications. There is also reference to privacy issues in the Computer Crimes Act 1997 which outlaws eavesdropping, tampering with or falsifying data and sabotage through computer viruses and worms.

  The Banking and Financial Institutions Act 1989 ("BAFIA") inter alia prohibits disclosure in any manner (with certain exceptions) of information and documents relating to the affairs or account of a customer.

  In relation to personal data and information, legislation on Personal Data Protection is still in the process of being drafted by the Ministry of Energy, Communications and Multimedia. Its stated objectives are, inter alia, to provide adequate security and privacy in handling personal information, to create confidence among consumers and users of both networked and non-networked industries, to accelerate uptake of e-transactions and to promote a secure electronic environment in line with MSC objectives. The extent to which privacy rights would be enhanced by such a law remains to be seen.

CONCLUSION Should there be introduction of legislation in Malaysia to specifically make invasion of privacy a civil wrong, for which an action for damages may be brought? While we mull over that issue, we should also perhaps take stock of the statutes that contain provisions which in fact pave the way for an invasion of privacy of the individual.

Much debate and academic ink has been expended on such a discussion. The US Supreme Court, the European Convention on Human Rights and the United Nations Universal Declaration of Human Rights have affirmed privacy as a fundamental human right. In the UK, despite the enactment of the Human Rights Act 1998 embodying the right to respect for a person's private life, it is still uncertain whether there is a tort of breach of privacy in English law (prompting those remarks of Mr. Justice Eady, quoted at the beginning of this article).

Would a general right of privacy create uncertainty? Perhaps, as was once put by the Younger Committee (another UK committee of inquiry on privacy):

> …best way to ensure regard for privacy is to provide specific and effective sanctions against clearly defined activities which unreasonably frustrate the individual in his search for privacy
> — ZR*p*

INDUSTRIAL RELATIONS

POSITIVE ACTION FOR THE POSITIVE LIVING ... What are the duties of an employer when it discovers that its employee has tested positive for HIV antibodies? Is the employer duty-bound to create a positive working environment and if it is, to what extent is this duty?

HIV/ AIDS is a workplace issue not only because it affects labour and productivity, but also because the workplace has a vital role to play in the wider struggle to limit the spread and effects of the epidemic.

At the outset it is important to note the duties of an employer that include: (a) providing the employee with work; (b) providing a safe working environment; and (c) treating employees with mutual trust and confidence. Although these obligations may not be found in the express terms and conditions of service of the employees concerned, such obligations are implied terms of their respective contracts of service.

Where it is discovered that an employee has tested positive for HIV antibodies, reference should be made to the *Code of Practice on Prevention and Management of HIV/ AIDS at the Workplace* ('the Code') to enable employers and employees to deal specifically with this issue. Although this code is not binding in law, such a code may be taken into account in any dispute involving employers and employees. In fact this is specifically provided for by section 30(5A) of the Industrial Relations Act 1967 which reads as follows:-

> In making its award, the court may take into consideration any agreement or code relating to employment practices between organizations, representative of employers and workmen respectively where such agreement or code has been approved by the Minister.

The Code deals with the duties of the employer and employee as well as the confidentiality and privacy issues related to employees infected ('the said employee') with HIV or AIDS.

According to the Code, it is important to ensure that the said employee does not create a risk of the virus spreading to his colleagues through the normal course of work. The fact that the employee is HIV-positive cannot be the sole criteria to disqualify him from working as the said employee has the right to continuous employment as long as he is able to and so long as he does not create any danger to himself, his colleagues and other individuals at his workplace. It is also provided that the procedure for termination of employment on medical grounds for the said employee must be the same as that which is applicable to employees who are infected with other diseases and disciplinary action must be taken against any employee found to have discriminated against an employee who is HIV-positive.

While the employer has to undertake these duties, the said employee has to perform his part of the bargain, in that he must act responsibly so as not to expose his colleagues to unnecessary risk. He should therefore take precautionary measures to prevent the spread of the virus. He is also encouraged to inform his employer of his HIV-positive status if the nature or activity of his work creates a risk of the virus spreading.

It is obvious therefore that the employer is required to perform a balancing act. On one hand, if the said employee poses a risk to his co-workers by the nature of his work in any manner, there is an obligation on the employer to take relevant steps to minimise the exposure. This may include taking steps to prevent the said employee from participating in hazardous sporting activities or carrying out activities at work which potentially may result in accidental exchange of bodily fluids. On the other hand, where there is no risk to co-workers, there is an obligation to protect the said employee's interests by continuing him in his employment and protecting him from discrimination by his co-workers - ZR*p*

Acquired Immunodeficiency Syndrome (AIDS) – The final, life-threatening stage of infection with human immunodeficiency virus (HIV). HIV is a virus that severely damages the immune system by infecting and destroying certain white blood cells. It should be noted that a person who tests positive for HIV does not necessarily have AIDS.

BRIEF-CASE...

CONSTRUCTION

PERNAS OTIS ELEVATOR CO SDN BHD V SYARIKAT PEMBENAAN YEOH TIONG LAY SDN BHD - 2004, High Court

PAY WHEN PAID In building contracts, whether it is 'Pay When Paid', 'Pay If Paid' or 'Back to Back', they share a common element – they are contingent clauses making payment to the contractor a condition precedent before payment is made to the sub-contractor.

A 'pay when paid' clause, as it is commonly referred to in the construction industry, in a building sub-contract, provides that a main contractor will pay his sub-contractor after his receipt of payment from the employer. The rationale for such a clause is (a) that the main contractor is relieved of the need to finance the works until payment is received from the employer; and (b) for the risk of the employer's insolvency to be shared proportionately between the main contractor and the sub-contractor.

An example of a 'pay when paid' clause is as follows:

> Payment to be made within seven (7) days after the defendants receive the same from the employer of the project.

This clause is not found in standard forms of building sub-contracts in Malaysia. However this clause is often included by varying the relevant clause in such standard forms.

FACTS In the High Court case of *Pernas Otis Elevator Co Sdn Bhd v Syarikat Pembenaan Yeoh Tiong Lay Sdn Bhd*, the plaintiff (sub-contractor) brought an action against the defendant (main contractor). The plaintiff completed the works as stipulated in the sub-contract. However the mechanical and electrical consultants (engaged by the employer) instructed against payment on the ground that the lifts installed by the plaintiff had caused excessive harmonic distortions which affected the electric flow system in the project.

The defendants argued on the basis of clause 2.3 of the agreement where it was stated that the defendants were not liable to pay the plaintiff as they had not received payment of the sum from the employer.

DECISION The High Court interpreted clause 2.3 literally, stating that 'received' means receipt of actual payment. Hence, unless and until the main contractor actually receives the monies, he is not obliged to pay the sub-contractor.

After a comprehensive review of the Singapore and Hong Kong authorities such as *Interpo Engineering Pte Ltd v Sin Heng Construction Co Pte Ltd* (High Court of Singapore, 1998) and *Schindler Lifts (HK) Ltd v Shin On Construction Co Ltd* (Court of Appeal of Hong Kong, 1998), the court was of the view that the insertion of such a clause is acceptable practice among the sub-contractors and main contractors in the related industry and that it is not an oppressive and one-sided clause. It was also the view of the High Court that the clause is based on the freedom to contract and that 'a sub-contractor per se is not a special species which requires special principles of law to give him a generous dose of legal protection.'

ANALYSIS Although the clause is based on the agreement between both parties, the legislator should perhaps consider regulating the legal implications of 'pay when paid' clauses – with the possibility of outlawing such clauses except in insolvency cases.

In fact it is interesting to note that in England, legislation has been introduced in the form of the Housing Grants, Construction and Regeneration Act 1996 wherein section 113 of the Act outlaws such contingent clauses except in respect of insolvency on the part of the original paying party. In the United States, in certain states, statutes have been enacted prohibiting the enforcement of such clauses. In some other states, courts have ruled such provisions as void against public policy - ZR*p*

BANKING/ CONSTITUTIONAL LAW

DANAHARTA URUS SDN BHD v KEKATONG SDN BHD – 2004, Federal Court

FACTS REVISITED The respondent/ borrower ('Kekatong') was the registered proprietor of certain lands. These lands were charged by way of a third party charge to a bank, which had availed facilities to a borrower. The borrower had defaulted and judgment was entered against him. The bank commenced foreclosure proceedings and obtained an order for sale, which was subsequently set aside. Upon the implementation of the Pengurusan Danaharta Nasional Act 1998 ('the Danaharta Act'), the bank sold the loan and the securities to the appellant ('Danaharta'), with whom, pursuant to the provisions of the Act, the land had vested.

Kekatong applied to the High Court seeking to restrain Danaharta from exercising any rights under the Danaharta Act or under the vesting order and with particular regard to section 57 of the Danaharta Act and paragraph 5 of the 15th Schedule to the National Land Code 1965 ('the NLC').

The High Court refused the injunction on the basis that there was no serious question to be tried and in any event it had no jurisdiction to grant an injunction by reason of section 72 of the Act. Kekatong appealed to the Court of Appeal.

HIGHLIGHTS OF THE DECISION OF THE COURT OF APPEAL In allowing the appeal by Kekatong it was held that section 72 of the Danaharta Act is unconstitutional as it had failed to meet the minimum 'standards of fairness both substantive and procedural by denying to an adversely affected litigant the right to obtain injunctive relief against them under any circumstances'.

The Court of Appeal went on the basis that the expression 'law' as found in article 8(1) of the Federal Constitution must refer to a system of law that incorporates the fundamental principles of natural justice of the common law. Section 72, in the opinion of the Court of Appeal, did not meet the minimum standards of substantive and procedural fairness.

FEDERAL COURT In Danaharta's appeal to the Federal Court, the history and rationale of the Act was given prominence.

The Danaharta Act was passed by Parliament in July 1998 following the July 1997 financial and economic crisis that hit Malaysia along with a few other Asian countries. The Danaharta Act was therefore a law specifically enacted to meet an economic exigency. Parliament enacted the statute to ensure that the acquisition of non-performing loans by Danaharta would ease the pressure upon banks and other financial institutions.

The Danaharta Act was meant to allow Danaharta to sell charged lands by private treaty without securing the usual court order as banks and other secured lenders are obliged to do under the NLC. Sale of these properties would be substantially delayed if injunctive relief was available. Section 72 was therefore introduced into the Danaharta Act to enable the appellant to carry out its operations speedily so as to achieve its objectives without being inundated, saddled or slowed down by applications for injunctions with its inherent delay.

In allowing Danaharta's appeal, it was stated by the Federal Court that there was in fact a rational basis between the classification in section 72 and its object in relation to the Danaharta Act.

ANALYSIS It is obvious that the Federal Court's approach to the interpretation of section 72 of the Danaharta Act was purposive. To a great extent, the Danaharta Act is also an instrument to promote the cause of justice. After all in the preamble to the Act, it is stated:

> …legislation is the only means by which the acquisition, management, financing and disposition of assets and liabilities can be implemented promptly, efficiently and economically *for the public good*.

Anything done for the public good must surely be another way of promoting social justice - *ZRp*

BRIEF-UP...

SC (DECISION OF SYARIAH ADVISORY COUNCIL)

AMENDMENTS TO CIRCULAR DATED 31 DECEMBER 2003 ON GOVERNMENT CONTRACTS AND GUIDELINES IN RELATION TO FIXING OF PRICING OF THE UNDERLYING ASSETS FOR ISLAMIC BONDS

Date of coming into operation
30 April 2004

Notes
In a letter to the Association of Merchant Bankers Malaysia ('AMBM') dated 30 April 2004, the SC informed the AMBM that the Syariah Advisory Council had amended the Circular dated 31 December 2003. The Syariah Advisory Council had decided the sale price of an underlying asset for Islamic Bonds must not exceed 1.33 times the market value and must not be below 0.67 times the market value if sold at a discount. In the event that the market value of the underlying asset cannot be obtained, the fair value or an appropriate price based on an applicable concept may be used - ZR*p*

SC GUIDELINES

GUIDELINES ON PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING FOR CAPITAL MARKET INTERMEDIARIES

Date of coming into operation
31 March 2004

Notes
These new guidelines were issued to provide guidance to dealers, fund managers, futures brokers and futures fund managers ('reporting institutions') licensed under the Securities Industry Act 1983 and Futures Industry Act 1993 for compliance with the provisions of the Anti-Money Laundering Act 2001 ('AMLA'). The guideline has also set out the definition of 'money laundering' and the general principles and policies to combat money laundering.

According to the guidelines, the reporting institutions must ensure that laws and regulations are adhered to, co-operate fully with law enforcement agencies, adopt policies consistent with principles set out under the AMLA, obtain satisfactory evidence of the customer's identity and have effective procedures for verifying the bona fides of customers.

The guidelines also set out examples of suspicious transactions, which should be reported immediately to the Financial Intelligence Unit in Bank Negara Malaysia, being the competent authority as established under the AMLA. - ZR*p*

SC PROSPECTUS GUIDELINES GUIDANCE SUPPLEMENT 1

LISTING OF FOREIGN-INCORPORATED COMPANIES

Date of coming into operation
19 May 2004

Notes
These new guidelines were issued to specify the minimum requirements of disclosure in a prospectus in relation to the listing of foreign-incorporated companies and should be read together with the existing Prospectus Guidelines on Public Offering. According to the new guidelines, foreign-incorporated companies seeking listing in Malaysia must disclose material information which would help investors in making informed decisions such as differences in enforceability of laws, corporate information and risks associated with being regulated by other jurisdictions – ZR*p*

BURSA MALAYSIA SECURITIES BERHAD LISTING REQUIREMENTS

AMENDMENTS CONSEQUENTIAL TO THE CHANGE OF NAMES FOR THE COMPANIES WITHIN THE BURSA MALAYSIA GROUP

Date of coming into operation
20 April 2004

Amendments
Paragraphs 1.01, 7.04 and all relevant paragraphs containing the terms 'Central Depository' and 'Rules of the Central Depository'.

Practice Notes ('PN') - all listing requirements and provisions of Practice Notes that contain the term 'Kuala Lumpur Stock Exchange' and 'Malaysia Securities Exchange Berhad'.

Paragraph 1.4 of PN 5/2001, relevant paragraphs of PN 5/2001, paragraph 6.1 of PN 5/2001, paragraph 5.1(c) of PN 14/2002

Notes
On 20 April 2004, the Kuala Lumpur Stock Exchange officially converted its name to Bursa Malaysia. As a result of the conversion, the operating exchange will be known as Bursa Malaysia Securities Berhad and the Listing Requirements of Malaysia Securities Exchange Berhad ("MSEB") is now known as the Listing Requirements of Bursa Malaysia Securities Berhad.

In connection with the conversion, the Listing Requirements of Bursa Malaysia were amended. The following are some of the amendments made to the Listing Requirements of Bursa Malaysia:

- The Rules of the Exchange are now known as Rules of Bursa Malaysia Securities Berhad
- Malaysian Central Depository Sdn Bhd is now known as Bursa Malaysia Depository Sdn Bhd
- Kuala Lumpur Stock Exchange Berhad, the holding company of the Bursa Malaysia, is now known as Bursa Malaysia Berhad;
- The Rules of Central Depository are now known as Rules of the Depository

In a press release dated 20 April 2004, Bursa Malaysia announced that since Bursa Malaysia is the brand name for the exchange, there is no abbreviation or translation for its usage. The exchange should in be referred to in print, electronically and verbally as Bursa Malaysia.

Amendments were also made to the Listing Requirements of Bursa Malaysia for the MESDAQ Market as a result of the conversion from MSEB to Bursa Malaysia, with effect from 20 April 2004.

Law is merely the expression of the will of the strongest for the time being, and therefore laws have no fixity, but shift from generation to generation.

Brooks Adams – (1838 – 1918, American Historian)

BRIEFLY…

LOCAL

BUILD THEN SELL ?…

'Build the houses first before you sell them…' as suggested recently by the Prime Minister Datuk Seri Abdullah Ahmad Badawi has received the 'thumbs-up' by consumer advocates but would such a practice really solve the problems that have plagued house buyers for decades now? After all, according to the Housing and Local Government Ministry statistics, up to the year 2002, there were 544 abandoned housing projects affecting 80,000 buyers, attributed mainly to the practice of 'build then sell'.

While the 'build then sell' concept could help address house buyers' complaints specifically in relation to late delivery and sub-standard construction work, bankers and economists are less enthusiastic, claiming that such a practice could be a curtain-raiser to other problems such as a decrease in the number of new houses being built and an increase in the purchase price of such houses. In fact there is a speculation of a 20% price increase.

What may be a more viable option however is the Australian model of 'build then sell'. According to the Australian practice, 10% of the purchase price is paid upon signing the sale and purchase agreement. The money is held in a trust account and the remaining 90% of the purchase price is only to be paid three months after the certificate of fitness has been issued. The buyer also has the right to terminate the sale and purchase agreement if the project is not completed in time or if industry standards are not complied with in the construction of the premises.

'Build then sell' or 'sell and build', a fact that remains is the housing industry is one of the most heavily regulated industries but ironically it is lacking in enforcement and perhaps most of the problems faced by house-buyers could be solved if existing laws and regulations are indeed enforced - *ZRp*

BURSA MALAYSIA – A NEW BEGINNING…

KLSE Bhd is now known as Bursa Malaysia Berhad. Bursa Malaysia Berhad owns the former KLSE, now known as Bursa Malaysia Securities Berhad (Bursa Malaysia), Bursa Malaysia Derivatives Berhad, Labuan International Exchange Incorporated (LFX) and other subsidiaries engaged as clearing houses and depositories for securities. Bursa Malaysia Berhad which is owned by the Government is expected to be listed on the Bursa Malaysia later this year.

Bursa is the Malay word for 'bourse' which is actually a French term for 'exchange' - *ZRp*

NEW INTEREST RATE FRAMEWORK

Bank Negara has introduced a more market-oriented interest rate mechanism that is expected to trigger greater competition among banks and finance companies – resulting in lower lending rates for some products. This new framework provides flexibility to financial institutions to price their products more efficiently based on their respective costs.

Banks will now determine their own base-lending rate (BLR) based on the overnight policy rate (OPR).

The BLR which used to be fixed by Bank Negara at 6%, is a major factor in determining the lending rate. Now Bank Negara will only need to be informed seven days before there are any changes planned in the BLRs by the banks.

Bank Negara however will continue to monitor the lending rates changed by banking institutions to ensure fair and just pricing, and to publish the rates offered by them - *ZRp*

ZR*p* IN-BRIEF...

The ZR*p* Brief is published for the purposes of updating its readers on the latest development in case law as well as legislation.

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- **Corporate Litigation** *(Shahul Hameed Amirudin; S Nantha Balan)*
- **Corporate Insolvency & Restructuring** *(Shahul Hameed Amirudin)*
- **Energy & Utilities** *(Lukman Sheriff Alias)*
- **General Commercial & Corporate Advisory** *(Dato' Zulkifly Rafique)*
- **Industrial Relations** *(P Jayasingam)*
- **Infrastructure & Construction** *(Wilfred Abraham; Tunku Alizan RM Alias)*
- **Intellectual Property** *(Au Wei Lien)*
- **Knowledge Management & Research** *(Wilfred Abraham; Khairuzzaman Muhammad; Mariette Peters)*
- **Media & Defamation** *(Shahul Hameed Amirudin; S Nantha Balan)*
- **Mergers & Acquisitions** *(Dato' Zulkifly Rafique; Jerry Ong; Zandra Tan)*
- **Oil & Gas** *(Solpiee Hj Sahmat)*
- **Privatisation & Corporatisation** *(Lukman Sheriff Alias)*
- **Property & Conveyancing** *(Au Wei Lien)*
- **Shipping & Aviation** *(Fuzet Farid)*